TEXAS MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES LAW:

SELECTED STATUTES FOR THE PRACTITIONER

2025-2027

With statutory amendments through
the 89th Legislative Regular Session, 2025

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FOREWORD

LexisNexis Publications is pleased to offer **Texas Mental Health and Intellectual and Developmental Disabilities Law: Selected Statutes for the Practitioner**. This compilation of selected laws is fully up-to-date through the 2023 Regular Session of the 89th legislature, 2025 1st Called Session, 2nd Called Session. We have included a "Table of Amendments" of statutes and 45 C.F.R. 164 current through October 2, 2025.

We are indebted to the Texas Judicial Commission on Mental Health, which provided us with direction and guidance in developing the contents of this volume.

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December 2025

JCMH
Texas Judicial Commission
on Mental Health

Justice Jane Bland, *Chair*
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Kristi Taylor, *Executive Director*

As the Executive Director of the Texas Judicial Commission on Mental Health and on behalf of the Supreme Court of Texas and the Texas Court of Criminal Appeals, it is my distinct honor to present the Fourth Edition of *Texas Mental Health and Intellectual and Developmental Disabilities Law*: *Selected Statutes for the Practitioner*. Navigating the intersection of the justice and mental health systems is a task that demands specialized knowledge of both civil and criminal laws.

At the heart of this compilation lies a commitment to empower judges, attorneys, and other stakeholders with the tools necessary to safeguard the rights of individuals proficiently and compassionately while promoting community safety. By distilling the relevant statutes found in several different codes into a coherent and accessible format, this resource equips practitioners with an essential tool for effective legal representation. This publication follows the work of Chris Lopez, an attorney with the Texas Health and Human Services Commission and expert in Texas mental health laws. Lopez has compiled and updated the many statutes necessary for this area of the law for over twenty years. The JCMH has built upon his work and began publishing the *Selected Statutes* in 2019. For this Fourth Edition, I extend my deepest appreciation to all those involved in bringing this publication to fruition.

This compendium is not merely a collection of statutes; it is a commitment to empower legal professionals, policymakers, advocates, and scholars. Let it be a catalyst for positive change and a source of guidance for all who endeavor to uphold the rights and dignity of individuals facing mental health challenges and those with intellectual and developmental disabilities in Texas.

Kristi Taylor, Executive Director

Texas Judicial Commission on Mental Health

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TABLE OF CONTENTS

Table of Amendments
Sections affected for Texas Status xvii
Sections Affected for the Code of Federal Regulations xxi

Constitution of the State of Texas 1876

Article I. Bill of Rights, 15, 15a, 35 1
Article III. Legislative Department, 49-h, 50-f, 51-a 1
Article IX. Municipal Corporations, 9, 13 2
Article XVI. General Provisions, 6, 33, 40 3

United States Code of Federal Regulations

Title 45. Public Welfare
Subtitle A. Department of Health and Human Services
Subchapter C. Administrative Data Standards and Related Requirements
Part 164. Security and Privacy
Subpart A. General Provisions, 164.102 to 164.106 7
Subpart C. Security Standards for the Protection of Electronic Protected Health Information, 164.302 to 164.318 8
Subpart D. Notification in the Case of Breach of Unsecured Protected Health Information, 164.400 to 164.414 13
Subpart E. Privacy of Individually Identifiable Health Information, 164.500 to 164.535 16

Health and Safety Code

Title 2. Health
Subtitle E. Health Care Councils and Resource Centers
Chapter 113. Texas Child Mental Health Care Consortium
Subchapter A. General Provisions, 113.0001 47
Subchapter B. Consortium, 113.0051 to 113.0053 47
Subchapter C. Executive Committee, 113.0101 to 113.0105 48
Subchapter D. Access to Care, 113.0151 to 113.0153 49
Subchapter D-1. Rural Pediatric Mental Health Care Access Program, 113.0181, 113.0182 49
Subchapter E. Child Mental Health Workforce, 113.0201, 113.0202 50
Subchapter F. Miscellaneous Provisions, 113.0251, 113.0252 50
Subtitle H. Public Health Provisions
Chapter 166. Advance Directives
Subchapter B. Directive to Physicians, 166.046 51
Subtitle I. Medical Records
Chapter 181. Medical Records Privacy
Subchapter A. General Provisions, 181.001 to 181.006 54
Subchapter B. Exemptions, 181.051 to 181.060 55
Subchapter C. Access to and Use of Protected Health Information, 181.101 to 181.105 57
Subchapter D. Prohibited Acts, 181.151 to 181.154 58
Subchapter E. Enforcement, 181.201 to 181.207 59

Title 4. Health Facilities
Subtitle F. Powers and Duties of Hospitals
Chapter 313. Consent to Medical Treatment Act, 313.001 to 313.008 60
Subtitle G. Provision of Services in Certain Facilities
Chapter 322. Use of Restraint and Seclusion in Certain Health Care Facilities
Subchapter A. General Provisions, 322.001 to 322.006 62
Subchapter B. Restraints and Seclusion, 322.051 to 322.056 63

Title 6. Food, Drugs, Alcohol, and Hazardous Substances
Subtitle B. Alcohol and Substance Abuse Programs
Chapter 467. Peer Assistance Programs, 467.001 to 467.008 64

Title 7. Mental Health and Intellectual Disability
Subtitle A. Services for Persons with Mental Illness or an Intellectual Disability
Chapter 531. Provisions Generally Applicable to Mental Health and Intellectual Disability Services, 531.001 to 531.0021 67
Chapter 532. General Provisions Relating to Department of State Health Services, 532.001 to 532.021 69
Chapter 532A. General Provisions Relating to Department of Aging and Disability Services, 532A.001 to 532A.004 72

Chapter 533. Powers and Duties of Department of State Health Services
Subchapter A. General Powers and Duties, 533.0001 to 533.018 ... 72
Subchapter B. Powers and Duties Relating to Provision of Mental Health Services, 533.031 to 533.053 ... 77
Subchapter C. Powers and Duties Relating to ICF-MR Program, 533.062, 533.066 ... 88
Subchapter D. Powers and Duties Relating to Department Facilities, 533.081 to 533.087 ... 88
Subchapter E. Jail Diversion Program, 533.101 to 533.108 ... 90
Chapter 533A. Powers and Duties of Department of Aging and Disability Services
Subchapter A. General Powers and Duties, 533A.001 to 533A.018 ... 91
Subchapter B. Powers and Duties Relating to Provision of Intellectual Disability Services, 533A.031 to 533A.043 ... 95
Subchapter C. Powers and Duties Relating to ICF-IID Program, 533A.062, 533A.066 ... 101
Subchapter D. Powers and Duties Relating to Department Facilities, 533A.081 to 533A.087 ... 102
Subchapter E. Jail Diversion Program, 533A.108 ... 103
Chapter 534. Community Services
Subchapter A. Community Centers, 534.0001 to 534.040 ... 104
Subchapter B. Community-Based Mental Health Services, 534.051 to 534.071 ... 113
Subchapter B-1. Community-Based Intellectual Disability Services, 534.101 to 534.124 ... 118
Subchapter C. Health Maintenance Organizations, 534.151 to 534.156 ... 123
Subtitle B. State Facilities
Chapter 551. General Provisions
Subchapter A. General Powers and Duties Relating to State Facilities, 551.001 to 551.009 ... 125
Subchapter B. Provisions Applicable to Facility Superintendent or Director, 551.021 to 551.026 ... 127
Subchapter C. Powers and Duties Relating to Patient or Client Care, 551.041 to 551.044 ... 128
Chapter 552. State Hospitals
Subchapter A. General Provisions, 552.001 to 552.002 ... 129
Subchapter B. Indigent and Nonindigent Patients, 552.011 to 552.041 ... 130
Subchapter C. Powers and Duties of Department Relating to State Hospitals, 552.051 to 552.054 ... 132
Subchapter D. Inspector General Duties, 552.101 to 552.104 ... 133
Subchapter E. State Hospital Operations, 552.151 to 552.154 ... 134
Chapter 554. State Centers and Homes
Subchapter A. Waco Center for Youth, 554.0001 to 554.002 ... 135
Chapter 555. State Supported Living Centers
Subchapter A. General Provisions, 555.001 to 555.003 ... 135
Subchapter B. Powers and Duties, 555.021 to 555.027 ... 137
Subchapter C. Office of Independent Ombudsman for State Supported Living Centers, 555.051 to 555.061 ... 139
Subchapter D. Inspector General Duties, 555.101 to 555.104 ... 141
Subchapter E. Electronic Monitoring of Resident's Room, 555.151 to 555.162 ... 142
Subchapter F. Right to Essential Caregiver Visits, 555.201, 555.202 ... 145
Subtitle C. Texas Mental Health Code
Chapter 571. General Provisions, 571.001 to 571.007 ... 146
Chapter 572. Voluntary Mental Health Services, 572.001 to 572.0051 ... 149
Chapter 573. Emergency Detention
Subchapter A. Apprehension by Peace Officer or Transportation for Emergency Detention by Guardian, 573.0001 to 573.005 ... 152
Subchapter B. Judge's or Magistrate's Order for Emergency Apprehension and Detention, 573.011, 573.012 ... 155
Subchapter C. Emergency Detention, Release, and Rights, 573.021 to 573.026 ... 157
Chapter 574. Court-ordered Mental Health Services
Subchapter A. Application for Commitment and Procedures, 574.001 to 574.014 ... 158
Subchapter B. Protective Custody, 574.021 to 574.028 ... 163
Subchapter C. Proceedings for Court-ordered Mental Health Services, 574.031 to 574.037 ... 165
Subchapter D. Designation of Facility and Transportation of Patient, 574.041 to 574.048 ... 170
Subchapter E. Post-Commitment Proceedings, 574.061 to 574.070 ... 172
Subchapter F. Furlough, Discharge, and Termination of Court-ordered Mental Health Services, 574.081 to 574.089 ... 175
Subchapter G. Administration of Medication to Patient Under Court Order for Mental Health Services, 574.101 to 574.110 ... 178
Subchapter H. Voluntary Admission for Certain Persons for Whom Motion for Court-ordered Services Has Been Filed, 574.151 to 574.154 ... 181
Subchapter I. Use of Video Technology at Proceedings, 574.201 to 574.203 ... 181

Chapter 575. Admission and Transfer Procedures for Inpatient Services
Subchapter A. Admission Procedures, 575.001 to 575.003 182
Subchapter B. Transfer Procedures, 575.011 to 575.017 183
Chapter 576. Rights of Patients
Subchapter A. General Rights, 576.001 to 576.010 184
Subchapter B. Rights Relating to Treatment, 576.021 to 576.027 186
Chapter 577. Private Mental Hospitals and Other Mental Health Facilities
Subchapter A. General Provisions; Licensing and Penalties, 577.001 to 577.019 187
Chapter 577A. Psychiatric Residential Youth Treatment Facilities
Subchapter A. General Provisions, 577A.001 to 577A.004 191
Subchapter B. Certification, Fees, and Inspections, 577A.051 to 577A.055 192
Subchapter C. Regulation of Certified Psychiatric Residential Youth Treatment Facilities, 577A.101, 577A.102 192
Subchapter D. Enforcement, 577A.151 193
Chapter 578. Electroconvulsive and Other Therapies, 578.001 to 578.008 193
Subtitle D. Persons with an Intellectual Disability Act
Chapter 591. General Provisions
Subchapter A. General Provisions, 591.001 to 591.006 195
Subchapter B. Duties of Department, 591.011 to 591.013 196
Subchapter C. Penalties and Remedies, 591.021 to 591.025 197
Chapter 592. Rights of Persons with an Intellectual Disability
Subchapter A. General Provisions, 592.001, 592.002 199
Subchapter B. Basic Bill of Rights, 592.011 to 592.021 199
Subchapter C. Rights of Clients, 592.031 to 592.040 200
Subchapter D. Rights of Residents, 592.051 to 592.056 201
Subchapter E. Use of Restraints in State Supported Living Centers, 592.101 to 592.106 202
Subchapter F. Administration of Psychoactive Medications, 592.151 to 592.160 203
Chapter 593. Admission and Commitment to Intellectual Disability Services
Subchapter A. General Provisions, 593.001 to 593.014 206
Subchapter B. Application and Admission to Voluntary Intellectual Disability Services, 593.021 to 593.030 208
Subchapter C. Commitment to Residential Care Facility, 593.041 to 593.056 210
Subchapter D. Fees, 593.071 to 593.082 212
Subchapter E. Admission and Commitment Under Prior Law, 593.091 to 593.093 215
Chapter 594. Transfer and Discharge
Subchapter A. General Provisions, 594.001 to 594.003 215
Subchapter B. Transfer or Discharge, 594.011 to 594.019 215
Subchapter C. Transfer to State Mental Hospital, 594.0301, 594.031 to 594.045 216
Chapter 595. Records, 595.001 to 595.010 218
Chapter 597. Capacity of Clients to Consent to Treatment
Subchapter A. General Provisions, 597.001 to 597.003 220
Subchapter B. Assessment of Client's Capacity; Incapacitated Clients Without Guardians, 597.021 220
Subchapter C. Surrogate Consent for ICF-IID Clients, 597.041 to 597.055 220
Subtitle E. Special Provisions Relating to Mental Illness and Intellectual Disability
Chapter 611. Mental Health Records, 611.001 to 611.008 224
Chapter 612. Interstate Compact on Mental Health, 612.001 to 612.007 226
Chapter 614. Texas Correctional Office on Offenders with Medical or Mental Impairments, 614.001 to 614.021 229
Chapter 615. Miscellaneous Provisions, 615.001, 615.002 238

Code of Criminal Procedure

Title 1. Code of Criminal Procedure
Introductory
Chapter 2. General Duties of Officers, 2.09, 2.12, 2.26 239
Arrest, Commitment and Bail
Chapter 14. Arrest without Warrant, 14.01, 14.03, 14.035, 14.051, 14.06 240
Chapter 15. Arrest under Warrant, 15.17 to 15.18 242
Chapter 16. The Commitment or Discharge of the Accused, 16.22, 16.23, 16.24 244
Chapter 17. Bail, 17.03 to 17.04, 17.08, 17.42 247
Search Warrants
Chapter 18. Search Warrants, 18.191 251
After Commitment or Bail and Before the Trial
Chapter 26. Arraignment, 26.04, 26.044, 26.047, 26.05, 26.051, 26.052, 26.13 252
Trial and its Incidents
Chapter 32A. Speedy Trial, 32A.01, 32A.02 261
Chapter 35. Formation of the Jury, 35.16 262
Chapter 38. Evidence in Criminal Actions, 38.07, 38.072, 38.30, 38.31 262

Proceedings After Verdict
Chapter 42. Judgment and Sentence, 42.03, 42.09, 42.19 ... 264
Chapter 42A Community Supervision
Subchapter B. Placement on Community Supervision, 42A.051, 42A.052 ... 270
Subchapter C. Deferred Adjudication Community Supervision, 42A.104, 42A.106 ... 270
Subchapter D. Jurisdiction Over Case; Geographical Jurisdiction, 42A.151 ... 271
Subchapter E. Partial Execution of Sentence; Continuing Jurisdiction, 42A.202 ... 271
Subchapter F. Presentence and Postsentence Reports and Evaluations, 42A.253, 42A.256, 42A.259 ... 271
Subchapter H. Mandatory Conditions Generally, 42A.351 ... 272
Subchapter K. Conditions Applicable to Certain Other Offenses and Offenders, 42A.506 ... 272
Subchapter L. State Jail Felony Community Supervision, 42A.556, 42A.558, 42A.560, 42A.561 ... 273
Chapter 43. Execution of Judgment, 43.09, 43.091, 43.10, 43.13 ... 274
Justice and Corporation Courts
Chapter 45. Justice and Municipal Courts
Subchapter B. Procedures for Justice and Municipal Courts, 45.0215, 45.041, 45.049, 45.0491, 45.0492, 45.051, 45.056, 45.058 ... 277
Subchapter E. Youth Diversion, 45.301 to 45.313 ... 278
Chapter 45A. Justice and Municipal Courts
Subchapter J. Cases Involving Juveniles, 45A.451 to 45A.464 ... 281
Miscellaneous Proceedings
Chapter 46. Miscellaneous Provisions Relating to Mental Illness and Intellectual Disability, 46.01 to 46.05 ... 288
Chapter 46B. Incompetency to Stand Trial
Subchapter A. General Provisions, 46B.001 to 46B.013 ... 289
Subchapter B. Examination, 46B.021 to 46B.027 ... 293
Subchapter C. Incompetency Trial, 46B.051 to 46B.055 ... 295
Subchapter D. Procedures After Determination of Incompetency, 46B.071 to 46B.091 ... 295
Subchapter E. Civil Commitment: Charges Pending, 46B.101 to 46B.117 ... 303
Subchapter F. Civil Commitment: Charges Dismissed, 46B.151 ... 307
Subchapter G. Provisions Applicable to Subchapters E and F, 46B.171 ... 308
Chapter 46C. Insanity Defense
Subchapter A. General Provisions, 46C.001 to 46C.003 ... 308
Subchapter B. Raising the Insanity Defense, 46C.051 to 46C.052 ... 309
Subchapter C. Court-Ordered Examination and Report, 46C.101 to 46C.107 ... 309
Subchapter D. Determination of Issue of Defendant's Sanity, 46C.151 to 46C.160 ... 310
Subchapter E. Disposition Following Acquittal by Reason of Insanity: No Finding of Dangerous Conduct, 46C.201 to 46C.202 ... 312
Subchapter F. Disposition Following Acquittal by Reason of Insanity: Finding of Dangerous Conduct, 46C.251 to 46C.270 ... 312
Chapter 55. Expunction of Criminal Records [Repealed] ... 318
Chapter 59. Forfeiture of Contraband, 59.01, 59.06 ... 318

Civil Practice and Remedies Code

Title 2. Trial, Judgment, and Appeal
Subtitle A. General Provisions
Chapter 14. Inmate Litigation, 14.003 ... 325
Subtitle C. Judgments
Chapter 31. Judgments, 31.004 ... 325
Title 6. Miscellaneous Provisions
Chapter 137. Declaration for Mental Health Treatment, 137.001 to 137.011 ... 325
Chapter 144. Destruction of Certain Records, 144.001 to 144.010 ... 329

Education Code

Title 2. Public Education
Subtitle F. Curriculum, Programs, and Services
Chapter 29 Special Education
Subchapter A. Special Education Program, 29.001 to 29.030 ... 331
Subchapter L. School District Program for Residents of Forensic State Supported Living Center, 29.451 to 29.258 ... 348

Estates Code

Title I. General Provisions
Chapter 22. Definitions, 22.007 ... 351

Title 2. Estate of Decedents; Durable Powers of Attorney
Subtitle P. Durable Powers of Attorney
Chapter 751. General Provisions Regarding Durable Powers of Attorney
Subchapter A. General Provisions, 751.001 to 751.0015 ... 351
Subchapter A-1. Appointment of Agents, 751.021 to 751.024 ... 353
Subchapter B. Effect of Certain Acts on Exercise of Durable Power of Attorney, 751.051 to 751.058 ... 354
Subchapter C. Duty to Inform and Account, 751.101 to 751.106 ... 354
Subchapter C-1. Other Duties of Agent, 751.121, 751.122 ... 355
Subchapter D. Recording Durable Power of Attorney for Certain Real Property Transactions, 751.151 ... 356
Subchapter E. Acceptance of and Reliance on Durable Power of Attorney, 751.201 to 751.213 ... 356
Subchapter F. Civil Remedies, 751.251 ... 360
Chapter 752. Statutory Durable Power of Attorney
Subchapter A. General Provisions Regarding Statutory Durable Power of Attorney, 752.001 to 752.004 ... 360
Subchapter B. Form of Statutory Durable Power of Attorney, 752.051, 752.052 ... 360
Subchapter C. Construction of Powers Related to Statutory Durable Power of Attorney, 752.101 to 752.115 ... 363
Chapter 753. Removal of Attorney in Fact or Agent, 753.001, 753.002 ... 369
Title 3. Guardianship and Related Procedures
Subtitle A. General Provisions
Chapter 1002. Definitions, 1002.018, 1002.030 ... 370
Subtitle B. Scope, Jurisdiction, and Venue
Chapter 1021. General Provisions, 1021.001 ... 370
Chapter 1022. Jurisdiction, 1022.001 to 1022.005, 1022.007 ... 371
Chapter 1023. Venue, 1023.001 to 1023.003 ... 372
Subtitle C. Procedural Matters
Chapter 1051. Notices and Process in Guardianship Proceedings in General
Subchapter C. Notice and Citation Required for Application for Guardianship, 1051.102 to 1051.104, 1051.106 ... 373
Subchapter F. Additional Notice Provisions, 1051.252 ... 375
Chapter 1055. Trial and Hearing Matters
Subchapter A. Standing and Pleadings, 1055.001, 1055.003 ... 375
Subchapter B. Trial and Hearing, 1055.052 ... 375
Subchapter C. Evidence, 1055.101 ... 376
Subtitle D. Creation of Guardianship
Chapter 1101. General Procedure to Appoint Guardian
Subchapter A. Initiation of Proceeding for Appointment of Guardian, 1101.001 ... 376
Subchapter B. Hearing; Jury Trial, 1101.051 ... 377
Subchapter C. Determination of Necessity of Guardianship; Findings and Proof, 1101.101 to 1101.104 ... 377
Subchapter D. Court Action, 1101.151 to 1101.153 ... 380
Chapter 1104. Selection of and Eligibility to Serve As Guardian
Subchapter F. Certification Requirements for Certain Guardians, 1104.251 ... 381
Chapter 1105. Qualification of Guardians
Subchapter A. General Provisions, 1105.003 ... 382
Chapter 1106. Letters of Guardianship, 1106.001 ... 382
Subtitle E. Administration of Guardianship
Chapter 1151. Rights, Powers, and Duties Under Guardianship
Subchapter B. Powers and Duties of Guardians Relating to Care of Ward, 151.051 to 1151.054 ... 382
Subtitle F. Evaluation, Modification, or Termination of Guardianship
Chapter 1202. Modification or Termination of Guardianship
Subchapter B. Application for Complete Restoration of Ward's Capacity or Modification of Guardianship, 1202.051 ... 384
Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship, 1202.151 to 1202.153 ... 384
Subtitle I. Other Special Proceedings and Substitutes for Guardianship
Chapter 1357. Supported Decision-Making Agreement Act
Subchapter A. General Provisions, 1357.001 to 1357.003 ... 387
Subchapter B. Scope of Agreement and Agreement Requirements, 1357.051 to 1357.056 ... 387
Subchapter C. Duty of Certain Persons with Respect to Agreement, 1357.101, 1357.102 ... 389

Texas Family Code

Title 2. Child in Relation to the Family
Subtitle A. Limitations of Minority
Chapter 32. Consent to Treatment of Child by Non-Parent or Child
Subchapter A. Consent to Medical, Dental, Psychological, and Surgical Treatment, 32.001 to 32.005 391
Subchapter C. Miscellaneous Provisions, 32.201 to 32.203 392
Chapter 35A. Temporary Authorization for Inpatient Mental Health Services for Minor Child, 35A.001 to 35A.005 393
Title 3. Juvenile Justice Code
Chapter 51. General Provisions, 51.10, 51.20, 51.21 395
Chapter 54. Judicial Proceedings, 54.02, 54.04013, 54.0408 396
Chapter 55. Proceedings Concerning Children with Mental Illness or Intellectual Disability
Subchapter A. General Provisions, 55.01 to 55.06 399
Subchapter B. Court-ordered Mental Health Services for Child with Mental Illness, 55.11 to 55.19 401
Subchapter C. Child Unfit to Proceed as a Result of Mental Illness or Intellectual Disability, 55.31 to 55.45 402
Subchapter D. Lack of Responsibility for Conduct as a Result of Mental Illness or Intellectual Disability, 55.51 to 55.60 407
Subchapter E. Proceedings for Court-Ordered Mental Health or Residential Intellectual Disability Services, 55.65 to 55.68 409
Chapter 56. Appeal, 56.01 411
Chapter 58. Records; Juvenile Justice Information System
Subchapter A. Creation and Confidentiality of Juvenile Records, 58.0051, 58.0052, 58.007 412
Title 3A. Truancy Court Proceedings
Chapter 65. Truancy Court Proceedings
Subchapter B. Initial Procedures, 65.065 415
Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship
Subtitle E. Protection of the Child
Chapter 264. Child Welfare Services
Subchapter A. General Provisions, 264.018 416
Subchapter B. Foster Care, 264.121 417
Subchapter E. Children's Advocacy Centers, 264.4031, 264.405 420
Chapter 266. Medical Care and Educational Services for Children in Conservatorship of Department of Family and Protective Services, 266.003 to 266.012 421

Government Code

Title 2. Judicial Branch
Subtitle A. Courts
Chapter 21. General Provisions, 21.009 427
Chapter 22. Appellate Courts
Subchapter A. Supreme Court, 22.0135, 22.017 427
Subchapter B. Court of Criminal Appeals, 22.1106 428
Chapter 25. Statutory County Courts
Subchapter A. General Provisions, 25.0002, 25.0003, 25.0012 428
Subchapter B. General Provisions Relating to Statutory Probate Courts, 25.0021, 25.0022 429
Chapter 26. Constitutional County Courts
Subchapter B. Appointment of Visiting Judge, 26.012 431
Subchapter D. Jurisdiction and Powers, 26.052 431
Subtitle D. Judicial Personnel and Officials
Chapter 54A. Associate Judges
Subchapter C. Statutory Probate Court Associate Judges, 54A.201, 54A.202, 54A.209, 54A.214, 54A.216 431
Chapter 56. Judicial and Court Personnel Training Fund, 56.001, 56.003 433
Subtitle F. Court Administration
Chapter 76. Community Supervision and Corrections Departments, 76.002, 76.003, 76.011 434
Chapter 79. Texas Indigent Defense Commission
Subchapter A. General Provisions, 79.001 436
Subchapter C. General Powers and Duties of Commission, 79.034 436

Subtitle K. Specialty Courts
Chapter 121. General Provisions, 121.001 to 121.004 ... 437
Chapter 124. Veterans Treatment Court Program, 124.001 to 124.007 ... 438
Chapter 125. Mental Health Court Programs, 125.001, 125.005 ... 440
Chapter 129. Public Safety Employees Treatment Court Program, 129.001 to 129.007 ... 441
Subtitle L. Court Professions Regulation
Chapter 155. Duties Respecting Guardianship
Subchapter A. General Provisions, 155.001 ... 443
Subchapter C. Standards for and Certification of Certain Guardians, 155.102 ... 443

Title 3. Legislative Branch
Subtitle Z. Miscellaneous Provisions
Chapter 392. Person First Respectful Language Initiative, 392.001, 392.002 ... 444

Title 4. Executive Branch
Subtitle C. State Military Forces and Veterans
Chapter 434. Veteran Assistance Agencies
Subchapter A. Texas Veterans Commission, 434.024 ... 445
Subchapter H. Statewide Coordination of Mental Health Program for Veterans, 434.351 to 434.353 ... 445
Subchapter I. Community Collaboration Initiative, 434.401 ... 446
Subtitle G. Corrections
Chapter 493. Texas Department of Criminal Justice: Organization, 493.031, 493.032, 493.0325, 493.034 ... 446
Chapter 495. Contracts for Correctional Facilities and Services
Subchapter B. Miscellaneous Contracts for Correctional Facilities and Services, 495.023 ... 448
Chapter 499. Population Management; Special Programs
Subchapter E. Unit and System Capacity, 499.102 ... 448
Chapter 501. Inmate Welfare
Subchapter A. General Welfare Provisions, 501.006, 501.0215, 501.023 to 501.025 ... 449
Subchapter B. General Medical and Mental Health Care Provisions, 501.056 to 501.071 ... 450
Subchapter C. Continuity of Care Programs; Reentry Program, 501.091, 501.092, 501.0921, 501.097, 501.0971, 501.098, 501.103 ... 457
Subchapter D. Inmate Housing, 501.113, 501.114 ... 460
Chapter 507. State Jail Division
Subchapter A. State Jail Felony Facilities, 507.007 ... 460
Subchapter B. Miscellaneous Provisions, 507.031, 507.034 ... 460
Chapter 508. Parole and Mandatory Supervision
Subchapter E. Parole and Mandatory Supervision; Release Procedures, 508.1455, 508.146, 508.152 ... 461
Subchapter G. Discretionary Conditions of Parole or Mandatory Supervision, 508.223 ... 463
Subchapter J. Miscellaneous, 508.316 ... 464
Chapter 509. Community Justice Assistance Division, 509.001 to 509.003, 509.0041, 509.006, 509.007, 509.0071, 509.011, 509.016 ... 464
Chapter 511. Commission on Jail Standards [Expires September 1, 2035], 511.001, 511.0085, 511.009, 511.0098, 511.011 ... 469
Subtitle I. Health and Human Services
Chapter 539. Community Collaboratives [Repealed] ... 472
Chapter 547A. Community Collaboratives, 547A.001 to 547A.010 ... 473

Title 7. Intergovernmental Relations
Chapter 772. Governmental Planning
Subchapter A. Planning Entities, 772.0061 ... 475

Human Resources Code

Title 10. Juvenile Boards, Juvenile Probation Departments, and Family Services Offices
Subtitle A. Juvenile Probation Services
Chapter 142. Juvenile Probation Departments and Personnel, 142.001, 142.007 ... 477
Subtitle B. Juvenile Boards and Family Services Offices
Chapter 152. Juvenile Boards
Subchapter A. General Provisions, 152.007, 152.0010, 152.00162 to 152.00165 ... 477

Title 12. Juvenile Justice Services and Facilities
Subtitle B. Probation Services; Probation Facilities
Chapter 221. Assistance to Counties and Regulation of Juvenile Boards and Juvenile Probation Departments
Subchapter A. General Provisions, 221.003, 221.0061 ... 479
Subchapter B. Contract Standards and Monitoring, 221.056 ... 480
Subtitle C. Secure Facilities
Chapter 244. Care and Treatment of Children
Subchapter A. General Care and Treatment of Children, 244.001 to 244.015 ... 481

Subchapter B. Provision of Certain Information; Rights of Parents, 244.052 486
Chapter 245. Release
Subchapter B. Authority of Release; Resumption of Care, 245.051, 245.0535 to 245.054 487
Subchapter D. Termination of Control, 245.151, 245.152 490

Occupations Code

Title 3. Health Professions
Subtitle A. Provisions Applying to Health Professions Generally
Chapter 111. Telemedicine, Teledentistry, and Telehealth, 111.001 491
Chapter 113. Mental Health Telemedicine and Telehealth Services, 113.001, 113.002 491

Penal Code

Title 1. Introductory Provisions
Chapter 1. General Provisions, 1.07 493
Title 2. General Principles of Criminal Responsibility
Chapter 8. General Defenses to Criminal Responsibility, 8.01, 8.08 493

Index I-1

TABLE OF AMENDMENTS

Sections affected for Texas Status

Sec/Art	Effect	Chapter
Code of Criminal Procedure		
14.03	Amended	SB 1610
14.06	Amended	SB 1610
14.06	Amended by Adding	SB 1896
15.17	Amended by Adding	HB 75
15.17	Amended	SB 1610
15.17	Amended by Adding	SB 1896
16.24	Added	SB 9
17.03	Amended	SB 9
17.42	Amended	SB 1020
26.05	Amended	HB 1445
26.13	Amended	SB 761
38.072	Amended by Adding	HB 1778
38.072	Amended	HB 1778
42.09	Amended	SB 2938
43.09	Amended	HB 16
45A.451	Amended	HB 1620
45A.452	Amended	HB 1620
45A.455	Repealed	HB 1620
45A.456	Amended	HB 1620
45A.457	Amended	HB 1620
45A.459	Amended	HB 16
45A.460	Amended	HB 16
59.01	Amended	SB 1498
Education Code		
29.001	Amended	HB 2
29.001	Amended	SB 568
29.0012	Added	HB 2
29.0012	Added	SB 568
29.002	Repealed	HB 2
29.002	Repealed	SB 568
29.003	Amended	HB 2
29.003	Amended	SB 568
29.0031	Amended	HB 2
29.0041	Amended	HB 2
29.0041	Amended	SB 568
29.005	Amended	HB 2
29.005	Amended	SB 568
29.005	Amended by Repealing	SB 568
29.0051	Amended	HB 2
29.0051	Amended	SB 568
29.006	Amended	HB 2
29.006	Amended	SB 568
29.008	Amended	HB 2
29.008	Amended	SB 568
29.009	Amended	HB 2
29.009	Amended	SB 568
29.0091	Added	HB 2310
29.010	Amended	HB 2
29.010	Amended	SB 568
29.012	Amended	HB 2
29.012	Amended	SB 568
29.013	Amended	HB 2
29.013	Amended	SB 568
29.014	Amended	HB 2
29.014	Amended	SB 568
29.0161	Amended	HB 2
29.0161	Repealed	SB 568
29.0162	Amended	HB 2
29.0162	Amended	SB 568
29.018	Amended	HB 2
29.018	Amended	SB 568
29.020	Amended	HB 2
29.020	Amended	SB 568
29.022	Amended	HB 2
29.022	Amended	SB 568
29.026	Added	HB 2
29.026	Added	SB 568
29.030	Added	HB 1188
Estates Code		
1023.002	Amended	SB 1760
1055.001	Amended	SB 746
1101.001	Amended	SB 2587
1151.051	Amended	SB 1760
Family Code		
264.018	Amended	HB 2809
264.018	Amended	HB 694
264.121	Amended	HB 4655
Government Code		
25.0003	Amended	HB 16
25.0022	Amended	HB 16
76.002	Amended	SB 663
121.002	Amended	HB 16
434.352	Amended	HB 114
434.352	Amended by Repealing	HB 114
493.0325	Added	HB 2756
499.102	Amended	SB 2405
501.024	Amended	SB 2938
501.054	Amended	SB 2405
501.055	Amended	HB 1610
501.055	Amended	SB 2405
501.057	Amended	SB 2405
501.062	Amended by Repealing	SB 2405
501.069	Amended	SB 2405
501.092	Amended	SB 2405
507.031	Amended	SB 2405
508.1445	Amended	SB 860
508.146	Amended	SB 860
508.152	Amended by Adding	SB 2405
509.004	Amended	SB 663

Sec/Art	Effect	Chapter
509.004	Amended	SB 2405
509.007	Amended	SB 663
511.009	Amended	SB 2938
539.010	Amended and Renumbered	HB 1620
547A.001	Amended and Renumbered	HB 1620
547A.010	Amended and Renumbered	HB 1620
Health & Safety Code		
113.0001	Amended by Adding	HB 18
113.0181	Added	HB 18
113.0182	Added	HB 18
113.0251	Amended	HB 6
113.0251	Amended	HB 18
181.105	Added	HB 4224
532.001	Amended	HB 913
533.0351	Amended	SB 1580
551.007	Amended by Adding	HB 109
533A.032	Amended	HB 1620
533A.066	Repealed	HB 2358
552.002	Amended	HB 913
552.103	Amended	HB 140
552.154	Added	HB 913
554.001	Amended	HB 109
554.002	Amended	HB 109
573.001	Amended by Repealing	SB 1164
573.001	Amended	SB 1164
573.002	Amended	SB 1164
573.003	Amended	SB 1164
573.003	Amended by Repealing	SB 1164
573.012	Amended by Repealing	SB 1164
573.012	Amended	SB 1164
573.022	Amended	SB 1164
574.034	Amended	HB 16
574.034	Amended	SB 1164
574.035	Amended	HB 16
574.035	Amended	SB 1164
574.064	Amended	SB 1164
577.004	Amended	HB 3560
592.039	Amended	HB 1620
614.002	Amended	SB 2405
614.009	Amended	SB 2405
614.013	Amended	SB 2405
614.014	Amended	SB 2405
614.015	Amended	SB 2405
614.017	Amended	SB 2405
614.018	Amended	SB 2405
614.021	Amended by Repealing	SB 2405
Human Resources Code		
221.003	Amended	HB 451
244.003	Amended	SB 2776

Sections Affected for the Code of Federal Regulations

(Through October 2, 2025)

CFR Section Affected	Effect	FR Page Number
164.502	Amended	89 FR 32976, 33063
164.509	Added	89 FR 32976, 33063
164.512	Amended	89 FR 32976, 33064
164.520	Amended	89 FR 32976, 33064
164.535	Added	89 FR 32976, 33066

CONSTITUTION OF THE STATE OF TEXAS 1876

Article
I. Bill of Rights
III. Legislative Department
IX. Counties
XVI. General Provisions

ARTICLE I

Bill of Rights

Section
15. Right of Trial by Jury.
15-a. Commitment of Persons of Unsound Mind.
35. Right of Certain Facility Residents to Designate Essential Caregiver.

Preamble

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 15. Right of Trial by Jury.

The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

Sec. 15-a. Commitment of Persons of Unsound Mind.

No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

Sec. 35. Right of Certain Facility Residents to Designate Essential Caregiver.

(a) A resident of a nursing facility, assisted living facility, intermediate care facility for individuals with an intellectual disability, residence providing home and community-based services, or state supported living center, as those terms are defined by general law, has the right to designate an essential caregiver with whom the facility, residence, or center may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a) of this section, the legislature by general law may provide guidelines for a facility, residence, or center described by Subsection (a) of this section to follow in establishing essential caregiver visitation policies and procedures.

HISTORY: Adoption proposed by Acts 2021, 87th Leg., S.J.R. No. 19, § 1, to be submitted to the electorate (Prop. 6) at the November 2, 2021 election, approved by the electorate (Prop. 6) at the election held November 2, 2021.

ARTICLE III

Legislative Department

Section
49-h. Bond Issuance for Correctional and Statewide Law Enforcement Facilities and for Institutions for Persons with Intellectual and Developmental Disabilities.
50-f. General Obligation Bonds for Construction and Repair Projects and for Purchase of Equipment.
51-a. Assistance Grants, Medical Care and Certain Other Services for Needy Persons, Federal Matching Funds.

Sec. 49-h. Bond Issuance for Correctional and Statewide Law Enforcement Facilities and for Institutions for Persons with Intellectual and Developmental Disabilities.

(a) In amounts authorized by constitutional amendment or by a debt proposition under Section 49 of this article, the legislature may provide for the issuance of general obligation bonds and the use of the bond proceeds for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities of corrections institutions, including youth corrections institutions, and mental health and mental retardation institutions. The legislature may require the review and approval of the issuance of the bonds and the projects to be financed by the bond proceeds. Notwithstanding any other provision of this constitution, the issuer of the bonds or any entity created or directed to review and approve projects may include members or appointees of members of the executive, legislative, and judicial departments of state government.

(b) Bonds issued under this section constitute a general obligation of the state. While any of the bonds or interest on the bonds is outstanding and unpaid, there is appropriated out of the first money coming into the treasury in each fiscal year, not otherwise appropriated by this constitution, the amount sufficient to pay the principal of and interest on the bonds that mature or become due during the fiscal year, less any amount in any sinking fund at the end of the preceding fiscal year that is pledged to payment of the bonds or interest.

(c) In addition to the purposes authorized under Subsection (a), the legislature may authorize the issuance of the general obligation bonds for acquiring, constructing, or equipping:

(1) new statewide law enforcement facilities and for major repair or renovation of existing facilities; and

(2) new prisons and substance abuse felony punishment facilities to confine criminals and major repair or renovation of existing facilities of those institutions, and for the acquisition of, major repair to, or renovation of other facilities for use as state prisons or substance abuse felony punishment facilities.

Amendment proposed by 1999 76th Leg., H.J.R. No. 62, approved by electorate (Prop. 3) at the November 2, 1999 election.

Sec. 50-f. General Obligation Bonds for Construction and Repair Projects and for Purchase of Equipment.

(a) The legislature by general law may authorize the Texas Public Finance Authority to provide for, issue, and sell general obligation bonds of the State of Texas in an amount not to exceed $850 million and to enter into related credit agreements. The bonds shall be executed in the form, on the terms, and in the denominations, bear interest, and be issued in installments as prescribed by the Texas Public Finance Authority.

(b) Proceeds from the sale of the bonds shall be deposited in a separate fund or account within the state treasury created by the comptroller for this purpose. Money in the separate fund or account may be used only to pay for:

(1) construction and repair projects authorized by the legislature by general law or the General Appropriations Act and administered by or on behalf of the General Services Commission, the Texas Youth Commission, the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, the Parks and Wildlife Department, the adjutant general's department, the Texas School for the Deaf, the Department of Agriculture, the Department of Public Safety of the State of Texas, the State Preservation Board, the Texas Department of Health, the Texas Historical Commission, or the Texas School for the Blind and Visually Impaired; or

(2) the purchase, as authorized by the legislature by general law or the General Appropriations Act, of needed equipment by or on behalf of a state agency listed in Subdivision (1) of this subsection.

(c) The maximum net effective interest rate to be borne by bonds issued under this section may be set by general law.

(d) While any of the bonds or interest on the bonds authorized by this section is outstanding and unpaid, from the first money coming into the state treasury in each fiscal year not otherwise appropriated by this constitution, an amount sufficient to pay the principal and interest on bonds that mature or become due during the fiscal year and to make payments that become due under a related credit agreement during the fiscal year is appropriated, less the amount in the sinking fund at the close of the previous fiscal year.

(e) Bonds issued under this section, after approval by the attorney general, registration by the comptroller of public accounts, and delivery to the purchasers, are incontestable and are general obligations of the State of Texas under this constitution.

Amendment proposed by 2001, 77th Leg., H.J.R. No. 97, approved by the electorate at the November 6, 2001 election.

Sec. 51-a. Assistance Grants, Medical Care and Certain Other Services for Needy Persons, Federal Matching Funds.

(a) The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations, restrictions and regulations as may by the Legislature be deemed expedient, for assistance grants to needy dependent children and the caretakers of such children, needy persons who are totally and permanently disabled because of a mental or physical handicap, needy aged persons and needy blind persons.

(b) The Legislature may provide by General Law for medical care, rehabilitation and other similar services for needy persons. The Legislature may prescribe such other eligibility requirements for participation in these programs as it deems appropriate and may make appropriations out of state funds for such purposes. The maximum amount paid out of state funds for assistance grants, to or on behalf of needy dependent children and their caretakers shall not exceed one percent of the state budget. The Legislature by general statute shall provide for the means for determining the state budget amounts, including state and other funds appropriated by the Legislature, to be used in establishing the biennial limit.

(c) Provided further, that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate federal statutes, as they now are or as they may be amended to the extent that federal matching money is not available to the state for these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such federal matching money will be available for assistance and/or medical care for or on behalf of needy persons.

(d) Nothing in this Section shall be construed to amend, modify or repeal Section 31 of Article XVI of this Constitution; provided further, however, that such medical care, services or assistance shall also include the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state.

Amendment proposed by 1999 76th Leg., H.J.R. No. 62, approved by electorate (Prop. 3) at the November 2, 1999 election.

ARTICLE IX

Counties

Section

9. Creation, Operation and Dissolution of Hospital Districts.
13. Participation of Municipalities and other Political Subdivisions in Establishment and Operation of Mental Health, Mental Retardation, or Public Health Services.

Sec. 9. Creation, Operation and Dissolution of Hospital Districts.

The Legislature may by general or special law provide

for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (75¢) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified voters thereof voting at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Provided, however, that no district shall be created by special law except after thirty (30) days' public notice to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the qualified voters in the district concerned.

The Legislature may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

(1) determining the desire of a majority of the qualified voters within the district to dissolve it;

(2) disposing of or transferring the assets, if any, of the district; and

(3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds, however dispensed, shall be considered an obligation to be repaid in satisfaction and provided that no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district.

Sec. 13. Participation of Municipalities and other Political Subdivisions in Establishment and Operation of Mental Health, Mental Retardation, or Public Health Services.

Notwithstanding any other section of this article, the Legislature in providing for the creation, establishment, maintenance, and operation of a hospital district, shall not be required to provide that such district shall assume full responsibility for the establishment, maintenance, support, or operation of mental health services or mental retardation services including the operation of any community mental health centers, community mental retardation centers or community mental health and mental retardation centers which may exist or be thereafter established within the boundaries of such district, nor shall the Legislature be required to provide that such district shall assume full responsibility of public health department units and clinics and related public health activities or services, and the Legislature shall not be required to restrict the power of any municipality or political subdivision to levy taxes or issue bonds or other obligations or to expend public moneys for the establishment, maintenance, support, or operation of mental health services, mental retardation services, public health units or clinics or related public health activities or services or the operation of such community mental health or mental retardation centers within the boundaries of the hospital districts; and unless a statute creating a hospital district shall expressly prohibit participation by any entity other than the hospital district in the establishment, maintenance, or support of mental health services, mental retardation services, public health units or clinics or related public health activities within or partly within the boundaries of any hospital district, any municipality or any other political subdivision or state-supported entity within the hospital district may participate in the establishment, maintenance, and support of mental health services, mental retardation services, public health units and clinics and related public health activities and may levy taxes, issue bonds or other obligations, and expend public moneys for such purposes as provided by law.

ARTICLE XVI

General Provisions

Section

6. Appropriations for Private Purposes; Annual Accounting of Public Money; Acceptance and Expenditure of Certain Money for Persons with Disabilities.
33. Salary or Compensation Payments to Persons Holding More Than One Public Office.
40. Holding More Than One Public Office; Exceptions; Right of Officeholder to Vote.

Sec. 6. Appropriations for Private Purposes; Annual Accounting of Public Money; Acceptance and Expenditure of Certain Money for Persons with Disabilities.

(a) No appropriation for private or individual purposes

shall be made, unless authorized by this Constitution. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

(b) State agencies charged with the responsibility of providing services to those who are blind, crippled, or otherwise physically or mentally handicapped may accept money from private or federal sources, designated by the private or federal source as money to be used in and establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care and treatment of the handicapped. Money accepted under this subsection is state money. State agencies may spend money accepted under this subsection, and no other money, for specific programs and projects to be conducted by local level or other private, nonsectarian associations, groups, and nonprofit organizations, in establishing and equipping facilities for assisting those who are blind, crippled, or otherwise physically or mentally handicapped in becoming gainfully employed, in rehabilitating and restoring the handicapped, and in providing other services determined by the state agency to be essential for the better care or treatment of the handicapped.

The state agencies may deposit money accepted under this subsection either in the state treasury or in other secure depositories. The money may not be expended for any purpose other than the purpose for which it was given. Notwithstanding any other provision of this Constitution, the state agencies may expend money accepted under this subsection without the necessity of an appropriation, unless the Legislature, by law, requires that the money be expended only on appropriation. The Legislature may prohibit state agencies from accepting money under this subsection or may regulate the amount of money accepted, the way the acceptance and expenditure of the money is administered, and the purposes for which the state agencies may expend the money. Money accepted under this subsection for a purpose prohibited by the Legislature shall be returned to the entity that gave the money.

This subsection does not prohibit state agencies authorized to render services to the handicapped from contracting with privately-owned or local facilities for necessary and essential services, subject to such conditions, standards, and procedures as may be prescribed by law.

Sec. 33. Salary or Compensation Payments to Persons Holding More Than One Public Office.

The accounting officers in this State shall neither draw nor pay a warrant or check on funds of the State of Texas, whether in the treasury or otherwise, to any person for salary or compensation who holds at the same time more than one civil office of emolument, in violation of Section 40.

Sec. 40. Holding More Than One Public Office; Exceptions; Right of Officeholder to Vote.

(a) No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of the Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers and enlisted members of the Texas State Guard and any other active militia or military force organized under state law, and the officers and directors of soil and water conservation districts, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, the National Guard Reserve, the Texas State Guard, and any other active militia or military force organized under state law, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States, or retired officers of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and retired warrant officers, and retired enlisted men of the United States Army, Air Force, Navy, Marine Corps, and Coast Guard, and officers of the State soil and water conservation districts, from holding at the same time any other office or position of honor, trust or profit, under this State or the United States, or from voting at any election, general, special or primary in this State when otherwise qualified.

(b) State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts. Such State employees or other individuals may not receive a salary for serving as members of such governing bodies, except that:

(1) a schoolteacher, retired schoolteacher, or retired school administrator may receive compensation for serving as a member of a governing body of a school district, city, town, or local governmental district, including a water district created under Section 59, Article XVI, or Section 52, Article III; and

(2) a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district created under Section 59 of this article or under Section 52, Article III, of this constitution.

(c) It is further provided that a nonelective State officer may hold other nonelective offices under the State or the United States, if the other office is of benefit to the State of Texas or is required by the State or Federal law, and there is no conflict with the original office for which he receives salary or compensation.

(d) No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law.

Amendment proposed by 1997 75th Leg., S.J.R. No. 36, approved by electorate at the November 4, 1997 election; amendment

proposed by 1999 76th Leg., S.J.R. No. 26, was not approved by electorate (Prop. 5) at the November 2, 1999 election; amendment proposed by 2001 77th Leg., H.J.R. No. 85, approved by electorate at the November 6, 2001 election; amendment proposed by 2003 78th Leg., S.J.R. No. 19, approved by electorate at the September 13, 2003 election; amendment proposed by Acts 2009, 81st Leg., H.J.R. No. 127, § 1, approved by the electorate (Prop. 7) at the November 3, 2009 election.

UNITED STATES CODE OF FEDERAL REGULATIONS

TITLE 45

PUBLIC WELFARE

Subtitle
A. Department of Health and Human Services

SUBTITLE A

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter
C. Administrative Data Standards and Related Requirements

SUBCHAPTER C

ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS

Part
164. Security and Privacy

PART 164

SECURITY AND PRIVACY

Subpart
A. General Provisions
C. Security Standards for the Protection of Electronic Protected Health Information
D. Notification in the Case of Breach of Unsecured Protected Health Information
E. Privacy of Individually Identifiable Health Information

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 1302(a); 42 U.S.C. 1320d-1320d-9; sec. 264, Pub. L. 104-191, 110 Stat. 2033-2034 (42 U.S.C. 1320d-2(note)); and secs. 13400-13424, Pub. L. 111-5, 123 Stat. 258-279.

SUBPART A

GENERAL PROVISIONS

rule
164.102. Statutory basis.
164.103. Definitions.
164.104. Applicability.
164.105. Organizational requirements.
164.106. Relationship to other parts.

§ 164.102 Statutory basis.

The provisions of this part are adopted pursuant to the Secretary's authority to prescribe standards, requirements, and implementation specifications under part C of title XI of the Act, section 264 of Public Law 104-191, and sections 13400-13424 of Public Law 111-5.

[65 FR 82462, 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53266, Aug. 14, 2002; 74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5692, Jan. 25, 2013]

§ 164.103 Definitions.

As used in this part, the following terms have the following meanings:

Common control exists if an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of another entity.

Common ownership exists if an entity or entities possess an ownership or equity interest of 5 percent or more in another entity.

Covered functions means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with § 164.105(a)(2)(iii)(D).

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

(3) That designates health care components in accordance with paragraph § 164.105(a)(2)(iii)(D).

Law enforcement official means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

(1) Investigate or conduct an official inquiry into a potential violation of law; or

(2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Plan sponsor is defined as defined at section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

Required by law means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

[68 FR 8334, 8374, Feb. 20, 2003; 74 FR 42740, 42767, Aug. 24, 2009; 78 FR 34264, 34266, June 7, 2013]

§ 164.104 Applicability.

(a) Except as otherwise provided, the standards, requirements, and implementation specifications adopted under this part apply to the following entities:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

(b) Where provided, the standards, requirements, and implementation specifications adopted under this part apply to a business associate.

[65 FR 82462, 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 68 FR 8334, 8375, Feb. 20, 2003; 78 FR 5566, 5692, Jan. 25, 2013]

§ 164.105 Organizational requirements.

(a)(1) Standard: Health care component. If a covered entity is a hybrid entity, the requirements of this part,

other than the requirements of this section, § 164.314, and § 164.504, apply only to the health care component(s) of the entity, as specified in this section.

(2) Implementation specifications:

(i) Application of other provisions. In applying a provision of this part, other than the requirements of this section, § 164.314, and § 164.504, to a hybrid entity:

(A) A reference in such provision to a "covered entity" refers to a health care component of the covered entity;

(B) A reference in such provision to a "health plan," "covered health care provider," or "health care clearinghouse," refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable;

(C) A reference in such provision to "protected health information" refers to protected health information that is created or received by or on behalf of the health care component of the covered entity; and

(D) A reference in such provision to "electronic protected health information" refers to electronic protected health information that is created, received, maintained, or transmitted by or on behalf of the health care component of the covered entity.

(ii) Safeguard requirements. The covered entity that is a hybrid entity must ensure that a health care component of the entity complies with the applicable requirements of this part. In particular, and without limiting this requirement, such covered entity must ensure that:

(A) Its health care component does not disclose protected health information to another component of the covered entity in circumstances in which subpart E of this part would prohibit such disclosure if the health care component and the other component were separate and distinct legal entities;

(B) Its health care component protects electronic protected health information with respect to another component of the covered entity to the same extent that it would be required under subpart C of this part to protect such information if the health care component and the other component were separate and distinct legal entities;

(C) If a person performs duties for both the health care component in the capacity of a member of the workforce of such component and for another component of the entity in the same capacity with respect to that component, such workforce member must not use or disclose protected health information created or received in the course of or incident to the member's work for the health care component in a way prohibited by subpart E of this part.

(iii) Responsibilities of the covered entity. A covered entity that is a hybrid entity has the following responsibilities:

(A) For purposes of subpart C of part 160 of this subchapter, pertaining to compliance and enforcement, the covered entity has the responsibility of complying with this part.

(B) The covered entity is responsible for complying with § 164.316(a) and § 164.530(i), pertaining to the implementation of policies and procedures to ensure compliance with applicable requirements of this part, including the safeguard requirements in paragraph (a)(2)(ii) of this section.

(C) The covered entity is responsible for complying with § 164.314 and § 164.504 regarding business associate arrangements and other organizational requirements.

(D) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation in accordance with paragraph (c) of this section, provided that, if the covered entity designates one or more health care components, it must include any component that would meet the definition of a covered entity or business associate if it were a separate legal entity. Health care component(s) also may include a component only to the extent that it performs covered functions.

(b)(1) Standard: Affiliated covered entities. Legally separate covered entities that are affiliated may designate themselves as a single covered entity for purposes of this part.

(2) Implementation specifications.

(i) Requirements for designation of an affiliated covered entity.

(A) Legally separate covered entities may designate themselves (including any health care component of such covered entity) as a single affiliated covered entity, for purposes of this part, if all of the covered entities designated are under common ownership or control.

(B) The designation of an affiliated covered entity must be documented and the documentation maintained as required by paragraph (c) of this section.

(ii) Safeguard requirements. An affiliated covered entity must ensure that it complies with the applicable requirements of this part, including, if the affiliated covered entity combines the functions of a health plan, health care provider, or health care clearinghouse, § 164.308(a)(4)(ii)(A) and § 164.504(g), as applicable.

(c)(1) Standard: Documentation. A covered entity must maintain a written or electronic record of a designation as required by paragraphs (a) or (b) of this section.

(2) Implementation specification: Retention period. A covered entity must retain the documentation as required by paragraph (c)(1) of this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

[68 FR 8334, 8375, Feb. 20, 2003; 78 FR 5566, 5692, Jan. 25, 2013]

§ 164.106 Relationship to other parts.

In complying with the requirements of this part, covered entities and, where provided, business associates, are required to comply with the applicable provisions of parts 160 and 162 of this subchapter.

[65 FR 82462, 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 78 FR 5566, 5693, Jan. 25, 2013]

SUBPART C

SECURITY STANDARDS FOR THE PROTECTION OF ELECTRONIC PROTECTED HEALTH INFORMATION

rule

164.302. Applicability.
164.304. Definitions.
164.306. Security standards: General rules.
164.308. Administrative safeguards.
164.310. Physical safeguards.
164.312. Technical safeguards.
164.314. Organizational requirements.
164.316. Policies and procedures and documentation requirements.
164.318. Compliance dates for the initial implementation of the security standards.
Appendix A. to Subpart C of Part 164 — Security Standards: Matrix

AUTHORITY NOTE APPLICABLE TO ENTIRE SUBPART:

42 U.S.C. 1320d-2 and 1320d-4; sec. 13401, Pub. L. 111-5, 123 Stat. 260.

§ 164.302 Applicability.

A covered entity or business associate must comply with the applicable standards, implementation specifications, and requirements of this subpart with respect to electronic protected health information of a covered entity.

[68 FR 8334, 8376, Feb. 20, 2003; 78 FR 5566, 5693, Jan. 25, 2013]

§ 164.304 Definitions.

As used in this subpart, the following terms have the following meanings:

Access means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource. (This definition applies to "access" as used in this subpart, not as used in subparts D or E of this part.)

Administrative safeguards are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the covered entity's or business associate's workforce in relation to the protection of that information.

Authentication means the corroboration that a person is the one claimed.

Availability means the property that data or information is accessible and useable upon demand by an authorized person.

Confidentiality means the property that data or information is not made available or disclosed to unauthorized persons or processes.

Encryption means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

Facility means the physical premises and the interior and exterior of a building(s).

Information system means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people.

Integrity means the property that data or information have not been altered or destroyed in an unauthorized manner.

Malicious software means software, for example, a virus, designed to damage or disrupt a system.

Password means confidential authentication information composed of a string of characters.

Physical safeguards are physical measures, policies, and procedures to protect a covered entity's or business associate's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

Security or Security measures encompass all of the administrative, physical, and technical safeguards in an information system.

Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

Technical safeguards means the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.

User means a person or entity with authorized access.

Workstation means an electronic computing device, for example, a laptop or desktop computer, or any other device that performs similar functions, and electronic media stored in its immediate environment.

[68 FR 8334, 8376, Feb. 20, 2003; 74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5693, Jan. 25, 2013]

§ 164.306 Security standards: General rules.

(a) General requirements. Covered entities and business associates must do the following:

(1) Ensure the confidentiality, integrity, and availability of all electronic protected health information the covered entity or business associate creates, receives, maintains, or transmits.

(2) Protect against any reasonably anticipated threats or hazards to the security or integrity of such information.

(3) Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required under subpart E of this part.

(4) Ensure compliance with this subpart by its workforce.

(b) Flexibility of approach.

(1) Covered entities and business associates may use any security measures that allow the covered entity or business associate to reasonably and appropriately implement the standards and implementation specifications as specified in this subpart.

(2) In deciding which security measures to use, a covered entity or business associate must take into account the following factors:

(i) The size, complexity, and capabilities of the covered entity or business associate.

(ii) The covered entity's or the business associate's technical infrastructure, hardware, and software security capabilities.

(iii) The costs of security measures.

(iv) The probability and criticality of potential risks to electronic protected health information.

(c) Standards. A covered entity or business associate must comply with the applicable standards as provided in this section and in §§ 164.308, 164.310, 164.312, 164.314 and 164.316 with respect to all electronic protected health information.

(d) Implementation specifications. In this subpart:

(1) Implementation specifications are required or addressable. If an implementation specification is required, the word "Required" appears in parentheses after the title of the implementation specification. If an implementation specification is addressable, the word "Addressable" appears in parentheses after the title of the implementation specification.

(2) When a standard adopted in § 164.308, § 164.310, § 164.312, § 164.314, or § 164.316 includes required implementation specifications, a covered entity or business associate must implement the implementation specifications.

(3) When a standard adopted in § 164.308, § 164.310, § 164.312, § 164.314, or § 164.316 includes addressable implementation specifications, a covered entity or business associate must—

(i) Assess whether each implementation specification is a reasonable and appropriate safeguard in its environment, when analyzed with reference to the likely contribution to protecting electronic protected health information; and

(ii) As applicable to the covered entity or business associate—

(A) Implement the implementation specification if reasonable and appropriate; or

(B) If implementing the implementation specification is not reasonable and appropriate—

$(1) Document why it would not be reasonable and appropriate to implement the implementation specification; and

$(2) Implement an equivalent alternative measure if reasonable and appropriate.

(e) Maintenance. A covered entity or business associate must review and modify the security measures implemented under this subpart as needed to continue provision of reasonable and appropriate protection of electronic protected health information, and update documentation of such security measures in accordance with § 164.316(b)(2)(iii).

[68 FR 8334, 8376, Feb. 20, 2003, as corrected at 68 FR 17153, Apr. 8, 2003; 78 FR 5566, 5693, Jan. 25, 2013]

§ 164.308 Administrative safeguards.

(a) A covered entity or business associate must, in accordance with § 164.306:

(1)(i) Standard: Security management process. Implement policies and procedures to prevent, detect, contain, and correct security violations.

(ii) Implementation specifications:

(A) Risk analysis (Required). Conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the covered entity or business associate.

(B) Risk management (Required). Implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level to comply with § 164.306(a).

(C) Sanction policy (Required). Apply appropriate sanctions against workforce members who fail to comply with the security policies and procedures of the covered entity or business associate.

(D) Information system activity review (Required). Implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.

(2) Standard: Assigned security responsibility. Identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the covered entity or business associate.

(3)(i) Standard: Workforce security. Implement policies and procedures to ensure that all members of its workforce have appropriate access to electronic protected health information, as provided under paragraph (a)(4) of this section, and to prevent those workforce members who do not have access under paragraph (a)(4) of this section from obtaining access to electronic protected health information.

(ii) Implementation specifications:

(A) Authorization and/or supervision (Addressable). Implement procedures for the authorization and/or supervision of workforce members who work with electronic protected health information or in locations where it might be accessed.

(B) Workforce clearance procedure (Addressable). Implement procedures to determine that the access of a workforce member to electronic protected health information is appropriate.

(C) Termination procedures (Addressable). Implement procedures for terminating access to electronic protected health information when the employment of, or other arrangement with, a workforce member ends or as required by determinations made as specified in paragraph (a)(3)(ii)(B) of this section.

(4)(i) Standard: Information access management. Implement policies and procedures for authorizing access to electronic protected health information that are consistent with the applicable requirements of subpart E of this part.

(ii) Implementation specifications:

(A) Isolating health care clearinghouse functions (Required). If a health care clearinghouse is part of a larger organization, the clearinghouse must implement policies and procedures that protect the electronic protected health information of the clearinghouse from unauthorized access by the larger organization.

(B) Access authorization (Addressable). Implement policies and procedures for granting access to electronic protected health information, for example, through access to a workstation, transaction, program, process, or other mechanism.

(C) Access establishment and modification (Addressable). Implement policies and procedures that, based upon the covered entity's or the business associate's access authorization policies, establish, document, review, and modify a user's right of access to a workstation, transaction, program, or process.

(5)(i) Standard: Security awareness and training. Implement a security awareness and training program for all members of its workforce (including management).

(ii) Implementation specifications. Implement:

(A) Security reminders (Addressable). Periodic security updates.

(B) Protection from malicious software (Addressable). Procedures for guarding against, detecting, and reporting malicious software.

(C) Log-in monitoring (Addressable). Procedures for monitoring log-in attempts and reporting discrepancies.

(D) Password management (Addressable). Procedures for creating, changing, and safeguarding passwords.

(6)(i) Standard: Security incident procedures. Implement policies and procedures to address security incidents.

(ii) Implementation specification: Response and reporting (Required). Identify and respond to suspected or known security incidents; mitigate, to the extent practicable, harmful effects of security incidents that are known to the covered entity or business associate; and document security incidents and their outcomes.

(7)(i) Standard: Contingency plan. Establish (and implement as needed) policies and procedures for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, and natural disaster) that damages systems that contain electronic protected health information.

(ii) Implementation specifications:

(A) Data backup plan (Required). Establish and implement procedures to create and maintain retrievable exact copies of electronic protected health information.

(B) Disaster recovery plan (Required). Establish (and implement as needed) procedures to restore any loss of data.

(C) Emergency mode operation plan (Required). Establish (and implement as needed) procedures to enable continuation of critical business processes for protection of the security of electronic protected health information while operating in emergency mode.

(D) Testing and revision procedures (Addressable). Implement procedures for periodic testing and revision of contingency plans.

(E) Applications and data criticality analysis (Addressable). Assess the relative criticality of specific applications and data in support of other contingency plan components.

(8) Standard: Evaluation. Perform a periodic technical and nontechnical evaluation, based initially upon the standards implemented under this rule and, subsequently, in response to environmental or operational changes affecting the security of electronic protected health information, that establishes the extent to which a covered entity's or business associate's security policies and procedures meet the requirements of this subpart.

(b)(1) Business associate contracts and other arrangements. A covered entity may permit a business associate to create, receive, maintain, or transmit electronic protected health information on the covered entity's behalf only if the covered entity obtains satisfactory assurances, in accordance with § 164.314(a), that the business associate will appropriately safeguard the information. A covered entity is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.

(2) A business associate may permit a business associate that is a subcontractor to create, receive, maintain, or transmit electronic protected health information on its behalf only if the business associate obtains satisfactory assurances, in accordance with § 164.314(a), that the subcontractor will appropriately safeguard the information.

(3) Implementation specifications: Written contract or other arrangement (Required). Document the satisfactory assurances required by paragraph (b)(1) or (b)(2) of this section through a written contract or other arrangement with the business associate that meets the applicable requirements of § 164.314(a).

[68 FR 8334, 8377, Feb. 20, 2003; 78 FR 5566, 5694, Jan. 25, 2013]

§ 164.310 Physical safeguards.

A covered entity or business associate must, in accordance with § 164.306:

(a)(1) Standard: Facility access controls. Implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed.

(2) Implementation specifications:

(i) Contingency operations (Addressable). Establish (and implement as needed) procedures that allow facility access in support of restoration of lost data under the disaster recovery plan and emergency mode operations plan in the event of an emergency.

(ii) Facility security plan (Addressable). Implement policies and procedures to safeguard the facility and the equipment therein from unauthorized physical access, tampering, and theft.

(iii) Access control and validation procedures (Addressable). Implement procedures to control and validate a person's access to facilities based on their role or function, including visitor control, and control of access to software programs for testing and revision.

(iv) Maintenance records (Addressable). Implement policies and procedures to document repairs and modifications to the physical components of a facility which are related to security (for example, hardware, walls, doors, and locks).

(b) Standard: Workstation use. Implement policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation that can access electronic protected health information.

(c) Standard: Workstation security. Implement physical safeguards for all workstations that access electronic protected health information, to restrict access to authorized users.

(d)(1) Standard: Device and media controls. Implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain electronic protected health information into and out of a facility, and the movement of these items within the facility.

(2) Implementation specifications:

(i) Disposal (Required). Implement policies and procedures to address the final disposition of electronic protected health information, and/or the hardware or electronic media on which it is stored.

(ii) Media re-use (Required). Implement procedures for removal of electronic protected health information from electronic media before the media are made available for re-use.

(iii) Accountability (Addressable). Maintain a record of the movements of hardware and electronic media and any person responsible therefore.

(iv) Data backup and storage (Addressable). Create a retrievable, exact copy of electronic protected health information, when needed, before movement of equipment.

[68 FR 8334, 8378, Feb. 20, 2003; 78 FR 5566, 5694, Jan. 25, 2013]

§ 164.312 Technical safeguards.

A covered entity or business associate must, in accordance with § 164.306:

(a)(1) Standard: Access control. Implement technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights as specified in § 164.308(a)(4).

(2) Implementation specifications:

(i) Unique user identification (Required). Assign a unique name and/or number for identifying and tracking user identity.

(ii) Emergency access procedure (Required). Establish (and implement as needed) procedures for obtaining necessary electronic protected health information during an emergency.

(iii) Automatic logoff (Addressable). Implement electronic procedures that terminate an electronic session after a predetermined time of inactivity.

(iv) Encryption and decryption (Addressable). Implement a mechanism to encrypt and decrypt electronic protected health information.

(b) Standard: Audit controls. Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic protected health information.

(c)(1) Standard: Integrity. Implement policies and procedures to protect electronic protected health information from improper alteration or destruction.

(2) Implementation specification: Mechanism to authenticate electronic protected health information (Addressable). Implement electronic mechanisms to corroborate that electronic protected health information has not been altered or destroyed in an unauthorized manner.

(d) Standard: Person or entity authentication. Implement procedures to verify that a person or entity seeking

access to electronic protected health information is the one claimed.

(e)(1) Standard: Transmission security. Implement technical security measures to guard against unauthorized access to electronic protected health information that is being transmitted over an electronic communications network.

(2) Implementation specifications:

(i) Integrity controls (Addressable). Implement security measures to ensure that electronically transmitted electronic protected health information is not improperly modified without detection until disposed of.

(ii) Encryption (Addressable). Implement a mechanism to encrypt electronic protected health information whenever deemed appropriate.

[68 FR 8334, 8378, Feb. 20, 2003; 78 FR 5566, 5694, Jan. 25, 2013]

§ 164.314 Organizational requirements.

(a)(1) Standard: Business associate contracts or other arrangements. The contract or other arrangement required by § 164.308(b)(3) must meet the requirements of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, as applicable.

(2) Implementation specifications (Required).

(i) Business associate contracts. The contract must provide that the business associate will—

(A) Comply with the applicable requirements of this subpart;

(B) In accordance with § 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit electronic protected health information on behalf of the business associate agree to comply with the applicable requirements of this subpart by entering into a contract or other arrangement that complies with this section; and

(C) Report to the covered entity any security incident of which it becomes aware, including breaches of unsecured protected health information as required by § 164.410.

(ii) Other arrangements. The covered entity is in compliance with paragraph (a)(1) of this section if it has another arrangement in place that meets the requirements of § 164.504(e)(3).

(iii) Business associate contracts with subcontractors. The requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section apply to the contract or other arrangement between a business associate and a subcontractor required by § 164.308(b)(4) in the same manner as such requirements apply to contracts or other arrangements between a covered entity and business associate.

(b)(1) Standard: Requirements for group health plans. Except when the only electronic protected health information disclosed to a plan sponsor is disclosed pursuant to § 164.504(f)(1)(ii) or (iii), or as authorized under § 164.508, a group health plan must ensure that its plan documents provide that the plan sponsor will reasonably and appropriately safeguard electronic protected health information created, received, maintained, or transmitted to or by the plan sponsor on behalf of the group health plan.

(2) Implementation specifications (Required). The plan documents of the group health plan must be amended to incorporate provisions to require the plan sponsor to —

(i) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the group health plan;

(ii) Ensure that the adequate separation required by § 164.504(f)(2)(iii) is supported by reasonable and appropriate security measures;

(iii) Ensure that any agent to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information; and

(iv) Report to the group health plan any security incident of which it becomes aware.

[68 FR 8334, 8379, Feb. 20, 2003; 78 FR 5566, 5694, Jan. 25, 2013; 78 FR 34264, 34266, June 7, 2013]

§ 164.316 Policies and procedures and documentation requirements.

A covered entity or business associate must, in accordance with § 164.306:

(a) Standard: Policies and procedures. Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of this subpart, taking into account those factors specified in § 164.306(b)(2)(i), (ii), (iii), and (iv). This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirements of this subpart. A covered entity or business associate may change its policies and procedures at any time, provided that the changes are documented and are implemented in accordance with this subpart.

(b)(1) Standard: Documentation.

(i) Maintain the policies and procedures implemented to comply with this subpart in written (which may be electronic) form; and

(ii) If an action, activity or assessment is required by this subpart to be documented, maintain a written (which may be electronic) record of the action, activity, or assessment.

(2) Implementation specifications:

(i) Time limit (Required). Retain the documentation required by paragraph (b)(1) of this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

(ii) Availability (Required). Make documentation available to those persons responsible for implementing the procedures to which the documentation pertains.

(iii) Updates (Required). Review documentation periodically, and update as needed, in response to environmental or operational changes affecting the security of the electronic protected health information.

[68 FR 8334, 8379, Feb. 20, 2003; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.318 Compliance dates for the initial implementation of the security standards.

(a) Health plan.

(1) A health plan that is not a small health plan must comply with the applicable requirements of this subpart no later than April 20, 2005.

(2) A small health plan must comply with the applicable requirements of this subpart no later than April 20, 2006.

(b) Health care clearinghouse. A health care clearinghouse must comply with the applicable requirements of this subpart no later than April 20, 2005.

(c) Health care provider. A covered health care provider must comply with the applicable requirements of this subpart no later than April 20, 2005.

[68 FR 8334, 8380, Feb. 20, 2003]

Appendix A to Subpart C of Part 164 — Security Standards: Matrix

Standards	Sections	Implementation Specifications (R)=Required, (A)=Addressable
	Administrative Safeguards	
Security Management Process	164.308(a)(1)	Risk Analysis (R)
		Risk Management (R)
		Sanction Policy (R)
		Information System Activity Review (R)
Assigned Security Responsibility	164.308(a)(2)	(R)
Workforce Security	164.308(a)(3)	Authorization and/or Supervision (A)
		Workforce Clearance Procedure
		Termination Procedures (A)
Information Access Management	164.308(a)(4)	Isolating Health care Clearinghouse Function (R)
		Access Authorization (A)
		Access Establishment and Modification (A)
Security Awareness and Training	164.308(a)(5)	Security Reminders (A)
		Protection from Malicious Software (A)
		Log-in Monitoring (A)
		Password Management (A)
Security Incident Procedures	164.308(a)(6)	Response and Reporting (R)
Contingency Plan	164.308(a)(7)	Data Backup Plan (R)
		Disaster Recovery Plan (R)
		Emergency Mode Operation Plan (R)
		Testing and Revision Procedure (A)
		Applications and Data Criticality Analysis (A)
Evaluation	164.308(a)(8)	(R)
Business Associate Contracts and Other Arrangement	164.308(b)(1)	Written Contract or Other Arrangement (R)
	Physical Safeguards	
Facility Access Controls	164.310(a)(1)	Contingency Operations (A)
		Facility Security Plan (A)
		Access Control and Validation Procedures (A)
		Maintenance Records (A)
Workstation Use	164.310(b)	(R)
Workstation Security	164.310(c)	(R)
Device and Media Controls	164.310(d)(1)	Disposal (R)
		Media Re-use (R)
		Accountability (A)
		Data Backup and Storage (A)
	Technical Safeguards (see § 164.312)	
Access Control	164.312(a)(1)	Unique User Identification (R)
		Emergency Access Procedure (R)
		Automatic Logoff (A)
		Encryption and Decryption (A)
Audit Controls	164.312(b)	(R)
Integrity	164.312(c)(1)	Mechanism to Authenticate Electronic Protected Health Information (A)
Person or Entity Authentication	164.312(d)	(R)
Transmission Security	164.312(e)(1)	Integrity Controls (A)
		Encryption (A)

[68 FR 8334, 8380, Feb. 20, 2003]

SUBPART D

NOTIFICATION IN THE CASE OF BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

rule
164.400. Applicability.
164.402. Definitions.
164.404. Notification to individuals.
164.406. Notification to the media.
164.408. Notification to the Secretary.
164.410. Notification by a business associate.
164.412. Law enforcement delay.
164.414. Administrative requirements and burden of proof.

§ 164.400 Applicability.

The requirements of this subpart shall apply with

respect to breaches of protected health information occurring on or after September 23, 2009.

[74 FR 42740, 42767, Aug. 24, 2009]

§ 164.402 Definitions.

As used in this subpart, the following terms have the following meanings:

Breach means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of this part which compromises the security or privacy of the protected health information.

(1) Breach excludes:

(i) Any unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of this part.

(ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under subpart E of this part.

(iii) A disclosure of protected health information where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(2) Except as provided in paragraph (1) of this definition, an acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

(i) The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;

(ii) The unauthorized person who used the protected health information or to whom the disclosure was made;

(iii) Whether the protected health information was actually acquired or viewed; and

(iv) The extent to which the risk to the protected health information has been mitigated.

Unsecured protected health information means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.

[74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.404 Notification to individuals.

(a) Standard —

(1) General rule. A covered entity shall, following the discovery of a breach of unsecured protected health information, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used, or disclosed as a result of such breach.

(2) Breaches treated as discovered. For purposes of paragraph (a)(1) of this section, §§ 164.406(a), and 164.408(a), a breach shall be treated as discovered by a covered entity as of the first day on which such breach is known to the covered entity, or, by exercising reasonable diligence would have been known to the covered entity. A covered entity shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or agent of the covered entity (determined in accordance with the federal common law of agency).

(b) Implementation specification: Timeliness of notification. Except as provided in § 164.412, a covered entity shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) Implementation specifications: Content of notification —

(1) Elements. The notification required by paragraph (a) of this section shall include, to the extent possible:

(A) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(B) A description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(C) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

(D) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and

(E) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(2) Plain language requirement. The notification required by paragraph (a) of this section shall be written in plain language.

(d) Implementation specifications: Methods of individual notification. The notification required by paragraph (a) of this section shall be provided in the following form:

(1) Written notice.

(i) Written notification by first-class mail to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail. The notification may be provided in one or more mailings as information is available.

(ii) If the covered entity knows the individual is deceased and has the address of the next of kin or personal representative of the individual (as specified under § 164.502(g)(4) of subpart E), written notification by first-class mail to either the next of kin or personal representative of the individual. The notification may be provided in one or more mailings as information is available.

(2) Substitute notice. In the case in which there is insufficient or out-of-date contact information that precludes written notification to the individual under paragraph (d)(1)(i) of this section, a substitute form of notice reasonably calculated to reach the individual shall be provided. Substitute notice need not be provided in the case in which there is insufficient or out-of-date contact information that precludes written notification to the next

of kin or personal representative of the individual under paragraph (d)(1)(ii).

(i) In the case in which there is insufficient or out-of-date contact information for fewer than 10 individuals, then such substitute notice may be provided by an alternative form of written notice, telephone, or other means.

(ii) In the case in which there is insufficient or out-of-date contact information for 10 or more individuals, then such substitute notice shall:

(A) Be in the form of either a conspicuous posting for a period of 90 days on the home page of the Web site of the covered entity involved, or conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside; and

(B) Include a toll-free phone number that remains active for at least 90 days where an individual can learn whether the individual's unsecured protected health information may be included in the breach.

(3) Additional notice in urgent situations. In any case deemed by the covered entity to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity may provide information to individuals by telephone or other means, as appropriate, in addition to notice provided under paragraph (d)(1) of this section.

[74 FR 42740, 42767, Aug. 24, 2009]

§ 164.406 Notification to the media.

(a) Standard. For a breach of unsecured protected health information involving more than 500 residents of a State or jurisdiction, a covered entity shall, following the discovery of the breach as provided in § 164.404(a)(2), notify prominent media outlets serving the State or jurisdiction.

(b) Implementation specification: Timeliness of notification. Except as provided in § 164.412, a covered entity shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) Implementation specifications: Content of notification. The notification required by paragraph (a) of this section shall meet the requirements of § 164.404(c).

[74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.408 Notification to the Secretary.

(a) Standard. A covered entity shall, following the discovery of a breach of unsecured protected health information as provided in § 164.404(a)(2), notify the Secretary.

(b) Implementation specifications: Breaches involving 500 or more individuals. For breaches of unsecured protected health information involving 500 or more individuals, a covered entity shall, except as provided in § 164.412, provide the notification required by paragraph (a) of this section contemporaneously with the notice required by § 164.404(a) and in the manner specified on the HHS Web site.

(c) Implementation specifications: Breaches involving less than 500 individuals. For breaches of unsecured protected health information involving less than 500 individuals, a covered entity shall maintain a log or other documentation of such breaches and, not later than 60 days after the end of each calendar year, provide the notification required by paragraph (a) of this section for breaches discovered during the preceding calendar year, in the manner specified on the HHS web site.

[74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.410 Notification by a business associate.

(a) Standard —

(1) General rule. A business associate shall, following the discovery of a breach of unsecured protected health information, notify the covered entity of such breach.

(2) Breaches treated as discovered. For purposes of paragraph (a)(1) of this section, a breach shall be treated as discovered by a business associate as of the first day on which such breach is known to the business associate or, by exercising reasonable diligence, would have been known to the business associate. A business associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the business associate (determined in accordance with the Federal common law of agency).

(b) Implementation specifications: Timeliness of notification. Except as provided in § 164.412, a business associate shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) Implementation specifications: Content of notification.

(1) The notification required by paragraph (a) of this section shall include, to the extent possible, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed during the breach.

(2) A business associate shall provide the covered entity with any other available information that the covered entity is required to include in notification to the individual under § 164.404(c) at the time of the notification required by paragraph (a) of this section or promptly thereafter as information becomes available.

[74 FR 42740, 42767, Aug. 24, 2009; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.412 Law enforcement delay.

If a law enforcement official states to a covered entity or business associate that a notification, notice, or posting required under this subpart would impede a criminal investigation or cause damage to national security, a covered entity or business associate shall:

(a) If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or

(b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

[74 FR 42740, 42767, Aug. 24, 2009]

§ 164.414 Administrative requirements and burden of proof.

(a) Administrative requirements. A covered entity is required to comply with the administrative requirements

of § 164.530(b), (d), (e), (g), (h), (i), and (j) with respect to the requirements of this subpart.

(b) Burden of proof. In the event of a use or disclosure in violation of subpart E, the covered entity or business associate, as applicable, shall have the burden of demonstrating that all notifications were made as required by this subpart or that the use or disclosure did not constitute a breach, as defined at § 164.402.

[74 FR 42740, 42767, Aug. 24, 2009]

SUBPART E

PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

rule
164.500. Applicability.
164.501. Definitions.
164.502. Uses and disclosures of protected health information: general rules.
164.504. Uses and disclosures: Organizational requirements.
164.506. Uses and disclosures to carry out treatment, payment, or health care operations.
164.508. Uses and disclosures for which an authorization is required.
164.509. Uses and disclosures for which an attestation is required.
164.510. Uses and disclosures requiring an opportunity for the individual to agree or to object.
164.512. Uses and disclosures for which an authorization or opportunity to agree or object is not required.
164.514. Other requirements relating to uses and disclosures of protected health information.
164.520. Notice of privacy practices for protected health information.
164.522. Rights to request privacy protection for protected health information.
164.524. Access of individuals to protected health information.
164.526. Amendment of protected health information.
164.528. Accounting of disclosures of protected health information.
164.530. Administrative requirements.
164.532. Transition provisions.
164.534. Compliance dates for initial implementation of the privacy standards.
164.535. Severability.

AUTHORITY NOTE APPLICABLE TO ENTIRE SUBPART:

42 U.S.C. 1320d-2, 1320d-4, and 1320d-9; sec. 264 of Pub. L. 104-191, 110 Stat. 2033-2034 (42 U.S.C. 1320d-2 (note)); and secs. 13400-13424, Pub. L. 111-5, 123 Stat. 258-279.

§ 164.500 Applicability.

(a) Except as otherwise provided herein, the standards, requirements, and implementation specifications of this subpart apply to covered entities with respect to protected health information.

(b) Health care clearinghouses must comply with the standards, requirements, and implementation specifications as follows:

(1) When a health care clearinghouse creates or receives protected health information as a business associate of another covered entity, the clearinghouse must comply with:

(i) Section 164.500 relating to applicability;

(ii) Section 164.501 relating to definitions;

(iii) Section 164.502 relating to uses and disclosures of protected health information, except that a clearinghouse is prohibited from using or disclosing protected health information other than as permitted in the business associate contract under which it created or received the protected health information;

(iv) Section 164.504 relating to the organizational requirements for covered entities;

(v) Section 164.512 relating to uses and disclosures for which individual authorization or an opportunity to agree or object is not required, except that a clearinghouse is prohibited from using or disclosing protected health information other than as permitted in the business associate contract under which it created or received the protected health information;

(vi) Section 164.532 relating to transition requirements; and

(vii) Section 164.534 relating to compliance dates for initial implementation of the privacy standards.

(2) When a health care clearinghouse creates or receives protected health information other than as a business associate of a covered entity, the clearinghouse must comply with all of the standards, requirements, and implementation specifications of this subpart.

(c) Where provided, the standards, requirements, and implementation specifications adopted under this subpart apply to a business associate with respect to the protected health information of a covered entity.

(d) The standards, requirements, and implementation specifications of this subpart do not apply to the Department of Defense or to any other federal agency, or nongovernmental organization acting on its behalf, when providing health care to overseas foreign national beneficiaries.

[65 FR 82462, 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53266, Aug. 14, 2002; 68 FR 8334, 8381, Feb. 20, 2003; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.501 Definitions.

As used in this subpart, the following terms have the following meanings:

Correctional institution means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

Data aggregation means, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Designated record set means:

(1) A group of records maintained by or for a covered entity that is:

(i) The medical records and billing records about individuals maintained by or for a covered health care provider;

(ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals.

(2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

Direct treatment relationship means a treatment relationship between an individual and a health care provider that is not an indirect treatment relationship.

Health care operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions:

(1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; patient safety activities (as defined in 42 CFR 3.20); population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(3) Except as prohibited under § 164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;

(4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and

(6) Business management and general administrative activities of the entity, including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this subchapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer.

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information or a limited data set, and fundraising for the benefit of the covered entity.

Health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

Indirect treatment relationship means a relationship between an individual and a health care provider in which:

(1) The health care provider delivers health care to the individual based on the orders of another health care provider; and

(2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the individual.

Inmate means a person incarcerated in or otherwise confined to a correctional institution.

Marketing: (1) Except as provided in paragraph (2) of this definition, marketing means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

(2) Marketing does not include a communication made:

(i) To provide refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the covered entity in exchange for making the communication is reasonably related to the covered entity's cost of making the communication.

(ii) For the following treatment and health care operations purposes, except where the covered entity receives financial remuneration in exchange for making the communication:

(A) For treatment of an individual by a health care provider, including case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual;

(B) To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits; or

(C) For case management or care coordination, contacting of individuals with information about treatment alternatives, and related functions to the extent these activities do not fall within the definition of treatment.

(3) Financial remuneration means direct or indirect payment from or on behalf of a third party whose product or service is being described. Direct or indirect payment does not include any payment for treatment of an individual.

Payment means:

(1) The activities undertaken by:

(i) Except as prohibited under § 164.502(a)(5)(i), a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or

(ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and

(2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:

(i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider and/or health plan.

Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

Treatment means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

[65 FR 82462, 82803, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53266, Aug. 14, 2002; 68 FR 8334, 8381, Feb. 20, 2003; 74 FR 42740, 42769, Aug. 24, 2009; 78 FR 5566, 5695, Jan. 25, 2013]

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) Standard. A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.

(1) Covered entities: Permitted uses and disclosures. A covered entity is permitted to use or disclose protected health information as follows:

(i) To the individual;

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;

(iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508;

(v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and

(vi) As permitted by and in compliance with any of the following:

(A) This section.

(B) Section 164.512 and, where applicable, § 164.509.

(C) Section 164.514(e), (f), or (g).

(2) Covered entities: Required disclosures. A covered entity is required to disclose protected health information:

(i) To an individual, when requested under, and required by § 164.524 or § 164.528; and

(ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the covered entity's compliance with this subchapter.

(3) Business associates: Permitted uses and disclosures. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or other arrangement pursuant to § 164.504(e) or as required by law. The business associate may not use or disclose protected health information in a manner that would violate the requirements of this subpart, if done by the covered entity, except for the purposes specified under § 164.504(e)(2)(i)(A) or (B) if such uses or disclosures are permitted by its contract or other arrangement.

(4) Business associates: Required uses and disclosures. A business associate is required to disclose protected health information:

(i) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the business associate's compliance with this subchapter.

(ii) To the covered entity, individual, or individual's designee, as necessary to satisfy a covered entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of protected health information.

(5) Prohibited uses and disclosures.

(i) Use and disclosure of genetic information for underwriting purposes: Notwithstanding any other provision of this subpart, a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, shall not use or disclose protected health information that is genetic information for underwriting purposes. For purposes of paragraph (a)(5)(i) of this section, underwriting purposes means, with respect to a health plan:

(A) Except as provided in paragraph (a)(5)(i)(B) of this section:

(1) Rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy (including changes in deductibles or other cost-sharing mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(2) The computation of premium or contribution amounts under the plan, coverage, or policy (including discounts, rebates, payments in kind, or other premium differential mechanisms in return for activities such as completing a health risk assessment or participating in a wellness program);

(3) The application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(4) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(B) Underwriting purposes does not include determinations of medical appropriateness where an individual seeks a benefit under the plan, coverage, or policy.

(ii) Sale of protected health information:

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to § 164.512(b) or § 164.514(e);

(ii) For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to § 164.506(a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to § 164.506(a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under § 164.524 or § 164.528;

(vii) Required by law as permitted under § 164.512(a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.

(iii) Reproductive health care —

(A) Prohibition. Subject to paragraphs (a)(5)(iii)(B) and (C) of this section, a covered entity or business associate may not use or disclose protected health information for any of the following activities:

(1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.

(2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.

(3) To identify any person for any purpose described in paragraphs (a)(5)(iii)(A)(1) or (2) of this section

(B) Rule of applicability. The prohibition at paragraph (a)(5)(iii)(A) of this section applies only where the relevant activity is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care, and the covered entity or business associate that received the request for protected health information has reasonably determined that one or more of the following conditions exists:

(1) The reproductive health care is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided.

(2) The reproductive health care is protected, required, or authorized by Federal law, including the United States Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided.

(3) The presumption at paragraph (a)(5)(iii)(C) of this section applies.

(C) Presumption. The reproductive health care provided by another person is presumed lawful under paragraph (a)(5)(iii)(B)(1) or (2) of this section unless the covered entity or business associate has any of the following:

(1) Actual knowledge that the reproductive health care was not lawful under the circumstances in which it was provided.

(2) Factual information supplied by the person requesting the use or disclosure of protected health information that demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.

(D) Scope. For the purposes of this subpart, seeking, obtaining, providing, or facilitating reproductive health care includes, but is not limited to, any of the following: expressing interest in, using, performing, furnishing, paying for, disseminating information about, arranging, insuring, administering, authorizing, providing coverage for, approving, counseling about, assisting, or otherwise taking action to engage in reproductive health care; or attempting any of the same.

(b) Standard: Minimum necessary. (1) Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

(2) Minimum necessary does not apply. This requirement does not apply to:

(i) Disclosures to or requests by a health care provider for treatment;

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

(iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;

(v) Uses or disclosures that are required by law, as described by § 164.512(a); and

(vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

(c) Standard: Uses and disclosures of protected health information subject to an agreed upon restriction. A covered entity that has agreed to a restriction pursuant to § 164.522(a)(1) may not use or disclose the protected health information covered by the restriction in violation of such restriction, except as otherwise provided in § 164.522(a).

(d) Standard: Uses and disclosures of de-identified protected health information.

(1) Uses and disclosures to create de-identified information. A covered entity may use protected health information to create information that is not individually identifiable health information or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by the covered entity.

(2) Uses and disclosures of de-identified information. Health information that meets the standard and implementation specifications for de-identification under § 164.514(a) and (b) is considered not to be individually identifiable health information, i.e., de-identified. The requirements of this subpart do not apply to information that has been de-identified in accordance with the applicable requirements of § 164.514, provided that:

(i) Disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified constitutes disclosure of protected health information; and

(ii) If de-identified information is re-identified, a covered entity may use or disclose such re-identified information only as permitted or required by this subpart.

(e)(1) Standard: Disclosures to business associates

(i) A covered entity may disclose protected health information to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf, if the covered entity obtains satisfactory assurance that the business associate will appropriately safeguard the information. A covered entity is not required to obtain such satisfactory assurances from a business associate that is a subcontractor.

(ii) A business associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information.

(2) Implementation specification: Documentation. The satisfactory assurances required by paragraph (e)(1) of this section must be documented through a written contract or other written agreement or arrangement with the business associate that meets the applicable requirements of § 164.504(e).

(f) Standard: Deceased individuals. A covered entity must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

(g)(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.

(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.

(3)(i) Implementation specification: unemancipated minors. If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:

(A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;

(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or

(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;

(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with § 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under § 164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) Implementation specification: Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under

this subchapter, with respect to protected health information relevant to such personal representation.

(5) Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative, provided that the conditions at paragraphs (g)(5)(i) and (ii) of this section are met:

(i) Paragraphs (g)(5)(i)(A) and (B) of this section both apply.

(A) The covered entity has a reasonable belief that any of the following is true:

(1) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person.

(2) Treating such person as the personal representative could endanger the individual.

(B) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(ii) The covered entity does not have a reasonable belief under paragraph (g)(5)(i)(A) of this section if the basis for their belief is the provision or facilitation of reproductive health care by such person for and at the request of the individual.

(h) Standard: Confidential communications. A covered health care provider or health plan must comply with the applicable requirements of § 164.522(b) in communicating protected health information.

(i) Standard: Uses and disclosures consistent with notice. A covered entity that is required by § 164.520 to have a notice may not use or disclose protected health information in a manner inconsistent with such notice. A covered entity that is required by § 164.520(b)(1)(iii) to include a specific statement in its notice if it intends to engage in an activity listed in § 164.520(b)(1)(iii)(A)-(C), may not use or disclose protected health information for such activities, unless the required statement is included in the notice.

(j) Standard: Disclosures by whistleblowers and workforce member crime victims.

(1) Disclosures by whistleblowers. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce or a business associate discloses protected health information, provided that:

(i) The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and

(ii) The disclosure is to:

(A) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or

(B) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described in paragraph (j)(1)(i) of this section.

(2) Disclosures by workforce members who are victims of a crime. A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

(i) The protected health information disclosed is about the suspected perpetrator of the criminal act; and

(ii) The protected health information disclosed is limited to the information listed in § 164.512(f)(2)(i).

[65 FR 82462, 82805, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53267, Aug. 14, 2002; 78 FR 5566, 5696, Jan. 25, 2013; 89 FR 32976, 33063, Apr. 26, 2024]

§ 164.504 Uses and disclosures: Organizational requirements.

(a) Definitions. As used in this section:

Plan administration functions means administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

Summary health information means information, that may be individually identifiable health information, and:

(1) That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and

(2) From which the information described at § 164.514(b)(2)(i) has been deleted, except that the geographic information described in § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code.

(b) — (d) [Reserved]

(e)(1) Standard: Business associate contracts

(i) The contract or other arrangement required by § 164.502(e)(2) must meet the requirements of paragraph (e)(2), (e)(3), or (e)(5) of this section, as applicable.

(ii) A covered entity is not in compliance with the standards in § 164.502(e) and this paragraph, if the covered entity knew of a pattern of activity or practice of the business associate that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.

(iii) A business associate is not in compliance with the standards in § 164.502(e) and this paragraph, if the business associate knew of a pattern of activity or practice of a subcontractor that constituted a material breach or violation of the subcontractor's obligation under the contract or other arrangement, unless the business associate took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.

(2) Implementation specifications: Business associate contracts. A contract between the covered entity and a business associate must:

(i) Establish the permitted and required uses and disclosures of protected health information by the business associate. The contract may not authorize the business associate to use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity, except that:

(A) The contract may permit the business associate to use and disclose protected health information for the proper management and administration of the business associate, as provided in paragraph (e)(4) of this section; and

(B) The contract may permit the business associate to provide data aggregation services relating to the health care operations of the covered entity.

(ii) Provide that the business associate will:

(A) Not use or further disclose the information other than as permitted or required by the contract or as required by law;

(B) Use appropriate safeguards and comply, where applicable, with subpart C of this part with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by its contract;

(C) Report to the covered entity any use or disclosure of the information not provided for by its contract of which it becomes aware, including breaches of unsecured protected health information as required by § 164.410;

(D) In accordance with § 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions and conditions that apply to the business associate with respect to such information;

(E) Make available protected health information in accordance with § 164.524;

(F) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with § 164.526;

(G) Make available the information required to provide an accounting of disclosures in accordance with § 164.528;

(H) To the extent the business associate is to carry out a covered entity's obligation under this subpart, comply with the requirements of this subpart that apply to the covered entity in the performance of such obligation.

(I) Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, the covered entity available to the Secretary for purposes of determining the covered entity's compliance with this subpart; and

(J) At termination of the contract, if feasible, return or destroy all protected health information received from, or created or received by the business associate on behalf of, the covered entity that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(iii) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.

(3) Implementation specifications: Other arrangements

(i) If a covered entity and its business associate are both governmental entities:

(A) The covered entity may comply with this paragraph and § 164.314(a)(1), if applicable, by entering into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of paragraph (e)(2) of this section and § 164.314(a)(2), if applicable.

(B) The covered entity may comply with this paragraph and § 164.314(a)(1), if applicable, if other law (including regulations adopted by the covered entity or its business associate) contains requirements applicable to the business associate that accomplish the objectives of paragraph (e)(2) of this section and § 164.314(a)(2), if applicable.

(ii) If a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate in § 160.103 of this subchapter to a covered entity, such covered entity may disclose protected health information to the business associate to the extent necessary to comply with the legal mandate without meeting the requirements of this paragraph and § 164.314(a)(1), if applicable, provided that the covered entity attempts in good faith to obtain satisfactory assurances as required by paragraph (e)(2) of this section and § 164.314(a)(1), if applicable, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

(iii) The covered entity may omit from its other arrangements the termination authorization required by paragraph (e)(2)(iii) of this section, if such authorization is inconsistent with the statutory obligations of the covered entity or its business associate.

(iv) A covered entity may comply with this paragraph and § 164.314(a)(1) if the covered entity discloses only a limited data set to a business associate for the business associate to carry out a health care operations function and the covered entity has a data use agreement with the business associate that complies with § 164.514(e)(4) and § 164.314(a)(1), if applicable.

(4) Implementation specifications: Other requirements for contracts and other arrangements

(i) The contract or other arrangement between the covered entity and the business associate may permit the business associate to use the protected health information received by the business associate in its capacity as a business associate to the covered entity, if necessary:

(A) For the proper management and administration of the business associate; or

(B) To carry out the legal responsibilities of the business associate.

(ii) The contract or other arrangement between the covered entity and the business associate may permit the business associate to disclose the protected health information received by the business associate in its capacity as a business associate for the purposes described in paragraph (e)(4)(i) of this section, if:

(A) The disclosure is required by law; or

(B)(1) The business associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and

(2) The person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(5) Implementation specifications: Business associate contracts with subcontractors. The requirements of § 164.504(e)(2) through (e)(4) apply to the contract or other arrangement required by § 164.502(e)(1)(ii) between a business associate and a business associate that is a subcontractor in the same manner as such requirements apply to contracts or other arrangements between a covered entity and business associate.

(f)(1) Standard: Requirements for group health plans

(i) Except as provided under paragraph (f)(1)(ii) or (iii) of this section or as otherwise authorized under § 164.508, a group health plan, in order to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of this subpart.

(ii) Except as prohibited by § 164.502(a)(5)(i), the group health plan, or a health insurance issuer or HMO with

respect to the group health plan, may disclose summary health information to the plan sponsor, if the plan sponsor requests the summary health information for purposes of:

(A) Obtaining premium bids from health plans for providing health insurance coverage under the group health plan; or

(B) Modifying, amending, or terminating the group health plan.

(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

(2) Implementation specifications: Requirements for plan documents. The plan documents of the group health plan must be amended to incorporate provisions to:

(i) Establish the permitted and required uses and disclosures of such information by the plan sponsor, provided that such permitted and required uses and disclosures may not be inconsistent with this subpart.

(ii) Provide that the group health plan will disclose protected health information to the plan sponsor only upon receipt of a certification by the plan sponsor that the plan documents have been amended to incorporate the following provisions and that the plan sponsor agrees to:

(A) Not use or further disclose the information other than as permitted or required by the plan documents or as required by law;

(B) Ensure that any agents to whom it provides protected health information received from the group health plan agree to the same restrictions and conditions that apply to the plan sponsor with respect to such information;

(C) Not use or disclose the information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the plan sponsor;

(D) Report to the group health plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;

(E) Make available protected health information in accordance with § 164.524;

(F) Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with § 164.526;

(G) Make available the information required to provide an accounting of disclosures in accordance with § 164.528;

(H) Make its internal practices, books, and records relating to the use and disclosure of protected health information received from the group health plan available to the Secretary for purposes of determining compliance by the group health plan with this subpart;

(I) If feasible, return or destroy all protected health information received from the group health plan that the sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

(J) Ensure that the adequate separation required in paragraph (f)(2)(iii) of this section is established.

(iii) Provide for adequate separation between the group health plan and the plan sponsor. The plan documents must:

(A) Describe those employees or classes of employees or other persons under the control of the plan sponsor to be given access to the protected health information to be disclosed, provided that any employee or person who receives protected health information relating to payment under, health care operations of, or other matters pertaining to the group health plan in the ordinary course of business must be included in such description;

(B) Restrict the access to and use by such employees and other persons described in paragraph (f)(2)(iii)(A) of this section to the plan administration functions that the plan sponsor performs for the group health plan; and

(C) Provide an effective mechanism for resolving any issues of noncompliance by persons described in paragraph (f)(2)(iii)(A) of this section with the plan document provisions required by this paragraph.

(3) Implementation specifications: Uses and disclosures. A group health plan may:

(i) Disclose protected health information to a plan sponsor to carry out plan administration functions that the plan sponsor performs only consistent with the provisions of paragraph (f)(2) of this section;

(ii) Not permit a health insurance issuer or HMO with respect to the group health plan to disclose protected health information to the plan sponsor except as permitted by this paragraph;

(iii) Not disclose and may not permit a health insurance issuer or HMO to disclose protected health information to a plan sponsor as otherwise permitted by this paragraph unless a statement required by § 164.520(b)(1)(iii)(C) is included in the appropriate notice; and (iv) Not disclose protected health information to the plan sponsor for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the plan sponsor.

(g) Standard: Requirements for a covered entity with multiple covered functions.

(1) A covered entity that performs multiple covered functions that would make the entity any combination of a health plan, a covered health care provider, and a health care clearinghouse, must comply with the standards, requirements, and implementation specifications of this subpart, as applicable to the health plan, health care provider, or health care clearinghouse covered functions performed.

(2) A covered entity that performs multiple covered functions may use or disclose the protected health information of individuals who receive the covered entity's health plan or health care provider services, but not both, only for purposes related to the appropriate function being performed.

[65 FR 82462, 82807, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53267, Aug. 14, 2002; 68 FR 8334, 8381, Feb. 20, 2003; 78 FR 5566, 5697, Jan. 25, 2013]

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) Standard: Permitted uses and disclosures. Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) through (4) or that are prohibited under § 164.502(a)(5)(i), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) Standard: Consent for uses and disclosures permitted.

(1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of protected health information when an authorization, under § 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.

(c) Implementation specifications: Treatment, payment, or health care operations.

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

(3) A covered entity may disclose protected health information to another covered entity or a health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to other participants in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

[65 FR 82462, 82810, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53268, Aug. 14, 2002; 78 FR 5566, 5698, Jan. 25, 2013]

§ 164.508 Uses and disclosures for which an authorization is required.

(a) Standard: Authorizations for uses and disclosures —

(1) Authorization required: General rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.

(2) Authorization required: Psychotherapy notes. Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of psychotherapy notes, except:

(i) To carry out the following treatment, payment, or health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or

(C) Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual; and

(ii) A use or disclosure that is required by § 164.502(a)(2)(ii) or permitted by § 164.512(a); § 164.512(d) with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1); or § 164.512(j)(1)(i).

(3) Authorization required: Marketing

(i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing involves financial remuneration, as defined in paragraph (3) of the definition of marketing at § 164.501, to the covered entity from a third party, the authorization must state that such remuneration is involved.

(4) Authorization required: Sale of protected health information.

(i) Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any disclosure of protected health information which is a sale of protected health information, as defined in § 164.501 of this subpart

(ii) Such authorization must state that the disclosure will result in remuneration to the covered entity.

(b) Implementation specifications: general requirements. —

(1) Valid authorizations

(i) A valid authorization is a document that meets the requirements in paragraphs (a)(3)(ii), (a)(4)(ii), (c)(1), and (c)(2) of this section, as applicable.

(ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional elements or information are not inconsistent with the elements required by this section.

(2) Defective authorizations. An authorization is not valid, if the document submitted has any of the following defects:

(i) The expiration date has passed or the expiration event is known by the covered entity to have occurred;

(ii) The authorization has not been filled out completely, with respect to an element described by paragraph (c) of this section, if applicable;

(iii) The authorization is known by the covered entity to have been revoked;

(iv) The authorization violates paragraph (b)(3) or (4) of this section, if applicable;

(v) Any material information in the authorization is known by the covered entity to be false.

(3) Compound authorizations. An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:

(i) An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same or another research study. This exception includes combining an authorization for the use or disclosure of protected health information for a research study with another authorization for the same research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in research. Where a covered health care provider has conditioned the provision of research-related

treatment on the provision of one of the authorizations, as permitted under paragraph (b)(4)(i) of this section, any compound authorization created under this paragraph must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt in to the research activities described in the unconditioned authorization.

(ii) An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.

(iii) An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when a covered entity has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under paragraph (b)(4) of this section on the provision of one of the authorizations. The prohibition in this paragraph on combining authorizations where one authorization conditions the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits under paragraph (b)(4) of this section does not apply to a compound authorization created in accordance with paragraph (b)(3)(i) of this section.

(4) Prohibition on conditioning of authorizations. A covered entity may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

(i) A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of protected health information for such research under this section;

(ii) A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:

(A) The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and

(B) The authorization is not for a use or disclosure of psychotherapy notes under paragraph (a)(2) of this section; and

(iii) A covered entity may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

(5) Revocation of authorizations. An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

(i) The covered entity has taken action in reliance thereon; or

(ii) If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

(6) Documentation. A covered entity must document and retain any signed authorization under this section as required by § 164.530(j).

(c) Implementation specifications: Core elements and requirements. —

(1) Core elements. A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) Required statements. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.

(3) Plain language requirement. The authorization must be written in plain language.

(4) Copy to the individual. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

[65 FR 82462, 82811, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53268, Aug. 14, 2002; 78 FR 5566, 5699, Jan. 25, 2013]

§ 164.509 Uses and disclosures for which an attestation is required.

(a) Standard: Attestations for certain uses and disclosures of protected health information to persons other than covered entities or business associates.

(1) A covered entity or business associate may not use or disclose protected health information potentially re-

lated to reproductive health care for purposes specified in § 164.512(d), (e), (f), or (g)(1), without obtaining an attestation that is valid under paragraph (b)(1) of this section from the person requesting the use or disclosure and complying with all applicable conditions of this part.

(2) A covered entity or business associate that uses or discloses protected health information potentially related to reproductive health care for purposes specified in § 164.512(d), (e), (f), or (g)(1), in reliance on an attestation that is defective under paragraph (b)(2) of this section, is not in compliance with this section.

(b) Implementation specifications: General requirements—

(1) Valid attestations.

(i) A valid attestation is a document that meets the requirements of paragraph (c)(1) of this section.

(ii) A valid attestation verifies that the use or disclosure is not otherwise prohibited by § 164.502(a)(5)(iii).

(iii) A valid attestation may be electronic, provided that it meets the requirements in paragraph (c)(1) of this section, as applicable.

(2) Defective attestations. An attestation is not valid if the document submitted has any of the following defects:

(i) The attestation lacks an element or statement required by paragraph (c) of this section.

(ii) The attestation contains an element or statement not required by paragraph (c) of this section

(iii) The attestation violates paragraph (b)(3) of this section.

(iv) The covered entity or business associate has actual knowledge that material information in the attestation is false.

(v) A reasonable covered entity or business associate in the same position would not believe that the attestation is true with respect to the requirement at paragraph (c)(1)(iv) of this section.

(3) Compound attestation. An attestation may not be combined with any other document except where such other document is needed to satisfy the requirements at paragraph (c)(iv) of this section or at § 164.502(a)(5)(iii)(C), as applicable.

(c) Implementation specifications: Content requirements and other obligations—

(1) Required elements. A valid attestation under this section must contain the following elements:

(i) A description of the information requested that identifies the information in a specific fashion, including one of the following:

(A) The name of any individual(s) whose protected health information is sought, if practicable.

(B) If including the name(s) of any individual(s) whose protected health information is sought is not practicable, a description of the class of individuals whose protected health information is sought.

(ii) The name or other specific identification of the person(s), or class of persons, who are requested to make the use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity is to make the requested use or disclosure.

(iv) A clear statement that the use or disclosure is not for a purpose prohibited under § 164.502(a)(5)(iii).

(v) A statement that a person may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if that person knowingly and in violation of HIPAA obtains individually identifiable health information relating to an individual or discloses individually identifiable health information to another person.

(vi) Signature of the person requesting the protected health information, which may be an electronic signature, and date. If the attestation is signed by a representative of the person requesting the information, a description of such representative's authority to act for the person must also be provided.

(2) Plain language requirement. The attestation must be written in plain language.

(d) Material misrepresentations. If, during the course of using or disclosing protected health information in reasonable reliance on a facially valid attestation, a covered entity or business associate discovers information reasonably showing that any representation made in the attestation was materially false, leading to a use or disclosure for a purpose prohibited under § 164.502(a)(5)(iii), the covered entity or business associate must cease such use or disclosure.

[89 FR 32976, 33063, Apr. 26, 2024]

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.

(a) Standard: use and disclosure for facility directories —

(1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:

(i) Use the following protected health information to maintain a directory of individuals in its facility:

(A) The individual's name;

(B) The individual's location in the covered health care provider's facility;

(C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and

(D) The individual's religious affiliation; and

(ii) Use or disclose for directory purposes such information:

(A) To members of the clergy; or

(B) Except for religious affiliation, to other persons who ask for the individual by name.

(2) Opportunity to object. A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.

(3) Emergency circumstances.

(i) If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility's directory, if such disclosure is:

(A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and

(B) In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

(ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.

(b) Standard: uses and disclosures for involvement in the individual's care and notification purposes —

(1) Permitted uses and disclosures

(i) A covered entity may, in accordance with paragraphs (b)(2), (b)(3), or (b)(5) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's health care or payment related to the individual's health care.

(ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of this section, as applicable.

(2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

(i) Obtains the individual's agreement;

(ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

(iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

(3) Limited uses and disclosures when the individual is not present. If the individual is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the covered entity may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's care or payment related to the individual's health care or needed for notification purposes. A covered entity may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

(4) Uses and disclosures for disaster relief purposes. A covered entity may use or disclose protected health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with such entities the uses or disclosures permitted by paragraph (b)(1)(ii) of this section. The requirements in paragraphs (b)(2), (b)(3), or (b)(5) of this section apply to such uses and disclosures to the extent that the covered entity, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

(5) Uses and disclosures when the individual is deceased. If the individual is deceased, a covered entity may disclose to a family member, or other persons identified in paragraph (b)(1) of this section who were involved in the individual's care or payment for health care prior to the individual's death, protected health information of the individual that is relevant to such person's involvement, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity.

[65 FR 82462, 82812, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53270, Aug. 14, 2002; 78 FR 5566, 5699, Jan. 25, 2013]

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

Except as provided by § 164.502(a)(5)(iii), a covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section and § 164.509. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given verbally.

(a) Standard: Uses and disclosures required by law.

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) Standard: Uses and disclosures for public health activities —

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product

defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

(v) An employer, about an individual who is a member of the workforce of the employer, if:

(A) The covered entity is a covered health care provider who provides health care to the individual at the request of the employer:

(1) To conduct an evaluation relating to medical surveillance of the workplace; or

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

(2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

(vi) A school, about an individual who is a student or prospective student of the school, if:

(A) The protected health information that is disclosed is limited to proof of immunization;

(B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and

(C) The covered entity obtains and documents the agreement to the disclosure from either:

(1) A parent, guardian, or other person acting in loco parentis of the individual, if the individual is an unemancipated minor; or

(2) The individual, if the individual is an adult or emancipated minor.

(2) Permitted uses. If the covered entity also is a public health authority, the covered entity is permitted to use protected health information in all cases in which it is permitted to disclose such information for public health activities under paragraph (b)(1) of this section.

(c) Standard: Disclosures about victims of abuse, neglect, or domestic violence —

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:

(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(3) Rule of construction. Nothing in this section shall be construed to permit disclosures prohibited by § 164.502(a)(5)(iii) when the sole basis of the report of abuse, neglect, or domestic violence is the provision or facilitation of reproductive health care.

(d) Standard: Uses and disclosures for health oversight activities —

(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.

(2) Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph (d)(1) of this section, a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:

(i) The receipt of health care;

(ii) A claim for public benefits related to health; or

(iii) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

(3) Joint activities or investigations. Notwithstanding paragraph (d)(2) of this section, if a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for purposes of paragraph (d) of this section.

(4) Permitted uses. If a covered entity also is a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of this section.

(e) Standard: Disclosures for judicial and administrative proceedings —

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:

(1) No objections were filed; or

(2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

(iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

(v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

(A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and

(B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(v) of this section.

(2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.

(f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;

(B) A grand jury subpoena; or

(C) An administrative request for which response is required by law, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

(1) The information sought is relevant and material to a legitimate law enforcement inquiry;

(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and

(3) De-identified information could not reasonably be used.

(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information:

(A) Name and address;

(B) Date and place of birth;

(C) Social security number;

(D) ABO blood type and rh factor;

(E) Type of injury;

(F) Date and time of treatment;

(G) Date and time of death, if applicable; and

(H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) Permitted disclosure: Victims of a crime. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) Permitted disclosure: Decedents. A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) Permitted disclosure: Reporting crime in emergencies.

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

(A) The commission and nature of a crime;

(B) The location of such crime or of the victim(s) of such crime; and

(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

(g) Standard: Uses and disclosures about decedents —

(1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

(2) Funeral directors. A covered entity may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the covered entity may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

(h) Standard: Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A covered entity may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

(i) Standard: Uses and disclosures for research purposes —

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that:

(i) Board approval of a waiver of authorization. The covered entity obtains documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by § 164.508 for use or disclosure of protected health information has been approved by either:

(A) An Institutional Review Board (IRB), established in accordance with 7 CFR lc.107, 10 CFR 745.107, 14 CFR 1230.107, 15 CFR 27.107, 16 CFR 1028.107, 21 CFR 56.107, 22 CFR 225.107, 24 CFR 60.107, 28 CFR 46.107, 32 CFR 219.107, 34 CFR 97.107, 38 CFR 16.107, 40 CFR 26.107, 45 CFR 46.107, 45 CFR 690.107, or 49 CFR 11.107; or

(B) A privacy board that:

(1) Has members with varying backgrounds and appropriate professional competency as necessary to review the effect of the research protocol on the individual's privacy rights and related interests;

(2) Includes at least one member who is not affiliated with the covered entity, not affiliated with any entity conducting or sponsoring the research, and not related to any person who is affiliated with any of such entities; and

(3) Does not have any member participating in a review of any project in which the member has a conflict of interest.

(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that:

(A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research;

(B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and

(C) The protected health information for which use or access is sought is necessary for the research purposes.

(iii) Research on decedent's information. The covered entity obtains from the researcher:

(A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents;

(B) Documentation, at the request of the covered entity, of the death of such individuals; and

(C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.

(2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following:

(i) Identification and date of action. A statement identifying the IRB or privacy board and the date on which the alteration or waiver of authorization was approved;

(ii) Waiver criteria. A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(1) An adequate plan to protect the identifiers from improper use and disclosure;

(2) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(3) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

(iii) Protected health information needed. A brief description of the protected health information for which use or access has been determined to be necessary by the institutional review board or privacy board, pursuant to paragraph (i)(2)(ii)(C) of this section;

(iv) Review and approval procedures. A statement that the alteration or waiver of authorization has been reviewed and approved under either normal or expedited review procedures, as follows:

(A) An IRB must follow the requirements of the Common Rule, including the normal review procedures (7 CFR 1c.108(b), 10 CFR 745.108(b), 14 CFR 1230.108(b), 15 CFR 27.108(b), 16 CFR 1028.108(b), 21 CFR 56.108(b), 22 CFR 225.108(b), 24 CFR 60.108(b), 28 CFR 46.108(b), 32 CFR 219.108(b), 34 CFR 97.108(b), 38 CFR 16.108(b), 40 CFR 26.108(b), 45 CFR 46.108(b), 45 CFR 690.108(b), or 49 CFR 11.108(b)) or the expedited review procedures (7 CFR 1c.110, 10 CFR 745.110, 14 CFR 1230.110, 15 CFR 27.110, 16 CFR 1028.110, 21 CFR 56.110, 22 CFR 225.110, 24 CFR 60.110, 28 CFR 46.110, 32 CFR 219.110, 34 CFR 97.110, 38 CFR 16.110, 40 CFR 26.110, 45 CFR 46.110, 45 CFR 690.110, or 49 CFR 11.110);

(B) A privacy board must review the proposed research at convened meetings at which a majority of the privacy board members are present, including at least one member who satisfies the criterion stated in paragraph (i)(1)(i)(B)(2) of this section, and the alteration or waiver of authorization must be approved by the majority of the privacy board members present at the meeting, unless the privacy board elects to use an expedited review procedure in accordance with paragraph (i)(2)(iv)(C) of this section;

(C) A privacy board may use an expedited review procedure if the research involves no more than minimal risk to the privacy of the individuals who are the subject of the protected health information for which use or disclosure is being sought. If the privacy board elects to use an expedited review procedure, the review and approval of the alteration or waiver of authorization may be carried out by the chair of the privacy board, or by one or more members of the privacy board as designated by the chair; and

(v) Required signature. The documentation of the alteration or waiver of authorization must be signed by the chair or other member, as designated by the chair, of the IRB or the privacy board, as applicable.

(j) Standard: Uses and disclosures to avert a serious threat to health or safety —

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:

(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or

(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: Uses and disclosures for specialized government functions —

(1) Military and veterans activities —

(i) Armed Forces personnel. A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) Separation or discharge from military service. A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) Veterans. A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) National security and intelligence activities. A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).

(3) Protective services for the President and others. A covered entity may disclose protected health information to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056 or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

(4) Medical suitability determinations. A covered entity that is a component of the Department of State may use protected health information to make medical suitability determinations and may disclose whether or not the individual was determined to be medically suitable to the officials in the Department of State who need access to such information for the following purposes:

(i) For the purpose of a required security clearance conducted pursuant to Executive Orders 10450 and 12968;

(ii) As necessary to determine worldwide availability or availability for mandatory service abroad under sections 101(a)(4) and 504 of the Foreign Service Act; or

(iii) For a family to accompany a Foreign Service member abroad, consistent with section 101(b)(5) and 904 of the Foreign Service Act.

(5) Correctional institutions and other law enforcement custodial situations.

(i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;

(B) The health and safety of such individual or other inmates;

(C) The health and safety of the officers or employees of or others at the correctional institution;

(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;

(E) Law enforcement on the premises of the correctional institution; or

(F) The administration and maintenance of the safety, security, and good order of the correctional institution.

(ii) Permitted uses. A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

(6) Covered entities that are government programs providing public benefits.

(i) A health plan that is a government program providing public benefits may disclose protected health information relating to eligibility for or enrollment in the health plan to another agency administering a government program providing public benefits if the sharing of eligibility or enrollment information among such government agencies or the maintenance of such information in a single or combined data system accessible to all such government agencies is required or expressly authorized by statute or regulation.

(ii) A covered entity that is a government agency administering a government program providing public benefits may disclose protected health information relating to the program to another covered entity that is a government agency administering a government program providing public benefits if the programs serve the same or similar populations and the disclosure of protected health information is necessary to coordinate the covered functions of such programs or to improve administration and management relating to the covered functions of such programs.

(7) National Instant Criminal Background Check System. A covered entity may use or disclose protected health information for purposes of reporting to the National Instant Criminal Background Check System the identity of an individual who is prohibited from possessing a firearm under 18 U.S.C. 922(g)(4), provided the covered entity:

(i) Is a State agency or other entity that is, or contains an entity that is:

(A) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; or

(B) A court, board, commission, or other lawful authority that makes the commitment or adjudication that causes an individual to become subject to 18 U.S.C. 922(g)(4); and

(ii) Discloses the information only to:

(A) The National Instant Criminal Background Check System; or

(B) An entity designated by the State to report, or which collects information for purposes of reporting, on behalf of the State, to the National Instant Criminal Background Check System; and

(iii)(A) Discloses only the limited demographic and certain other information needed for purposes of reporting to the National Instant Criminal Background Check System; and

(B) Does not disclose diagnostic or clinical information for such purposes.

(l) Standard: Disclosures for workers' compensation. A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

[65 FR 82462, 82813, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53270, Aug. 14, 2002; 78 FR 5566, 5699, Jan. 25, 2013; 78 FR 34264, 34266, June 7, 2013; 81 FR 395, Jan. 6, 2016; 89 FR 32976, 33064, Apr. 26, 2024]

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

(a) Standard: De-identification of protected health information. Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.

(b) Implementation specifications: Requirements for de-identification of protected health information. A covered entity may determine that health information is not individually identifiable health information only if:

(1) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(i) Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(ii) Documents the methods and results of the analysis that justify such determination; or

(2)(i) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census:

(1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and

(2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 000.

(C) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;

(D) Telephone numbers;

(E) Fax numbers;

(F) Electronic mail addresses;

(G) Social security numbers;

(H) Medical record numbers;

(I) Health plan beneficiary numbers;

(J) Account numbers;

(K) Certificate/license numbers;

(L) Vehicle identifiers and serial numbers, including license plate numbers;

(M) Device identifiers and serial numbers;

(N) Web Universal Resource Locators (URLs);

(O) Internet Protocol (IP) address numbers;

(P) Biometric identifiers, including finger and voice prints;

(Q) Full face photographic images and any comparable images; and

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

(ii) The covered entity does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.

(c) Implementation specifications: Re-identification. A covered entity may assign a code or other means of record identification to allow information de-identified under this section to be re-identified by the covered entity, provided that:

(1) Derivation. The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and

(2) Security. The covered entity does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(d)(1) Standard: minimum necessary requirements. In order to comply with § 164.502(b) and this section, a covered entity must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for, or the use and disclosure of, protected health information.

(2) Implementation specifications: Minimum necessary uses of protected health information.

(i) A covered entity must identify:

(A) Those persons or classes of persons, as appropriate, in its workforce who need access to protected health information to carry out their duties; and

(B) For each such person or class of persons, the category or categories of protected health information to which access is needed and any conditions appropriate to such access.

(ii) A covered entity must make reasonable efforts to limit the access of such persons or classes identified in paragraph (d)(2)(i)(A) of this section to protected health information consistent with paragraph (d)(2)(i)(B) of this section.

(3) Implementation specification: Minimum necessary disclosures of protected health information.

(i) For any type of disclosure that it makes on a routine and recurring basis, a covered entity must implement policies and procedures (which may be standard protocols) that limit the protected health information disclosed to the amount reasonably necessary to achieve the purpose of the disclosure.

(ii) For all other disclosures, a covered entity must:

(A) Develop criteria designed to limit the protected health information disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

(iii) A covered entity may rely, if such reliance is reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

(A) Making disclosures to public officials that are permitted under § 164.512, if the public official represents that the information requested is the minimum necessary for the stated purpose(s);

(B) The information is requested by another covered entity;

(C) The information is requested by a professional who is a member of its workforce or is a business associate of the covered entity for the purpose of providing professional services to the covered entity, if the professional represents that the information requested is the minimum necessary for the stated purpose(s); or

(D) Documentation or representations that comply with the applicable requirements of § 164.512(i) have been provided by a person requesting the information for research purposes.

(4) Implementation specifications: Minimum necessary requests for protected health information.

(i) A covered entity must limit any request for protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made, when requesting such information from other covered entities.

(ii) For a request that is made on a routine and recurring basis, a covered entity must implement policies and procedures (which may be standard protocols) that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(iii) For all other requests, a covered entity must:

(A) Develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

(5) Implementation specification: Other content requirement. For all uses, disclosures, or requests to which the requirements in paragraph (d) of this section apply, a covered entity may not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

(e)(1) Standard: Limited data set. A covered entity may use or disclose a limited data set that meets the requirements of paragraphs (e)(2) and (e)(3) of this section, if the covered entity enters into a data use agreement with the limited data set recipient, in accordance with paragraph (e)(4) of this section.

(2) Implementation specification: Limited data set: A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

(i) Names;

(ii) Postal address information, other than town or city, State, and zip code;

(iii) Telephone numbers;

(iv) Fax numbers;

(v) Electronic mail addresses;

(vi) Social security numbers;

(vii) Medical record numbers;

(viii) Health plan beneficiary numbers;

(ix) Account numbers;

(x) Certificate/license numbers;

(xi) Vehicle identifiers and serial numbers, including license plate numbers;

(xii) Device identifiers and serial numbers;

(xiii) Web Universal Resource Locators (URLs);

(xiv) Internet Protocol (IP) address numbers;

(xv) Biometric identifiers, including finger and voice prints; and

(xvi) Full face photographic images and any comparable images.

(3) Implementation specification: Permitted purposes for uses and disclosures.

(i) A covered entity may use or disclose a limited data set under paragraph (e)(1) of this section only for the purposes of research, public health, or health care operations.

(ii) A covered entity may use protected health information to create a limited data set that meets the requirements of paragraph (e)(2) of this section, or disclose protected health information only to a business associate for such purpose, whether or not the limited data set is to be used by the covered entity.

(4) Implementation specifications: Data use agreement —

(i) Agreement required. A covered entity may use or disclose a limited data set under paragraph (e)(1) of this section only if the covered entity obtains satisfactory assurance, in the form of a data use agreement that meets the requirements of this section, that the limited data set recipient will only use or disclose the protected health information for limited purposes.

(ii) Contents. A data use agreement between the covered entity and the limited data set recipient must:

(A) Establish the permitted uses and disclosures of such information by the limited data set recipient, consistent with paragraph (e)(3) of this section. The data use agreement may not authorize the limited data set recipient to use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity;

(B) Establish who is permitted to use or receive the limited data set; and

(C) Provide that the limited data set recipient will:

(1) Not use or further disclose the information other than as permitted by the data use agreement or as otherwise required by law;

(2) Use appropriate safeguards to prevent use or disclosure of the information other than as provided for by the data use agreement;

(3) Report to the covered entity any use or disclosure of the information not provided for by its data use agreement of which it becomes aware;

(4) Ensure that any agents to whom it provides the limited data set agree to the same restrictions and conditions that apply to the limited data set recipient with respect to such information; and

(5) Not identify the information or contact the individuals.

(iii) Compliance.

(A) A covered entity is not in compliance with the standards in paragraph (e) of this section if the covered

entity knew of a pattern of activity or practice of the limited data set recipient that constituted a material breach or violation of the data use agreement, unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful:

(1) Discontinued disclosure of protected health information to the recipient; and

(2) Reported the problem to the Secretary.

(B) A covered entity that is a limited data set recipient and violates a data use agreement will be in noncompliance with the standards, implementation specifications, and requirements of paragraph (e) of this section.

(f) Fundraising communications —

(1) Standard: Uses and disclosures for fundraising. Subject to the conditions of paragraph (f)(2) of this section, a covered entity may use, or disclose to a business associate or to an institutionally related foundation, the following protected health information for the purpose of raising funds for its own benefit, without an authorization meeting the requirements of § 164.508:

(i) Demographic information relating to an individual, including name, address, other contact information, age, gender, and date of birth;

(ii) Dates of health care provided to an individual;

(iii) Department of service information;

(iv) Treating physician;

(v) Outcome information; and

(vi) Health insurance status.

(2) Implementation specifications: Fundraising requirements.

(i) A covered entity may not use or disclose protected health information for fundraising purposes as otherwise permitted by paragraph (f)(1) of this section unless a statement required by § 164.520(b)(1)(iii)(A) is included in the covered entity's notice of privacy practices.

(ii) With each fundraising communication made to an individual under this paragraph, a covered entity must provide the individual with a clear and conspicuous opportunity to elect not to receive any further fundraising communications. The method for an individual to elect not to receive further fundraising communications may not cause the individual to incur an undue burden or more than a nominal cost.

(iii) A covered entity may not condition treatment or payment on the individual's choice with respect to the receipt of fundraising communications.

(iv) A covered entity may not make fundraising communications to an individual under this paragraph where the individual has elected not to receive such communications under paragraph (f)(2)(ii) of this section.

(v) A covered entity may provide an individual who has elected not to receive further fundraising communications with a method to opt back in to receive such communications.

(g) Standard: Uses and disclosures for underwriting and related purposes. If a health plan receives protected health information for the purpose of underwriting, premium rating, or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if such health insurance or health benefits are not placed with the health plan, such health plan may only use or disclose such protected health information for such purpose or as may be required by law, subject to the prohibition at § 164.502(a)(5)(i) with respect to genetic information included in the protected health information.

(h)(1) Standard: Verification requirements. Prior to any disclosure permitted by this subpart, a covered entity must:

(i) Except with respect to disclosures under § 164.510, verify the identity of a person requesting protected health information and the authority of any such person to have access to protected health information under this subpart, if the identity or any such authority of such person is not known to the covered entity; and

(ii) Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the protected health information when such documentation, statement, or representation is a condition of the disclosure under this subpart.

(2) Implementation specifications: Verification —

(i) Conditions on disclosures. If a disclosure is conditioned by this subpart on particular documentation, statements, or representations from the person requesting the protected health information, a covered entity may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

(A) The conditions in § 164.512(f)(1)(ii)(C) may be satisfied by the administrative subpoena or similar process or by a separate written statement that, on its face, demonstrates that the applicable requirements have been met.

(B) The documentation required by § 164.512(i)(2) may be satisfied by one or more written statements, provided that each is appropriately dated and signed in accordance with § 164.512(i)(2)(i) and (v).

(ii) Identity of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

(A) If the request is made in person, presentation of an agency identification badge, other official credentials, or other proof of government status;

(B) If the request is in writing, the request is on the appropriate government letterhead; or

(C) If the disclosure is to a person acting on behalf of a public official, a written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.

(iii) Authority of public officials. A covered entity may rely, if such reliance is reasonable under the circumstances, on any of the following to verify authority when the disclosure of protected health information is to a public official or a person acting on behalf of the public official:

(A) A written statement of the legal authority under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority;

(B) If a request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal is presumed to constitute legal authority.

(iv) Exercise of professional judgment. The verification requirements of this paragraph are met if the covered entity relies on the exercise of professional judgment in making a use or disclosure in accordance with § 164.510 or acts on a good faith belief in making a disclosure in accordance with § 164.512(j).

[65 FR 82462, 82818, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53270, Aug. 14, 2002; 78 FR 5566, 5700, Jan. 25, 2013; 78 FR 34264, 34266, June 7, 2013]

§ 164.520 Notice of privacy practices for protected health information.

(a) Standard: Notice of privacy practices —

(1) Right to notice. Except as provided by paragraph (a)(3) or (4) of this section, an individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's legal duties with respect to protected health information.

(2) Notice requirements for covered entities creating or maintaining records subject to 42 U.S.C. 290dd-2. As provided in 42 CFR 2.22, an individual who is the subject of records protected under 42 CFR part 2 has a right to adequate notice of the uses and disclosures of such records, and of the individual's rights and the covered entity's legal duties with respect to such records.

(3) Exception for group health plans.

(i) An individual enrolled in a group health plan has a right to notice:

(A) From the group health plan, if, and to the extent that, such an individual does not receive health benefits under the group health plan through an insurance contract with a health insurance issuer or HMO; or

(B) From the health insurance issuer or HMO with respect to the group health plan through which such individuals receive their health benefits under the group health plan.

(ii) A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and that creates or receives protected health information in addition to summary health information as defined in § 164.504(a) or information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan, must:

(A) Maintain a notice under this section; and

(B) Provide such notice upon request to any person. The provisions of paragraph (c)(1) of this section do not apply to such group health plan.

(iii) A group health plan that provides health benefits solely through an insurance contract with a health insurance issuer or HMO, and does not create or receive protected health information other than summary health information as defined in § 164.504(a) or information on whether an individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan, is not required to maintain or provide a notice under this section.

(4) Exception for inmates. An inmate does not have a right to notice under this section, and the requirements of this section do not apply to a correctional institution that is a covered entity.

(b) Implementation specifications: Content of notice —

(1) Required elements. The covered entity, including any covered entity receiving or maintaining records subject to 42 U.S.C. 290dd-2, must provide a notice that is written in plain language and that contains the elements required by this paragraph.

(i) Header. The notice must contain the following statement as a header or otherwise prominently displayed:

"THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."

(ii) Uses and disclosures. The notice must contain:

(A) A description, including at least one example, of the types of uses and disclosures that the covered entity is permitted by this subpart to make for each of the following purposes: treatment, payment, and health care operations.

(B) A description of each of the other purposes for which the covered entity is permitted or required by this subpart to use or disclose protected health information without the individual's written authorization.

(C) If a use or disclosure for any purpose described in paragraphs (b)(1)(ii)(A) or (B) of this section is prohibited or materially limited by other applicable law, such as 42 CFR part 2, the description of such use or disclosure must reflect the more stringent law as defined in § 160.202 of this subchapter.

(D) For each purpose described in paragraph (b)(1)(ii)(A) or (B) of this section, the description must include sufficient detail to place the individual on notice of the uses and disclosures that are permitted or required by this subpart and other applicable law, such as 42 CFR part 2.

(E) A description of the types of uses and disclosures that require an authorization under § 164.508(a)(2)-(a)(4), a statement that other uses and disclosures not described in the notice will be made only with the individual's written authorization, and a statement that the individual may revoke an authorization as provided by § 164.508(b)(5).

(F) A description, including at least one example, of the types of uses and disclosures prohibited under § 164.502(a)(5)(iii) in sufficient detail for an individual to understand the prohibition.

(G) A description, including at least one example, of the types of uses and disclosures for which an attestation is required under § 164.509.

(H) A statement adequate to put the individual on notice of the potential for information disclosed pursuant to this subpart to be subject to redisclosure by the recipient and no longer protected by this subpart

(iii) Separate statements for certain uses or disclosures. If the covered entity intends to engage in any of the following activities, the description required by paragraph (b)(1)(ii)(A) or (B) of this section must include a separate statement informing the individual of such activities, as applicable:

(A) In accordance with § 164.514(f)(1), the covered entity may contact the individual to raise funds for the covered entity and the individual has a right to opt out of receiving such communications;

(B) In accordance with § 164.504(f), the group health plan, or a health insurance issuer or HMO with respect to a group health plan, may disclose protected health information to the sponsor of the plan;

(C) If a covered entity that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, intends to use or disclose protected health information for underwriting purposes, a statement that the covered entity is prohibited from using or disclosing protected health information that is genetic information of an individual for such purposes;

(D) Substance use disorder treatment records received from programs subject to 42 CFR part 2, or testimony relaying the content of such records, shall not be used or disclosed in civil, criminal, administrative, or legislative proceedings against the individual unless based on written consent, or a court order after notice and an opportunity to be heard is provided to the individual or the holder of the record, as provided in 42 CFR part 2. A court order authorizing use or disclosure must be accompanied by a

subpoena or other legal requirement compelling disclosure before the requested record is used or disclosed; or

(E) If a covered entity that creates or maintains records subject to 42 CFR part 2 intends to use or disclose such records for fundraising for the benefit of the covered entity, the individual must first be provided with a clear and conspicuous opportunity to elect not to receive any fundraising communications.

(iv) Individual rights. The notice must contain a statement of the individual's rights with respect to protected health information and a brief description of how the individual may exercise these rights, as follows:

(A) The right to request restrictions on certain uses and disclosures of protected health information as provided by § 164.522(a), including a statement that the covered entity is not required to agree to a requested restriction, except in case of a disclosure restricted under § 164.522(a)(1)(vi);

(B) The right to receive confidential communications of protected health information as provided by § 164.522(b), as applicable;

(C) The right to inspect and copy protected health information as provided by § 164.524;

(D) The right to amend protected health information as provided by § 164.526;

(E) The right to receive an accounting of disclosures of protected health information as provided by § 164.528; and

(F) The right of an individual, including an individual who has agreed to receive the notice electronically in accordance with paragraph (c)(3) of this section, to obtain a paper copy of the notice from the covered entity upon request.

(v) Covered entity's duties. The notice must contain:

(A) A statement that the covered entity is required by law to maintain the privacy of protected health information, to provide individuals with notice of its legal duties and privacy practices, and to notify affected individuals following a breach of unsecured protected health information;

(B) A statement that the covered entity is required to abide by the terms of the notice currently in effect; and

(C) For the covered entity to apply a change in a privacy practice that is described in the notice to protected health information that the covered entity created or received prior to issuing a revised notice, in accordance with § 164.530(i)(2)(ii), a statement that it reserves the right to change the terms of its notice and to make the new notice provisions effective for all protected health information that it maintains. The statement must also describe how it will provide individuals with a revised notice.

(vi) Complaints. The notice must contain a statement that individuals may complain to the covered entity and to the Secretary if they believe their privacy rights have been violated, a brief description of how the individual may file a complaint with the covered entity, and a statement that the individual will not be retaliated against for filing a complaint.

(vii) Contact. The notice must contain the name, or title, and telephone number of a person or office to contact for further information as required by § 164.530(a)(1)(ii).

(viii) Effective date. The notice must contain the date on which the notice is first in effect, which may not be earlier than the date on which the notice is printed or otherwise published.

(2) Optional elements.

(i) In addition to the information required by paragraph (b)(1) of this section, if a covered entity elects to limit the uses or disclosures that it is permitted to make under this subpart, the covered entity may describe its more limited uses or disclosures in its notice, provided that the covered entity may not include in its notice a limitation affecting its right to make a use or disclosure that is required by law or permitted by § 164.512(j)(1)(i).

(ii) For the covered entity to apply a change in its more limited uses and disclosures to protected health information created or received prior to issuing a revised notice, in accordance with § 164.530(i)(2)(ii), the notice must include the statements required by paragraph (b)(1)(v)(C) of this section.

(3) Revisions to the notice. The covered entity must promptly revise and distribute its notice whenever there is a material change to the uses or disclosures, the individual's rights, the covered entity's legal duties, or other privacy practices stated in the notice. Except when required by law, a material change to any term of the notice may not be implemented prior to the effective date of the notice in which such material change is reflected.

(c) Implementation specifications: Provision of notice. A covered entity must make the notice required by this section available on request to any person and to individuals as specified in paragraphs (c)(1) through (c)(3) of this section, as applicable.

(1) Specific requirements for health plans

(i) A health plan must provide the notice:

(A) No later than the compliance date for the health plan, to individuals then covered by the plan;

(B) Thereafter, at the time of enrollment, to individuals who are new enrollees.

(ii) No less frequently than once every three years, the health plan must notify individuals then covered by the plan of the availability of the notice and how to obtain the notice.

(iii) The health plan satisfies the requirements of paragraph (c)(1) of this section if notice is provided to the named insured of a policy under which coverage is provided to the named insured and one or more dependents.

(iv) If a health plan has more than one notice, it satisfies the requirements of paragraph (c)(1) of this section by providing the notice that is relevant to the individual or other person requesting the notice.

(v) If there is a material change to the notice:

(A) A health plan that posts its notice on its web site in accordance with paragraph (c)(3)(i) of this section must prominently post the change or its revised notice on its web site by the effective date of the material change to the notice, and provide the revised notice, or information about the material change and how to obtain the revised notice, in its next annual mailing to individuals then covered by the plan.

(B) A health plan that does not post its notice on a web site pursuant to paragraph (c)(3)(i) of this section must provide the revised notice, or information about the material change and how to obtain the revised notice, to individuals then covered by the plan within 60 days of the material revision to the notice.

(2) Specific requirements for certain covered health care providers. A covered health care provider that has a direct treatment relationship with an individual must:

(i) Provide the notice:

(A) No later than the date of the first service delivery, including service delivered electronically, to such individual after the compliance date for the covered health care provider; or

(B) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.

(ii) Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice provided in accordance with paragraph (c)(2)(i) of this section, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained;

(iii) If the covered health care provider maintains a physical service delivery site:

(A) Have the notice available at the service delivery site for individuals to request to take with them; and

(B) Post the notice in a clear and prominent location where it is reasonable to expect individuals seeking service from the covered health care provider to be able to read the notice; and

(iv) Whenever the notice is revised, make the notice available upon request on or after the effective date of the revision and promptly comply with the requirements of paragraph (c)(2)(iii) of this section, if applicable.

(3) Specific requirements for electronic notice.

(i) A covered entity that maintains a web site that provides information about the covered entity's customer services or benefits must prominently post its notice on the web site and make the notice available electronically through the web site.

(ii) A covered entity may provide the notice required by this section to an individual by e-mail, if the individual agrees to electronic notice and such agreement has not been withdrawn. If the covered entity knows that the e-mail transmission has failed, a paper copy of the notice must be provided to the individual. Provision of electronic notice by the covered entity will satisfy the provision requirements of paragraph (c) of this section when timely made in accordance with paragraph (c)(1) or (2) of this section.

(iii) For purposes of paragraph (c)(2)(i) of this section, if the first service delivery to an individual is delivered electronically, the covered health care provider must provide electronic notice automatically and contemporaneously in response to the individual's first request for service. The requirements in paragraph (c)(2)(ii) of this section apply to electronic notice.

(iv) The individual who is the recipient of electronic notice retains the right to obtain a paper copy of the notice from a covered entity upon request.

(d) Implementation specifications: Joint notice by separate covered entities. Covered entities that participate in organized health care arrangements may comply with this section by a joint notice, provided that:

(1) The covered entities participating in the organized health care arrangement agree to abide by the terms of the notice with respect to protected health information created or received by the covered entity as part of its participation in the organized health care arrangement;

(2) The joint notice meets the implementation specifications in paragraph (b) of this section, except that the statements required by this section may be altered to reflect the fact that the notice covers more than one covered entity; and

(i) Describes with reasonable specificity the covered entities, or class of entities, to which the joint notice applies;

(ii) Describes with reasonable specificity the service delivery sites, or classes of service delivery sites, to which the joint notice applies; and

(iii) If applicable, states that the covered entities participating in the organized health care arrangement will share protected health information with each other, as necessary to carry out treatment, payment, or health care operations relating to the organized health care arrangement.

(3) The covered entities included in the joint notice must provide the notice to individuals in accordance with the applicable implementation specifications of paragraph (c) of this section. Provision of the joint notice to an individual by any one of the covered entities included in the joint notice will satisfy the provision requirement of paragraph (c) of this section with respect to all others covered by the joint notice.

(4) The permission in paragraph (d) of this section for covered entities that participate in an organized health care arrangement to issue a joint notice may not be construed to remove any obligations or duties of entities creating or maintaining records subject to 42 U.S.C. 290dd-2, or to remove any rights of patients who are the subjects of such records.

(e) Implementation specifications: Documentation. A covered entity must document compliance with the notice requirements, as required by § 164.530(j), by retaining copies of the notices issued by the covered entity and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment, in accordance with paragraph (c)(2)(ii) of this section.

[65 FR 82462, 82820, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53271, Aug. 14, 2002; 78 FR 5566, 5701, Jan. 25, 2013; 89 FR 32976, 33064, Apr. 26, 2024]

§ 164.522 Rights to request privacy protection for protected health information.

(a)(1) Standard: Right of an individual to request restriction of uses and disclosures

(i) A covered entity must permit an individual to request that the covered entity restrict:

(A) Uses or disclosures of protected health information about the individual to carry out treatment, payment, or health care operations; and

(B) Disclosures permitted under § 164.510(b).

(ii) Except as provided in paragraph (a)(1)(vi) of this section, a covered entity is not required to agree to a restriction.

(iii) A covered entity that agrees to a restriction under paragraph (a)(1)(i) of this section may not use or disclose protected health information in violation of such restriction, except that, if the individual who requested the restriction is in need of emergency treatment and the restricted protected health information is needed to provide the emergency treatment, the covered entity may use the restricted protected health information, or may disclose such information to a health care provider, to provide such treatment to the individual.

(iv) If restricted protected health information is disclosed to a health care provider for emergency treatment under paragraph (a)(1)(iii) of this section, the covered entity must request that such health care provider not further use or disclose the information.

(v) A restriction agreed to by a covered entity under paragraph (a) of this section, is not effective under this subpart to prevent uses or disclosures permitted or required under §§ 164.502(a)(2)(ii), 164.510(a) or 164.512.

(vi) A covered entity must agree to the request of an individual to restrict disclosure of protected health information about the individual to a health plan if:

(A) The disclosure is for the purpose of carrying out payment or health care operations and is not otherwise required by law; and

(B) The protected health information pertains solely to a health care item or service for which the individual, or person other than the health plan on behalf of the individual, has paid the covered entity in full.

(2) Implementation specifications: Terminating a restriction. A covered entity may terminate a restriction, if:

(i) The individual agrees to or requests the termination in writing;

(ii) The individual orally agrees to the termination and the oral agreement is documented; or

(iii) The covered entity informs the individual that it is terminating its agreement to a restriction, except that such termination is:

(A) Not effective for protected health information restricted under paragraph (a)(1)(vi) of this section; and

(B) Only effective with respect to protected health information created or received after it has so informed the individual.

(3) Implementation specification: Documentation. A covered entity must document a restriction in accordance with § 160.530(j) of this subchapter.

(b)(1) Standard: Confidential communications requirements

(i) A covered health care provider must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the covered health care provider by alternative means or at alternative locations.

(ii) A health plan must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected health information from the health plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.

(2) Implementation specifications: Conditions on providing confidential communications.

(i) A covered entity may require the individual to make a request for a confidential communication described in paragraph (b)(1) of this section in writing.

(ii) A covered entity may condition the provision of a reasonable accommodation on:

(A) When appropriate, information as to how payment, if any, will be handled; and

(B) Specification of an alternative address or other method of contact.

(iii) A covered health care provider may not require an explanation from the individual as to the basis for the request as a condition of providing communications on a confidential basis.

(iv) A health plan may require that a request contain a statement that disclosure of all or part of the information to which the request pertains could endanger the individual.

[65 FR 82462, 82822, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53271, Aug. 14, 2002; 78 FR 5566, 5701, Jan. 25, 2013]

§ 164.524 Access of individuals to protected health information.

(a) Standard: Access to protected health information.

(1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, except for:

(i) Psychotherapy notes; and

(ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

(2) Unreviewable grounds for denial. A covered entity may deny an individual access without providing the individual an opportunity for review, in the following circumstances.

(i) The protected health information is excepted from the right of access by paragraph (a)(1) of this section.

(ii) A covered entity that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.

(iii) An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research.

(iv) An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. 552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law.

(v) An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(3) Reviewable grounds for denial. A covered entity may deny an individual access, provided that the individual is given a right to have such denials reviewed, as required by paragraph (a)(4) of this section, in the following circumstances:

(i) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;

(ii) The protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

(iii) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person.

(4) Review of a denial of access. If access is denied on a ground permitted under paragraph (a)(3) of this section, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny. The covered entity must provide or deny access in accordance with the determination of the reviewing official under paragraph (d)(4) of this section.

(b) Implementation specifications: requests for access and timely action.

(1) Individual's request for access. The covered entity must permit an individual to request access to inspect or to obtain a copy of the protected health information about the individual that is maintained in a designated record set. The covered entity may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement.

(2) Timely action by the covered entity

(i) Except as provided in paragraph (b)(2)(ii) of this section, the covered entity must act on a request for access no later than 30 days after receipt of the request as follows.

(A) If the covered entity grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, in accordance with paragraph (c) of this section.

(B) If the covered entity denies the request, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d) of this section.

(ii) If the covered entity is unable to take an action required by paragraph (b)(2)(i)(A) or (B) of this section within the time required by paragraph (b)(2)(i) of this section, as applicable, the covered entity may extend the time for such actions by no more than 30 days, provided that:

(A) The covered entity, within the time limit set by paragraph (b)(2)(i) of this section, as applicable, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; and

(B) The covered entity may have only one such extension of time for action on a request for access.

(c) Implementation specifications: Provision of access. If the covered entity provides an individual with access, in whole or in part, to protected health information, the covered entity must comply with the following requirements.

(1) Providing the access requested. The covered entity must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the covered entity need only produce the protected health information once in response to a request for access.

(2) Form of access requested.

(i) The covered entity must provide the individual with access to the protected health information in the form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable hard copy form or such other form and format as agreed to by the covered entity and the individual.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, if the protected health information that is the subject of a request for access is maintained in one or more designated record sets electronically and if the individual requests an electronic copy of such information, the covered entity must provide the individual with access to the protected health information in the electronic form and format requested by the individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by the covered entity and the individual.

(iii) The covered entity may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if:

(A) The individual agrees in advance to such a summary or explanation; and

(B) The individual agrees in advance to the fees imposed, if any, by the covered entity for such summary or explanation.

(3) Time and manner of access.

(i) The covered entity must provide the access as requested by the individual in a timely manner as required by paragraph (b)(2) of this section, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information, or mailing the copy of the protected health information at the individual's request. The covered entity may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.

(ii) If an individual's request for access directs the covered entity to transmit the copy of protected health information directly to another person designated by the individual, the covered entity must provide the copy to the person designated by the individual. The individual's request must be in writing, signed by the individual, and clearly identify the designated person and where to send the copy of protected health information.

(4) Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the covered entity may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:

(i) Labor for copying the protected health information requested by the individual, whether in paper or electronic form;

(ii) Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;

(iii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and

(iv) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(iii) of this section.

(d) Implementation specifications: Denial of access. If the covered entity denies access, in whole or in part, to protected health information, the covered entity must comply with the following requirements.

(1) Making other information accessible. The covered entity must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the covered entity has a ground to deny access.

(2) Denial. The covered entity must provide a timely, written denial to the individual, in accordance with paragraph (b)(2) of this section. The denial must be in plain language and contain:

(i) The basis for the denial;

(ii) If applicable, a statement of the individual's review rights under paragraph (a)(4) of this section, including a description of how the individual may exercise such review rights; and

(iii) A description of how the individual may complain to the covered entity pursuant to the complaint procedures in § 164.530(d) or to the Secretary pursuant to the procedures in § 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in § 164.530(a)(1)(ii).

(3) Other responsibility. If the covered entity does not maintain the protected health information that is the subject of the individual's request for access, and the covered entity knows where the requested information is

maintained, the covered entity must inform the individual where to direct the request for access.

(4) Review of denial requested. If the individual has requested a review of a denial under paragraph (a)(4) of this section, the covered entity must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The covered entity must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards in paragraph (a)(3) of this section. The covered entity must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.

(e) Implementation specification: Documentation. A covered entity must document the following and retain the documentation as required by § 164.530(j):

(1) The designated record sets that are subject to access by individuals; and

(2) The titles of the persons or offices responsible for receiving and processing requests for access by individuals.

[65 FR 82462, 82802, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 78 FR 5566, 5701, Jan. 25, 2013; 78 FR 34264, 34266, June 7, 2013; 79 FR 7290, 7316, Feb. 6, 2014]

§ 164.526 Amendment of protected health information.

(a) Standard: Right to amend.

(1) Right to amend. An individual has the right to have a covered entity amend protected health information or a record about the individual in a designated record set for as long as the protected health information is maintained in the designated record set.

(2) Denial of amendment. A covered entity may deny an individual's request for amendment, if it determines that the protected health information or record that is the subject of the request:

(i) Was not created by the covered entity, unless the individual provides a reasonable basis to believe that the originator of protected health information is no longer available to act on the requested amendment;

(ii) Is not part of the designated record set;

(iii) Would not be available for inspection under § 164.524; or

(iv) Is accurate and complete.

(b) Implementation specifications: Requests for amendment and timely action —

(1) Individual's request for amendment. The covered entity must permit an individual to request that the covered entity amend the protected health information maintained in the designated record set. The covered entity may require individuals to make requests for amendment in writing and to provide a reason to support a requested amendment, provided that it informs individuals in advance of such requirements.

(2) Timely action by the covered entity.

(i) The covered entity must act on the individual's request for an amendment no later than 60 days after receipt of such a request, as follows.

(A) If the covered entity grants the requested amendment, in whole or in part, it must take the actions required by paragraphs (c)(1) and (2) of this section.

(B) If the covered entity denies the requested amendment, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d)(1) of this section.

(ii) If the covered entity is unable to act on the amendment within the time required by paragraph (b)(2)(i) of this section, the covered entity may extend the time for such action by no more than 30 days, provided that:

(A) The covered entity, within the time limit set by paragraph (b)(2)(i) of this section, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will complete its action on the request; and

(B) The covered entity may have only one such extension of time for action on a request for an amendment.

(c) Implementation specifications: Accepting the amendment. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must comply with the following requirements.

(1) Making the amendment. The covered entity must make the appropriate amendment to the protected health information or record that is the subject of the request for amendment by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(2) Informing the individual. In accordance with paragraph (b) of this section, the covered entity must timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the covered entity notify the relevant persons with which the amendment needs to be shared in accordance with paragraph (c)(3) of this section.

(3) Informing others. The covered entity must make reasonable efforts to inform and provide the amendment within a reasonable time to:

(i) Persons identified by the individual as having received protected health information about the individual and needing the amendment; and

(ii) Persons, including business associates, that the covered entity knows have the protected health information that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

(d) Implementation specifications: Denying the amendment. If the covered entity denies the requested amendment, in whole or in part, the covered entity must comply with the following requirements.

(1) Denial. The covered entity must provide the individual with a timely, written denial, in accordance with paragraph (b)(2) of this section. The denial must use plain language and contain:

(i) The basis for the denial, in accordance with paragraph (a)(2) of this section;

(ii) The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;

(iii) A statement that, if the individual does not submit a statement of disagreement, the individual may request that the covered entity provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment; and

(iv) A description of how the individual may complain to the covered entity pursuant to the complaint procedures established in § 164.530(d) or to the Secretary pursuant to the procedures established in § 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in § 164.530(a)(1)(ii).

(2) Statement of disagreement. The covered entity must permit the individual to submit to the covered entity a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The covered entity may reasonably limit the length of a statement of disagreement.

(3) Rebuttal statement. The covered entity may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the covered entity must provide a copy to the individual who submitted the statement of disagreement.

(4) Recordkeeping. The covered entity must, as appropriate, identify the record or protected health information in the designated record set that is the subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the covered entity's denial of the request, the individual's statement of disagreement, if any, and the covered entity's rebuttal, if any, to the designated record set.

(5) Future disclosures.

(i) If a statement of disagreement has been submitted by the individual, the covered entity must include the material appended in accordance with paragraph (d)(4) of this section, or, at the election of the covered entity, an accurate summary of any such information, with any subsequent disclosure of the protected health information to which the disagreement relates.

(ii) If the individual has not submitted a written statement of disagreement, the covered entity must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of the protected health information only if the individual has requested such action in accordance with paragraph (d)(1)(iii) of this section.

(iii) When a subsequent disclosure described in paragraph (d)(5)(i) or (ii) of this section is made using a standard transaction under part 162 of this subchapter that does not permit the additional material to be included with the disclosure, the covered entity may separately transmit the material required by paragraph (d)(5)(i) or (ii) of this section, as applicable, to the recipient of the standard transaction.

(e) Implementation specification: Actions on notices of amendment. A covered entity that is informed by another covered entity of an amendment to an individual's protected health information, in accordance with paragraph (c)(3) of this section, must amend the protected health information in designated record sets as provided by paragraph (c)(1) of this section.

(f) Implementation specification: Documentation. A covered entity must document the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals and retain the documentation as required by § 164.530(j).

[65 FR 82462, 82824, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001]

§ 164.528 Accounting of disclosures of protected health information.

(a) Standard: Right to an accounting of disclosures of protected health information.

(1) An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested, except for disclosures:

(i) To carry out treatment, payment and health care operations as provided in § 164.506;

(ii) To individuals of protected health information about them as provided in § 164.502;

(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, as provided in § 164.502;

(iv) Pursuant to an authorization as provided in § 164.508;

(v) For the facility's directory or to persons involved in the individual's care or other notification purposes as provided in § 164.510;

(vi) For national security or intelligence purposes as provided in § 164.512(k)(2);

(vii) To correctional institutions or law enforcement officials as provided in § 164.512(k)(5);

(viii) As part of a limited data set in accordance with § 164.514(e); or

(ix) That occurred prior to the compliance date for the covered entity.

(2)(i) The covered entity must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, as provided in § 164.512(d) or (f), respectively, for the time specified by such agency or official, if such agency or official provides the covered entity with a written statement that such an accounting to the individual would be reasonably likely to impede the agency's activities and specifying the time for which such a suspension is required.

(ii) If the agency or official statement in paragraph (a)(2)(i) of this section is made orally, the covered entity must:

(A) Document the statement, including the identity of the agency or official making the statement;

(B) Temporarily suspend the individual's right to an accounting of disclosures subject to the statement; and

(C) Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless a written statement pursuant to paragraph (a)(2)(i) of this section is submitted during that time.

(3) An individual may request an accounting of disclosures for a period of time less than six years from the date of the request.

(b) Implementation specifications: Content of the accounting. The covered entity must provide the individual with a written accounting that meets the following requirements.

(1) Except as otherwise provided by paragraph (a) of this section, the accounting must include disclosures of protected health information that occurred during the six years (or such shorter time period at the request of the individual as provided in paragraph (a)(3) of this section) prior to the date of the request for an accounting, including disclosures to or by business associates of the covered entity.

(2) Except as otherwise provided by paragraphs (b)(3) or (b)(4) of this section, the accounting must include for each disclosure:

(i) The date of the disclosure;

(ii) The name of the entity or person who received the protected health information and, if known, the address of such entity or person;

(iii) A brief description of the protected health information disclosed; and

(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.

(3) If, during the period covered by the accounting, the covered entity has made multiple disclosures of protected health information to the same person or entity for a

single purpose under §§ 164.502(a)(2)(ii) or 164.512, the accounting may, with respect to such multiple disclosures, provide:

(i) The information required by paragraph (b)(2) of this section for the first disclosure during the accounting period;

(ii) The frequency, periodicity, or number of the disclosures made during the accounting period; and

(iii) The date of the last such disclosure during the accounting period.

(4)(i) If, during the period covered by the accounting, the covered entity has made disclosures of protected health information for a particular research purpose in accordance with § 164.512(i) for 50 or more individuals, the accounting may, with respect to such disclosures for which the protected health information about the individual may have been included, provide:

(A) The name of the protocol or other research activity;

(B) A description, in plain language, of the research protocol or other research activity, including the purpose of the research and the criteria for selecting particular records;

(C) A brief description of the type of protected health information that was disclosed;

(D) The date or period of time during which such disclosures occurred, or may have occurred, including the date of the last such disclosure during the accounting period;

(E) The name, address, and telephone number of the entity that sponsored the research and of the researcher to whom the information was disclosed; and

(F) A statement that the protected health information of the individual may or may not have been disclosed for a particular protocol or other research activity.

(ii) If the covered entity provides an accounting for research disclosures, in accordance with paragraph (b)(4) of this section, and if it is reasonably likely that the protected health information of the individual was disclosed for such research protocol or activity, the covered entity shall, at the request of the individual, assist in contacting the entity that sponsored the research and the researcher.

(c) Implementation specifications: Provision of the accounting.

(1) The covered entity must act on the individual's request for an accounting, no later than 60 days after receipt of such a request, as follows.

(i) The covered entity must provide the individual with the accounting requested; or

(ii) If the covered entity is unable to provide the accounting within the time required by paragraph (c)(1) of this section, the covered entity may extend the time to provide the accounting by no more than 30 days, provided that:

(A) The covered entity, within the time limit set by paragraph (c)(1) of this section, provides the individual with a written statement of the reasons for the delay and the date by which the covered entity will provide the accounting; and

(B) The covered entity may have only one such extension of time for action on a request for an accounting.

(2) The covered entity must provide the first accounting to an individual in any 12 month period without charge. The covered entity may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that the covered entity informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

(d) Implementation specification: Documentation. A covered entity must document the following and retain the documentation as required by § 164.530(j):

(1) The information required to be included in an accounting under paragraph (b) of this section for disclosures of protected health information that are subject to an accounting under paragraph (a) of this section;

(2) The written accounting that is provided to the individual under this section; and

(3) The titles of the persons or offices responsible for receiving and processing requests for an accounting by individuals.

[65 FR 82462, 82826, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53271, Aug. 14, 2002]

§ 164.530 Administrative requirements.

(a)(1) Standard: Personnel designations.

(i) A covered entity must designate a privacy official who is responsible for the development and implementation of the policies and procedures of the entity.

(ii) A covered entity must designate a contact person or office who is responsible for receiving complaints under this section and who is able to provide further information about matters covered by the notice required by § 164.520.

(2) Implementation specification: Personnel designations. A covered entity must document the personnel designations in paragraph (a)(1) of this section as required by paragraph (j) of this section.

(b)(1) Standard: Training. A covered entity must train all members of its workforce on the policies and procedures with respect to protected health information required by this subpart and subpart D of this part, as necessary and appropriate for the members of the workforce to carry out their functions within the covered entity.

(2) Implementation specifications: Training.

(i) A covered entity must provide training that meets the requirements of paragraph (b)(1) of this section, as follows:

(A) To each member of the covered entity's workforce by no later than the compliance date for the covered entity;

(B) Thereafter, to each new member of the workforce within a reasonable period of time after the person joins the covered entity's workforce; and

(C) To each member of the covered entity's workforce whose functions are affected by a material change in the policies or procedures required by this subpart or subpart D of this part, within a reasonable period of time after the material change becomes effective in accordance with paragraph (i) of this section.

(ii) A covered entity must document that the training as described in paragraph (b)(2)(i) of this section has been provided, as required by paragraph (j) of this section.

(c)(1) Standard: Safeguards. A covered entity must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information.

(2)(i) Implementation specification: Safeguards. A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart.

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

(d)(1) Standard: Complaints to the covered entity. A covered entity must provide a process for individuals to make complaints concerning the covered entity's policies and procedures required by this subpart and subpart D of this part or its compliance with such policies and procedures or the requirements of this subpart or subpart D of this part.

(2) Implementation specification: Documentation of complaints. As required by paragraph (j) of this section, a covered entity must document all complaints received, and their disposition, if any.

(e)(1) Standard: Sanctions. A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart or subpart D of this part. This standard does not apply to a member of the covered entity's workforce with respect to actions that are covered by and that meet the conditions of § 164.502(j) or paragraph (g)(2) of this section.

(2) Implementation specification: Documentation. As required by paragraph (j) of this section, a covered entity must document the sanctions that are applied, if any.

(f) Standard: Mitigation. A covered entity must mitigate, to the extent practicable, any harmful effect that is known to the covered entity of a use or disclosure of protected health information in violation of its policies and procedures or the requirements of this subpart by the covered entity or its business associate.

(g) Standard: Refraining from intimidating or retaliatory acts. A covered entity —

(1) May not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the exercise by the individual of any right established, or for participation in any process provided for, by this subpart or subpart D of this part, including the filing of a complaint under this section; and

(2) Must refrain from intimidation and retaliation as provided in § 160.316 of this subchapter.

(h) Standard: Waiver of rights. A covered entity may not require individuals to waive their rights under § 160.306 of this subchapter, this subpart, or subpart D of this part, as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

(i)(1) Standard: Policies and procedures. A covered entity must implement policies and procedures with respect to protected health information that are designed to comply with the standards, implementation specifications, or other requirements of this subpart and subpart D of this part. The policies and procedures must be reasonably designed, taking into account the size and the type of activities that relate to protected health information undertaken by a covered entity, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirement of this subpart.

(2) Standard: Changes to policies and procedures.

(i) A covered entity must change its policies and procedures as necessary and appropriate to comply with changes in the law, including the standards, requirements, and implementation specifications of this subpart or subpart D of this part.

(ii) When a covered entity changes a privacy practice that is stated in the notice described in § 164.520, and makes corresponding changes to its policies and procedures, it may make the changes effective for protected health information that it created or received prior to the effective date of the notice revision, if the covered entity has, in accordance with § 164.520(b)(1)(v)(C), included in the notice a statement reserving its right to make such a change in its privacy practices; or

(iii) A covered entity may make any other changes to policies and procedures at any time, provided that the changes are documented and implemented in accordance with paragraph (i)(5) of this section.

(3) Implementation specification: Changes in law. Whenever there is a change in law that necessitates a change to the covered entity's policies or procedures, the covered entity must promptly document and implement the revised policy or procedure. If the change in law materially affects the content of the notice required by § 164.520, the covered entity must promptly make the appropriate revisions to the notice in accordance with § 164.520(b)(3). Nothing in this paragraph may be used by a covered entity to excuse a failure to comply with the law.

(4) Implementation specifications: Changes to privacy practices stated in the notice.

(i) To implement a change as provided by paragraph (i)(2)(ii) of this section, a covered entity must:

(A) Ensure that the policy or procedure, as revised to reflect a change in the covered entity's privacy practice as stated in its notice, complies with the standards, requirements, and implementation specifications of this subpart;

(B) Document the policy or procedure, as revised, as required by paragraph (j) of this section; and

(C) Revise the notice as required by § 164.520(b)(3) to state the changed practice and make the revised notice available as required by § 164.520(c). The covered entity may not implement a change to a policy or procedure prior to the effective date of the revised notice.

(ii) If a covered entity has not reserved its right under § 164.520(b)(1)(v)(C) to change a privacy practice that is stated in the notice, the covered entity is bound by the privacy practices as stated in the notice with respect to protected health information created or received while such notice is in effect. A covered entity may change a privacy practice that is stated in the notice, and the related policies and procedures, without having reserved the right to do so, provided that:

(A) Such change meets the implementation specifications in paragraphs (i)(4)(i)(A)-(C) of this section; and

(B) Such change is effective only with respect to protected health information created or received after the effective date of the notice.

(5) Implementation specification: Changes to other policies or procedures. A covered entity may change, at any time, a policy or procedure that does not materially affect the content of the notice required by § 164.520, provided that:

(i) The policy or procedure, as revised, complies with the standards, requirements, and implementation specifications of this subpart; and

(ii) Prior to the effective date of the change, the policy or procedure, as revised, is documented as required by paragraph (j) of this section.

(j)(1) Standard: Documentation. A covered entity must:

(i) Maintain the policies and procedures provided for in paragraph (i) of this section in written or electronic form;

(ii) If a communication is required by this subpart to be in writing, maintain such writing, or an electronic copy, as documentation; and

(iii) If an action, activity, or designation is required by this subpart to be documented, maintain a written or electronic record of such action, activity, or designation.

(iv) Maintain documentation sufficient to meet its burden of proof under § 164.414(b).

(2) Implementation specification: Retention period. A covered entity must retain the documentation required by paragraph (j)(1) of this section for six years from the date of its creation or the date when it last was in effect, whichever is later.

(k) Standard: Group health plans.

(1) A group health plan is not subject to the standards or implementation specifications in paragraphs (a) through (f) and (i) of this section, to the extent that:

(i) The group health plan provides health benefits solely through an insurance contract with a health insurance issuer or an HMO; and

(ii) The group health plan does not create or receive protected health information, except for:

(A) Summary health information as defined in § 164.504(a); or

(B) Information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan.

(2) A group health plan described in paragraph (k)(1) of this section is subject to the standard and implementation specification in paragraph (j) of this section only with respect to plan documents amended in accordance with § 164.504(f).

[65 FR 82462, 82826, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53272, Aug. 14, 2002; 71 FR 8390, 8433, Feb. 16, 2006; 74 FR 42740, 42769, Aug. 24, 2009]

§ 164.532 Transition provisions.

(a) Standard: Effect of prior authorizations. Notwithstanding §§ 164.508 and 164.512(i), a covered entity may use or disclose protected health information, consistent with paragraphs (b) and (c) of this section, pursuant to an authorization or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, informed consent of the individual to participate in research, a waiver of informed consent by an IRB, or a waiver of authorization in accordance with § 164.512(i)(1)(i).

(b) Implementation specification: Effect of prior authorization for purposes other than research. Notwithstanding any provisions in § 164.508, a covered entity may use or disclose protected health information that it created or received prior to the applicable compliance date of this subpart pursuant to an authorization or other express legal permission obtained from an individual prior to the applicable compliance date of this subpart, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction in accordance with § 164.522(a).

(c) Implementation specification: Effect of prior permission for research. Notwithstanding any provisions in §§ 164.508 and 164.512(i), a covered entity may, to the extent allowed by one of the following permissions, use or disclose, for research, protected health information that it created or received either before or after the applicable compliance date of this subpart, provided that there is no agreed-to restriction in accordance with § 164.522(a), and the covered entity has obtained, prior to the applicable compliance date, either:

(1) An authorization or other express legal permission from an individual to use or disclose protected health information for the research;

(2) The informed consent of the individual to participate in the research;

(3) A waiver, by an IRB, of informed consent for the research, in accordance with 7 CFR 1c.116(d), 10 CFR 745.116(d), 14 CFR 1230.116(d), 15 CFR 27.116(d), 16 CFR 1028.116(d), 21 CFR 50.24, 22 CFR 225.116(d), 24 CFR 60.116(d), 28 CFR 46.116(d), 32 CFR 219.116(d), 34 CFR 97.116(d), 38 CFR 16.116(d), 40 CFR 26.116(d), 45 CFR 46.116(d), 45 CFR 690.116(d), or 49 CFR 11.116(d), provided that a covered entity must obtain authorization in accordance with § 164.508 if, after the compliance date, informed consent is sought from an individual participating in the research; or

(4) A waiver of authorization in accordance with § 164.512(i)(1)(i).

(d) Standard: Effect of prior contracts or other arrangements with business associates. Notwithstanding any other provisions of this part, a covered entity, or business associate with respect to a subcontractor, may disclose protected health information to a business associate and may allow a business associate to create, receive, maintain, or transmit protected health information on its behalf pursuant to a written contract or other written arrangement with such business associate that does not comply with §§ 164.308(b), 164.314(a), 164.502(e), and 164.504(e), only in accordance with paragraph (e) of this section.

(e) Implementation specification: Deemed compliance.

(1) Qualification. Notwithstanding other sections of this part, a covered entity, or business associate with respect to a subcontractor, is deemed to be in compliance with the documentation and contract requirements of §§ 164.308(b), 164.314(a), 164.502(e), and 164.504(e), with respect to a particular business associate relationship, for the time period set forth in paragraph (e)(2) of this section, if:

(i) Prior to January 25, 2013, such covered entity, or business associate with respect to a subcontractor, has entered into and is operating pursuant to a written contract or other written arrangement with the business associate that complies with the applicable provisions of §§ 164.314(a) or 164.504(e) that were in effect on such date; and

(ii) The contract or other arrangement is not renewed or modified from March 26, 2013, until September 23, 2013.

(2) Limited deemed compliance period. A prior contract or other arrangement that meets the qualification requirements in paragraph (e) of this section shall be deemed compliant until the earlier of:

(i) The date such contract or other arrangement is renewed or modified on or after September 23, 2013; or

(ii) September 22, 2014.

(3) Covered entity responsibilities. Nothing in this section shall alter the requirements of a covered entity to comply with part 160, subpart C of this subchapter and §§ 164.524, 164.526, 164.528, and 164.530(f) with respect to protected health information held by a business associate.

(f) Effect of prior data use agreements. If, prior to January 25, 2013, a covered entity has entered into and is operating pursuant to a data use agreement with a recipient of a limited data set that complies with § 164.514(e), notwithstanding § 164.502(a)(5)(ii), the covered entity may continue to disclose a limited data set pursuant to such agreement in exchange for remuneration from or on behalf of the recipient of the protected health information until the earlier of:

(1) The date such agreement is renewed or modified on or after September 23, 2013; or

(2) September 22, 2014.

[65 FR 82462, 82828, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001; 67 FR 53182, 53272, Aug. 14, 2002; 78 FR 5566, 5702, Jan. 25, 2013; 78 FR 34264, 34266, June 7, 2013]

§ 164.534 Compliance dates for initial implementation of the privacy standards.

(a) Health care providers. A covered health care provider must comply with the applicable requirements of this subpart no later than April 14, 2003.

(b) Health plans. A health plan must comply with the applicable requirements of this subpart no later than the following as applicable:

(1) Health plans other han small health plans. April 14, 2003.

(2) Small health plans. April 14, 2004.

(c) Health clearinghouses. A health care clearinghouse must comply with the applicable requirements of this subpart no later than April 14, 2003.

[65 FR 82462, 82829, Dec. 28, 2000; 66 FR 12434, Feb. 26, 2001]

§ 164.535 Severability.

If any provision of the HIPAA Privacy Rule to Support Reproductive Health Care Privacy is held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or circumstance, it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

[89 FR 32976, 33066, Apr. 26, 2024]

HEALTH AND SAFETY CODE

Title
2. Health
4. Health Facilities
6. Food, Drugs, Alcohol, and Hazardous Substances
7. Mental Health and Intellectual Disability

TITLE 2

HEALTH

Subtitle
E. Health Care Councils and Resource Centers
H. Public Health Provisions
I. Medical Records

SUBTITLE E

HEALTH CARE COUNCILS AND RESOURCE CENTERS

CHAPTER 113

Texas Child Mental Health Care Consortium

Subchapter
A. General Provisions
B. Consortium
C. Executive Committee
D. Access to Care
D-1. Rural Pediatric Mental Health Care Access Program
E. Child Mental Health Workforce
F. Miscellaneous Provisions

Subchapter A

General Provisions

Section
113.0001. Definitions.

Sec. 113.0001. Definitions.

In this chapter:

(1) "Community mental health provider" means an entity that provides mental health care services at a local level, including a local mental health authority.

(2) "Consortium" means the Texas Child Mental Health Care Consortium.

(3) "Executive committee" means the executive committee of the consortium.

(4) "Rural health clinic" means a rural health clinic, as defined by 42 C.F.R. Section 491.2, that is:

(A) accredited by an accreditation organization, a participant in the federal Medicare program, or both; and

(B) located in a county that does not contain a general hospital or special hospital, as those terms are defined by Section 241.003.

(5) "Rural hospital" has the meaning assigned by Section 548.0351, Government Code.

(6) "Rural hospital organization" has the meaning assigned by Section 526.0321, Government Code.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; 2025, 89th Leg., ch. 707 (H.B. 18), § 11, effective June 20, 2025.

Subchapter B

Consortium

Section
113.0051. Establishment; Purpose.
113.0052. Composition.
113.0053. Administrative Attachment.

Sec. 113.0051. Establishment; Purpose.

The Texas Child Mental Health Care Consortium is established to:

(1) leverage the expertise and capacity of the health-related institutions of higher education listed in Section 113.0052(1) to address urgent mental health challenges and improve the mental health care system in this state in relation to children and adolescents; and

(2) enhance the state's ability to address mental health care needs of children and adolescents through collaboration of the health-related institutions of higher education listed in Section 113.0052(1).

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0052. Composition.

The consortium is composed of:

(1) the following health-related institutions of higher education:

(A) Baylor College of Medicine;

(B) Texas A&M University System Health Science Center;

(C) Texas Tech University Health Sciences Center;

(D) Texas Tech University Health Sciences Center at El Paso;

(E) University of North Texas Health Science Center at Fort Worth;

(F) The Dell Medical School at The University of Texas at Austin;

(G) The University of Texas Medical Branch at Galveston;

(H) The University of Texas Health Science Center at Houston;

(I) The University of Texas Health Science Center at San Antonio;

(J) The University of Texas Rio Grande Valley School of Medicine;

(K) The University of Texas Health Science Center at Tyler; and

(L) The University of Texas Southwestern Medical Center;

(2) the commission;

(3) the Texas Higher Education Coordinating Board;

(4) three nonprofit organizations that focus on mental health care, designated by a majority of the members described by Subdivision (1);

(5) each regional education service center established under Chapter 8, Education Code, that the executive commissioner identifies as a center predominately serving school districts classified as rural by the National Center for Education Statistics of the United States Department of Education; and

(6) any other entity that the executive committee considers necessary.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; Acts 2023, 88th Leg., ch. 150 (S.B. 850), § 1, effective September 1, 2023.

Sec. 113.0053. Administrative Attachment.

The consortium is administratively attached to the Texas Higher Education Coordinating Board for the purpose of receiving and administering appropriations and other funds under this chapter. The board is not responsible for providing to the consortium staff, human resources, contract monitoring, purchasing, or any other administrative support services.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter C

Executive Committee

Section

113.0101. Executive Committee Composition.
113.0102. Terms; Vacancy.
113.0103. Presiding Officer.
113.0104. Statewide Behavioral Health Coordinating Council.
113.0105. General Duties.

Sec. 113.0101. Executive Committee Composition.

(a) The consortium is governed by an executive committee composed of the following members:

(1) the chair of the academic department of psychiatry of each of the health-related institutions of higher education listed in Section 113.0052(1) or a licensed psychiatrist, including a child-adolescent psychiatrist, designated by the chair to serve in the chair's place;

(2) a representative of the commission with expertise in the delivery of mental health care services, appointed by the executive commissioner;

(3) a representative of the commission with expertise in mental health facilities, appointed by the executive commissioner;

(4) a representative of the Texas Higher Education Coordinating Board, appointed by the commissioner of the coordinating board;

(5) a representative of each nonprofit organization described by Section 113.0052(4) that is part of the consortium, designated by a majority of the members described by Subdivision (1);

(6) a representative of a hospital system in this state, designated by a majority of the members described by Subdivision (1);

(7) a representative selected from among the regional education service centers described by Section 113.0052(5), appointed by the executive commissioner; and

(8) any other representative designated:

(A) under Subsection (b); or

(B) by a majority of the members described by Subdivision (1) at the request of the executive committee.

(b) The president of each of the health-related institutions of higher education listed in Section 113.0052(1) may designate a representative to serve on the executive committee.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; Acts 2023, 88th Leg., ch. 150 (S.B. 850), § 2, effective September 1, 2023.

Sec. 113.0102. Terms; Vacancy.

(a) Except as provided by Subsection (b), the executive committee shall establish:

(1) the terms of executive committee members; and

(2) procedures for the reappointment of members.

(b) An executive committee member described by Section 113.0101(a)(7) serves a two-year term and is eligible for reappointment.

(c) A vacancy on the executive committee shall be filled in the same manner as the original appointment.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; Acts 2023, 88th Leg., ch. 150 (S.B. 850), § 3, effective September 1, 2023.

Sec. 113.0103. Presiding Officer.

The executive committee shall elect a presiding officer from among the membership of the executive committee.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0104. Statewide Behavioral Health Coordinating Council.

The consortium shall designate a member of the executive committee to represent the consortium on the statewide behavioral health coordinating council.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0105. General Duties.

The executive committee shall:

(1) coordinate the provision of funding to the health-related institutions of higher education listed in Section 113.0052(1) to carry out the purposes of this chapter;

(2) establish procedures and policies for the administration of funds under this chapter;

(3) monitor funding and agreements entered into under this chapter to ensure recipients of funding comply with the terms and conditions of the funding and agreements; and

(4) establish procedures to document compliance by executive committee members and staff with applicable laws governing conflicts of interest.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter D

Access to Care

Section
113.0151. Child Psychiatry Access Network and Telemedicine and Telehealth Programs.
113.0152. Consent Required for Services to Minor.
113.0153. Reimbursement for Services.

Sec. 113.0151. Child Psychiatry Access Network and Telemedicine and Telehealth Programs.

(a) The consortium shall establish a network of comprehensive child psychiatry access centers. A center established under this section shall:

(1) be located at a health-related institution of higher education listed in Section 113.0052(1); and

(2) provide consultation services and training opportunities for pediatricians and primary care providers operating in the center's geographic region to better care for children and youth with behavioral health needs.

(b) The consortium shall establish or expand telemedicine or telehealth programs for identifying and assessing behavioral health needs and providing access to mental health care services. The consortium shall implement this subsection with a focus on the behavioral health needs of at-risk children and adolescents.

(c) A health-related institution of higher education listed in Section 113.0052(1) may enter into a memorandum of understanding with a community mental health provider to:

(1) establish a center under Subsection (a); or

(2) establish or expand a program under Subsection (b).

(d) The consortium shall leverage the resources of a hospital system under Subsection (a) or (b) if the hospital system:

(1) provides consultation services and training opportunities for pediatricians and primary care providers that are consistent with those described by Subsection (a); and

(2) has an existing telemedicine or telehealth program for identifying and assessing the behavioral health needs of and providing access to mental health care services for children and adolescents.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0152. Consent Required for Services to Minor.

(a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child.

(b) The consortium shall develop and post on its Internet website a model form for a parent or legal guardian to provide consent under this section.

(c) This section does not apply to services provided by a school counselor in accordance with Section 33.005, 33.006, or 33.007, Education Code.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0153. Reimbursement for Services.

A child psychiatry access center established under Section 113.0151(a) may not submit an insurance claim or charge a pediatrician or primary care provider a fee for providing consultation services or training opportunities under this section.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter D-1

Rural Pediatric Mental Health Care Access Program

Section
113.0181. Mental Health Care Access Program for Rural Hospitals and Rural Health Clinics.
113.0182. Consent Required for Services to Minor.

Sec. 113.0181. Mental Health Care Access Program for Rural Hospitals and Rural Health Clinics.

(a) Using the network of comprehensive child psychiatry access centers established under Section 113.0151, the consortium shall establish or expand provider consultation programs to assist health care practitioners providing services at rural hospitals or rural health clinics to:

(1) identify and assess the behavioral health needs of pediatric and perinatal patients seeking services at the hospital or clinic; and

(2) identify necessary mental health care services to improve access to mental health care services for pediatric and perinatal patients seeking services at the hospital or clinic.

(b) The consortium, in collaboration with a rural hospital organization, shall develop a plan to establish, under the authority provided in Section 113.0151(b) and not later than September 1, 2026, telemedicine or telehealth programs to identify and assess behavioral health needs and provide access to mental health care services for pediatric patients seeking services at rural hospitals or rural health clinics. The plan may include limitations on the hours of the day during which services provided by the telemedicine or telehealth programs are available. The plan shall provide access to mental health care services for pediatric patients seeking services at the rural hospital or rural health clinic at the same or a substantially similar level as the mental health care services provided to students attending school in a school district for which the consortium has made available mental health care services under this chapter.

(c) On or after September 1, 2026, and subject to available appropriations, the consortium shall establish a program establishing or expanding telemedicine or telehealth programs to identify and assess behavioral health needs and provide access to mental health care services for pediatric patients seeking services at rural hospitals or rural health clinics.

HISTORY: 2025, 89th Leg., ch. 707 (H.B. 18), § 12, effective June 20, 2025.

Sec. 113.0182. Consent Required for Services to Minor.

(a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child or, if the parent or legal guardian is not known or available, the adult with whom the child primarily resides.

(b) The consortium shall develop and post on the consortium's Internet website a model form for a person to provide consent under this section.

(c) Written consent obtained under Subsection (a) is not valid if the consent authorizes the provision of a mental health care service to a child that affirms the child's perception of the child's gender if that perception is inconsistent with the child's biological sex.

HISTORY: 2025, 89th Leg., ch. 707 (H.B. 18), § 12, effective June 20, 2025.

Subchapter E

Child Mental Health Workforce

Section
113.0201. Child Psychiatry Workforce Expansion.
113.0202. Child and Adolescent Psychiatry Fellowship.

Sec. 113.0201. Child Psychiatry Workforce Expansion.

(a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding:

(1) two full-time psychiatrists who treat children and adolescents to serve as academic medical director at a facility operated by a community mental health provider; and

(2) two new resident rotation positions.

(b) An academic medical director described by Subsection (a) shall collaborate and coordinate with a community mental health provider to expand the amount and availability of mental health care resources by developing training opportunities for residents and supervising residents at a facility operated by the community mental health provider.

(c) An institution of higher education that receives funding under Subsection (a) shall require that psychiatric residents participate in rotations through the facility operated by the community mental health provider in accordance with Subsection (b).

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Sec. 113.0202. Child and Adolescent Psychiatry Fellowship.

(a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding a physician fellowship position that will lead to a medical specialty in the diagnosis and treatment of psychiatric and associated behavioral health issues affecting children and adolescents.

(b) The funding provided to a health-related institution of higher education under this section must be used to increase the number of fellowship positions at the institution and may not be used to replace existing funding for the institution.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

Subchapter F

Miscellaneous Provisions

Section
113.0251. Biennial Report. [2 Versions: As amended by Acts 2025, 89th Leg., HB 18]
113.0251. Biennial Report. [2 Versions: As amended by Acts 2025, 89th Leg., H.B. 6]
113.0252. Appropriation Contingency.

Sec. 113.0251. Biennial Report. [2 Versions: As amended by Acts 2025, 89th Leg., HB 18]

Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues, and the Legislative Budget Board and post on its Internet website a written report that outlines:

(1) the activities and objectives of the consortium;

(2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee;

(3) the rural hospitals and rural health clinics to which the program established under Section 113.0181 provided mental health access services;

(4) the cost to maintain the mental health care access program established under Subchapter D-1; and

(5) any legislative recommendations based on the activities and objectives described by Subdivision (1).

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; 2025, 89th Leg., ch. 707 (H.B. 18), § 13, effective June 20, 2025.

Sec. 113.0251. Biennial Report. [2 Versions: As amended by Acts 2025, 89th Leg., H.B. 6]

Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues and post on its Internet website a written report that outlines:

(1) the activities and objectives of the consortium;

(2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee;

(3) during the preceding two years, the percentage of participants in the Texas Child Health Access through Telemedicine program operated by the consortium:

(A) who were prescribed a psychotropic drug by the consortium;

(B) who were referred to a health provider for further mental health services;

(C) who completed program treatment goals; and

(D) who were provided information on consortium research programs on the participant's discharge from the program;

(4) during the preceding two years, the percentage of potential participants:

(A) for whom a parent or legal guardian declined to give informed consent to participate in the program; and

(B) who were referred to but not enrolled in the program because the potential participant needed more emergent care; and

(5) any legislative recommendations based on the activities and objectives described by Subdivision (1).

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019; 2025, 89th Leg., ch. 1066 (H.B. 6), § 20, effective June 20, 2025.

Sec. 113.0252. Appropriation Contingency.

The consortium is required to implement a provision of this chapter only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the consortium may, but is not required to, implement a provision of this chapter.

HISTORY: Acts 2019, 86th Leg., ch. 464 (S.B. 11), § 22, effective June 6, 2019.

SUBTITLE H

PUBLIC HEALTH PROVISIONS

CHAPTER 166

Advance Directives

Subchapter B

Directive to Physicians

Section
166.046. Procedure If Not Effectuating Directive or Treatment Decision for Certain Patients.

Sec. 166.046. Procedure If Not Effectuating Directive or Treatment Decision for Certain Patients.

(a) This section applies only to health care and treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication.

(a-1) If an attending physician refuses to honor an advance directive of or health care or treatment decision made by or on behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee during the review. The patient shall be given life-sustaining treatment during the review.

(a-2) An ethics or medical committee that reviews a physician's refusal to honor an advance directive or health care or treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review but may not make any judgment on the patient's quality of life. For purposes of this section, a decision by the committee based on any of the considerations described by Subdivisions (1) through (5) is not a judgment on the patient's quality of life. If the review requires the committee to determine whether life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1) will prolong the natural process of dying or hasten the patient's death;

(2) will result in substantial, irremediable, and objectively measurable physical pain that is not outweighed by the benefit of providing the treatment;

(3) is medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(4) is consistent with the prevailing standard of care; or

(5) is contrary to the patient's clearly documented desires.

(b) The person responsible for the patient's health care decisions:

(1) shall be informed in writing not less than seven calendar days before the meeting called to discuss the patient's directive, unless the period is waived by written mutual agreement, of:

(A) the ethics or medical committee review process and any other related policies and procedures adopted by the health care facility, including any policy described by Subsection (b-1);

(B) the rights described in Subdivisions (3)(A)-(D);

(C) the date, time, and location of the meeting;

(D) the work contact information of the facility's personnel who, in the event of a disagreement, will be responsible for overseeing the reasonable effort to transfer the patient to another physician or facility willing to comply with the directive;

(E) the factors the committee is required to consider under Subsection (a-2); and

(F) the language in Section 166.0465;

(2) at the time of being informed under Subdivision (1), shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department under Section 166.053; and

(3) is entitled to:

(A) attend and participate in the meeting as scheduled by the committee;

(B) receive during the meeting a written statement of the first name, first initial of the last name, and title of each committee member who will participate in the meeting;

(C) subject to Subsection (b-1):

(i) be accompanied at the meeting by the patient's spouse, parents, adult children, and not more than four additional individuals, including legal counsel, a physician, a health care professional, or a patient advocate, selected by the person responsible for the patient's health care decisions; and

(ii) have an opportunity during the open portion of the meeting to either directly or through another individual attending the meeting:

(a) explain the justification for the health care or treatment request made by or on behalf of the patient;

(b) respond to information relating to the patient that is submitted or presented during the open portion of the meeting; and

(c) state any concerns of the person responsible for the patient's health care decisions regarding compliance with this section or Section 166.0465, including stating an opinion that one or more of the patient's disabilities are not relevant to the committee's determination of whether the medical or surgical intervention is medically appropriate;

(D) receive a written notice of:

(i) the decision reached during the review process accompanied by an explanation of the decision, including, if applicable, the committee's reasoning for affirming that requested life-sustaining treatment is medically inappropriate;

(ii) the patient's major medical conditions as identified by the committee, including any disability of the patient considered by the committee in reaching the decision, except the notice is not required to specify whether any medical condition qualifies as a disability;

(iii) a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv) the health care facilities contacted before the meeting as part of the transfer efforts under Subsection (d) and, for each listed facility that denied the request to transfer the patient and provided a reason for the denial, the provided reason;

(E) receive a copy of or electronic access to the portion of the patient's medical record related to the treatment received by the patient in the facility for the period of the patient's current admission to the facility; and

(F) receive a copy of or electronic access to all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (E).

(b-1) A health care facility may adopt and implement a written policy for meetings held under this section that is reasonable and necessary to:

(1) facilitate information sharing and discussion of the patient's medical status and treatment requirements, including provisions related to attendance, confidentiality, and timing regarding any agenda item; and

(2) preserve the effectiveness of the meeting, including provisions disclosing that the meeting is not a legal proceeding and the committee will enter into an executive session for deliberations.

(b-2) Notwithstanding Subsection (b)(3), the following individuals may not attend or participate in the executive session of an ethics or medical committee under this section:

(1) the physicians or health care professionals providing health care and treatment to the patient; or

(2) the person responsible for the patient's health care decisions or any person attending the meeting under Subsection (b)(3)(C)(i).

(b-3) If the health care facility or person responsible for the patient's health care decisions intends to have legal counsel attend the meeting of the ethics or medical committee, the facility or person, as applicable, shall make a good faith effort to provide written notice of that intention not less than 48 hours before the meeting begins.

(c) The written notice required by Subsection (b)(3)(D)(i) must be included in the patient's medical record.

(d) After written notice is provided under Subsection (b)(1), the patient's attending physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. The health care facility's personnel shall assist the physician in arranging the patient's transfer to:

(1) another physician;

(2) an alternative care setting within that facility; or

(3) another facility.

(d-1) If another health care facility denies the patient's transfer request, the personnel of the health care facility assisting with the patient's transfer efforts under Subsection (d) shall make a good faith effort to inquire whether the facility that denied the patient's transfer request would be more likely to approve the transfer request if a medical procedure, as that term is defined in this section, is performed on the patient.

(d-2) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate:

(1) the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies all of the following conditions:

(A) in the attending physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(B) an authorized representative for another health care facility with the ability to comply with the patient's advance directive or the health care or treatment decision made by or on behalf of the patient has expressed to the personnel described by Subsection (b)(1)(D) or the attending physician that the facility is more likely to accept the patient's transfer to the other facility if the medical procedure is performed on the patient;

(C) in the medical judgment of the physician who would perform the medical procedure, performing the medical procedure is:

(i) within the prevailing standard of medical care; and

(ii) not medically contraindicated or medically inappropriate under the circumstances;

(D) in the medical judgment of the physician who would perform the medical procedure, the physician has the training and experience to perform the medical procedure;

(E) the physician who would perform the medical procedure has medical privileges at the facility where the patient is receiving care authorizing the physician to perform the medical procedure at the facility;

(F) the facility where the patient is receiving care has determined the facility has the resources for the performance of the medical procedure at the facility; and

(G) the person responsible for the patient's health care decisions provides consent on behalf of the patient for the medical procedure; and

(2) the person responsible for the patient's health care decisions is entitled to receive:

(A) a delay notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions provides to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent;

(B) a start notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), no medical procedure satisfies all of the conditions described by Subdivisions (1)(A) through (F); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions does not provide to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent; and

(C) a start notice accompanied by a statement that one or more of the conditions described by Subdivisions (1)(A) through (G) are no longer satisfied if, after a delay notice is provided in accordance with Subdivision (2)(A) and before the medical procedure on which the delay notice is based is performed on the patient, one or more of those conditions are no longer satisfied.

(d-3) After the 25-day period described by Subsection (e) begins, the period may not be suspended or stopped for any reason. This subsection does not limit or affect a court's ability to order an extension of the period in accordance with Subsection (g). Subsection (d-2) does not require a medical procedure to be performed on the patient after the expiration of the 25-day period.

(e) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical interventions necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another health care facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 25th calendar day after a start notice is provided in accordance with Subsection (d-2)(2)(B) or (C) to the person responsible for the patient's health care decisions or a medical procedure for which a delay notice was provided in accordance with Subsection (d-2)(2)(A) is performed, whichever occurs first, unless ordered to extend the 25-day period under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1) hasten the patient's death;

(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(3) result in substantial, irremediable, and objectively measurable physical pain not outweighed by the benefit of providing the treatment;

(4) be medically ineffective in prolonging life; or

(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the person responsible for the patient's health care decisions, the appropriate district or

county court shall extend the period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

(i) In this section:

(1) "Delay notice" means a written notice that the first day of the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will be delayed until the calendar day after a medical procedure required by Subsection (d-2)(1) is performed unless, before the medical procedure is performed, the person receives written notice of an earlier first day because one or more conditions described by that subdivision are no longer satisfied.

(2) "Medical procedure" means only a tracheostomy or a percutaneous endoscopic gastrostomy.

(3) "Start notice" means a written notice that the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will begin on the first calendar day after the date the notice is provided.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 450 (S.B. 1260), § 1.03, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1228 (S.B. 1320), §§ 3, 4, effective June 20, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0503, effective April 2, 2015; Acts 2015, 84th Leg., ch. 435 (H.B. 3074), § 5, effective September 1, 2015; Acts 2023, 88th Leg., ch. 915 (H.B. 3162), §§ 2, 3, effective September 1, 2023.

SUBTITLE I

MEDICAL RECORDS

CHAPTER 181

Medical Records Privacy

Subchapter
A. General Provisions
B. Exemptions
C. Access to and Use of Protected Health Information
D. Prohibited Acts
E. Enforcement

Subchapter A

General Provisions

Section
181.001. Definitions.
181.002. Applicability.
181.003. Sovereign Immunity.
181.004. Applicability of State and Federal Law.
181.005. Duties of the Executive Commissioner.
181.006. Protected Health Information Not Public.

Sec. 181.001. Definitions.

(a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.]

(2) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.]

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(4) "Marketing" means:

(A) making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service, unless the communication is made:

(i) to describe a health-related product or service or the payment for a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about:

(a) the entities participating in a health care provider network or health plan network;

(b) replacement of, or enhancement to, a health plan; or

(c) health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;

(ii) for treatment of the individual;

(iii) for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or

(iv) by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list;

(B) an arrangement between a covered entity and any other entity under which the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service; and

(C) notwithstanding Paragraphs (A)(ii) and (iii), a product-specific written communication to a consumer that encourages a change in products.

(5) "Product" means a prescription drug or prescription medical device.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 2, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 1, effective September 1, 2012; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(55), effective April 2, 2015.

Sec. 181.002. Applicability.

(a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 653 (S.B. 1106), § 5, effective June 17, 2011.

Sec. 181.003. Sovereign Immunity.

This chapter does not waive sovereign immunity to suit or liability.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.004. Applicability of State and Federal Law.

(a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 2, effective September 1, 2012.

Sec. 181.005. Duties of the Executive Commissioner.

(a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011, and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 4, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 3, effective September 1, 2012.

Sec. 181.006. Protected Health Information Not Public.

Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 419 (H.B. 2004), § 5, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 4, effective September 1, 2012.

Subchapter B

Exemptions

Section

181.051. Partial Exemption.
181.052. Processing Payment Transactions by Financial Institutions.
181.053. Nonprofit Agencies.
181.054. Workers' Compensation.
181.055. Employee Benefit Plan.
181.056. American Red Cross.
181.057. Information Relating to Offenders with Mental Impairments.
181.058. Educational Records.
181.059. Crime Victim Compensation.
181.060. Information Regarding Communicable Diseases in Certain Facilities.

Sec. 181.051. Partial Exemption.

Except for Subchapter D, this chapter does not apply to:

(1) a covered entity as defined by Section 602.001, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1274 (H.B. 2922), § 20, effective April 1, 2005.

Sec. 181.052. Processing Payment Transactions by Financial Institutions.

(a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.053. Nonprofit Agencies.

The executive commissioner shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0521, effective April 2, 2015.

Sec. 181.054. Workers' Compensation.

This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under a self-insured program for workers' compensation.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.055. Employee Benefit Plan.

This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.056. American Red Cross.

This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 5, effective September 1, 2003.

Sec. 181.057. Information Relating to Offenders with Mental Impairments.

This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.058. Educational Records.

In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.059. Crime Victim Compensation.

This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Chapter 56B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 5, effective September 1, 2012; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.53, effective January 1, 2021.

Sec. 181.060. Information Regarding Communicable Diseases in Certain Facilities.

(a) In this section:

(1) "Communicable disease" has the meaning assigned by Section 81.003.

(2) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) a continuing care facility licensed under Chapter 246; and

(C) an assisted living facility licensed under Chapter 247.

(3) "Resident" means an individual, including a patient, who resides in a facility.

(b) In this chapter, protected health information does not include information that identifies:

(1) the name or location of a facility in which residents have been diagnosed with a communicable disease; or

(2) the number of residents who have been diagnosed with a communicable disease in a facility.

(c) Unless made confidential under other law, the information described by Subsection (b) is not confidential and is subject to disclosure under Chapter 552, Government Code.

HISTORY: Acts 2021, 87th Leg., ch. 95 (S.B. 930), § 2, effective September 1, 2021.

Subchapter C

Access to and Use of Protected Health Information

Section

181.101. Training Required.
181.102. Consumer Access to Electronic Health Records.
181.103. Consumer Information Website.
181.104. Consumer Complaint Report by Attorney General.
181.105. Required Information Regarding Consumer Access to Health Records and Complaints.

Sec. 181.101. Training Required.

(a) Each covered entity shall provide training to employees of the covered entity regarding the state and federal law concerning protected health information as necessary and appropriate for the employees to carry out the employees' duties for the covered entity.

(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 90th day after the date the employee is hired by the covered entity.

(c) If the duties of an employee of a covered entity are affected by a material change in state or federal law concerning protected health information, the employee shall receive training described by Subsection (a) within a reasonable period, but not later than the first anniversary of the date the material change in law takes effect.

(d) A covered entity shall require an employee of the entity who receives training described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's completion of training. The covered entity shall maintain the signed statement until the sixth anniversary of the date the statement is signed.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; am. Acts 2013, 83rd Leg., ch. 1367 (S.B. 1609), § 1, effective June 14, 2013.

Sec. 181.102. Consumer Access to Electronic Health Records.

(a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the department, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0522, effective April 2, 2015.

Sec. 181.103. Consumer Information Website.

The attorney general shall maintain an Internet website that provides:

(1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;

(2) a list of the state agencies, including the department, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0523, effective April 2, 2015.

Sec. 181.104. Consumer Complaint Report by Attorney General.

(a) The attorney general annually shall submit to the legislature a report describing:

(1) the number and types of complaints received by the attorney general and by the state agencies receiving consumer complaints under Section 181.103; and

(2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 6, effective September 1, 2012.

Sec. 181.105. Required Information Regarding Consumer Access to Health Records and Complaints.

(a) Except as provided by Subsection (b), a covered entity shall prominently post on the entity's Internet website and at any entity facility detailed instructions for a consumer to:

(1) request the consumer's health care records from the entity;

(2) contact the disciplinary or licensing authority for the covered entity; and

(3) file a consumer complaint as described by Section 181.103.

(b) This section does not apply to a covered entity that conducts claims processing, data processing, data analysis, utilization review, or billing on behalf of another covered entity that provides health care services directly to consumers.

HISTORY: 2025, 89th Leg., ch. 650 (H.B. 4224), § 1, effective September 1, 2025.

Subchapter D

Prohibited Acts

Section
181.151. Reidentified Information.
181.152. Marketing Uses of Information.
181.153. Sale of Protected Health Information Prohibited; Exceptions.
181.154. Notice and Authorization Required for Electronic Disclosure of Protected Health Information; Exceptions.

Sec. 181.151. Reidentified Information.

A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.152. Marketing Uses of Information.

(a) A covered entity must obtain clear and unambiguous permission in written or electronic form to use or disclose protected health information for any marketing communication, except if the communication is:

(1) in the form of a face-to-face communication made by a covered entity to an individual;

(2) in the form of a promotional gift of nominal value provided by the covered entity;

(3) necessary for administration of a patient assistance program or other prescription drug savings or discount program; or

(4) made at the oral request of the individual.

(b) If a covered entity uses or discloses protected health information to send a written marketing communication through the mail, the communication must be sent in an envelope showing only the names and addresses of sender and recipient and must:

(1) state the name and toll-free number of the entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the 45th day after the date the person receives the request.

(d) A marketing communication made at the oral request of the individual under Subsection (a)(4) may be made only if clear and unambiguous oral permission for the use or disclosure of the protected health information is obtained. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with the requirements of this section.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 6, effective January 1, 2004.

Sec. 181.153. Sale of Protected Health Information Prohibited; Exceptions.

(a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 7, effective September 1, 2012.

Sec. 181.154. Notice and Authorization Required for Electronic Disclosure of Protected Health Information; Exceptions.

(a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

(1) posting a written notice in the covered entity's place of business;

(2) posting a notice on the covered entity's Internet website; or

(3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's pro-

tected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a covered entity as defined by 45 C.F.R. Section 160.103.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 7, effective September 1, 2012.

Subchapter E

Enforcement

Section

181.201. Injunctive Relief; Civil Penalty.
181.202. Disciplinary Action.
181.203. Exclusion from State Programs.
181.204. Availability of Other Remedies [Repealed].
181.205. Mitigation.
181.206. Audits of Covered Entities.
181.207. Funding.

Sec. 181.201. Injunctive Relief; Civil Penalty.

(a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) $5,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) $25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) $250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed $250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed $1.5 million annually.

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 8, effective September 1, 2012.

Sec. 181.202. Disciplinary Action.

In addition to the penalties prescribed by this chapter, a violation of this chapter by a covered entity that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

(1) revoke the covered entity's license; or

(2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 9, effective September 1, 2012.

Sec. 181.203. Exclusion from State Programs.

In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.204. Availability of Other Remedies [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 9, effective September 1, 2003.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1511 (S.B. 11), § 1, effective September 1, 2001.

Sec. 181.205. Mitigation.

(a) In an action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of individually identifiable health information, a covered entity may introduce, as mitigating evidence, evidence of the entity's good faith efforts to comply with:

(1) state law related to the privacy of individually identifiable health information; or

(2) the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 924 (S.B. 1136), § 7, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 10, effective September 1, 2012.

Sec. 181.206. Audits of Covered Entities.

(a) The commission, in coordination with the attorney general and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(a-1) [Expired by its own terms, effective September 1, 2021]

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 11, effective September 1, 2012; Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 2, effective September 1, 2015.

Sec. 181.207. Funding.

(a) The commission and the Texas Department of Insurance shall apply for and actively pursue available federal funding for enforcement of this chapter.

(b) **[Expired by its own terms, effective September 1, 2021]**

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1126 (H.B. 300), § 11, effective September 1, 2012; Acts 2015, 84th Leg., ch. 12 (S.B. 203), § 3, effective September 1, 2015.

TITLE 4

HEALTH FACILITIES

Subtitle
F. Powers and Duties of Hospitals
G. Provision of Services In Certain Facilities

SUBTITLE F

POWERS AND DUTIES OF HOSPITALS

CHAPTER 313

Consent to Medical Treatment Act

Section
313.001. Short Title.
313.002. Definitions.
313.003. Exceptions and Application.

Section
313.004. Consent for Medical Treatment.
313.005. Prerequisites for Consent.
313.006. Liability for Medical Treatment Costs.
313.007. Limitation on Liability.
313.008. Authority to Adopt Rules; Effective Date [Renumbered].

Sec. 313.001. Short Title.

This chapter may be cited as the Consent to Medical Treatment Act.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993.

Sec. 313.002. Definitions.

In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(3-a) "Home and community support services agency" means a facility licensed under Chapter 142.

(4) "Hospital" means a facility licensed under Chapter 241.

(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter 242.

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home;

(C) is receiving services from a home and community support services agency; or

(D) is an inmate of a county or municipal jail.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 1, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 1, effective September 1, 2011.

Sec. 313.003. Exceptions and Application.

(a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Subtitle P, Title 2, Estates Code;

(3) consent to medical treatment of minors under Chapter 32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 450 (S.B. 1260), § 2.01, effective September 1, 1999; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.045, effective September 1, 2017.

Sec. 313.004. Consent for Medical Treatment.

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who is reasonably available after a reasonably diligent inquiry, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is reasonably available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) the patient's adult children;

(3) the patient's parents; or

(4) the patient's nearest living relative.

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(a-1) If the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in Subsection (a) who is reasonably available after a reasonably diligent inquiry, another physician who is not involved in the medical treatment of the patient may concur with the treatment.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction of proceedings under Title 3, Estates Code.

(c) Any medical treatment consented to under Subsection (a) or concurred with under Subsection (a-1) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

(1) voluntary inpatient mental health services;

(2) electro-convulsive treatment; or

(3) the appointment of another surrogate decision-maker.

(e) Notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

(1) psychotropic medication;

(2) involuntary inpatient mental health services; or

(3) psychiatric services calculated to restore competency to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code, may consent to medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 2, effective September 1, 2011; Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 7, effective September 1, 2019; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.046, effective September 1, 2017; Acts 2023, 88th Leg., ch. 915 (H.B. 3162), § 12, effective September 1, 2023.

Sec. 313.005. Prerequisites for Consent.

(a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

(1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 3, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 253 (H.B. 1128), § 3, effective September 1, 2011.

Sec. 313.006. Liability for Medical Treatment Costs.

Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993.

Sec. 313.007. Limitation on Liability.

(a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 407 (S.B. 332), § 1, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1271 (H.B. 3473), § 4, effective September 1, 2007.

Sec. 313.008. Authority to Adopt Rules; Effective Date [Renumbered].

Renumbered to Tex. Health & Safety Code § 314.008 by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(25), effective September 1, 1995.

SUBTITLE G

PROVISION OF SERVICES IN CERTAIN FACILITIES

CHAPTER 322

Use of Restraint and Seclusion in Certain Health Care Facilities

Subchapter
A. General Provisions
B. Restraints and Seclusion

Subchapter A

General Provisions

Section
322.001. Definitions.
322.002. Plan for Emergency Services [Renumbered].
322.003. Rejection of Plan [Renumbered].
322.004. Minimum Standards for Emergency Services [Renumbered].
322.005. Information Form [Renumbered].
322.006. Inspection [Renumbered].

Sec. 322.001. Definitions.

In this chapter:

(1) "Facility" means:

(A) a general residential operation, as defined by Section 42.002, Human Resources Code, including a state-operated facility, serving children with an intellectual disability;

(B) an ICF-IID licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

(2) "Health and human services agency" means an agency listed in Section 521.0001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.0856, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.49, effective April 1, 2025.

Sec. 322.002. Plan for Emergency Services [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.002 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.003. Rejection of Plan [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.003 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.004. Minimum Standards for Emergency Services [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.004 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.005. Information Form [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.005 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Sec. 322.006. Inspection [Renumbered].

Renumbered to Tex. Health & Safety Code § 323.006 by Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 17.001(47), effective September 1, 2007.

Subchapter B

Restraints and Seclusion

Section

322.051. Certain Restraints Prohibited.
322.0515. Authorization For Use of Wheelchair Self-Release Seat Belt; Exception.
322.052. Adoption of Restraint and Seclusion Procedures.
322.053. Notification.
322.054. Retaliation Prohibited.
322.055. Medicaid Waiver Program.
322.056. Reporting Requirement.

Sec. 322.051. Certain Restraints Prohibited.

(a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.0515. Authorization For Use of Wheelchair Self-Release Seat Belt; Exception.

(a) Except as provided by Subsection (b) and notwithstanding Section 322.051, a facility shall allow a resident to use a wheelchair self-release seat belt while the resident is in the resident's wheelchair if:

(1) the resident demonstrates the ability to release and fasten the seat belt without assistance;

(2) the use of the wheelchair self-release seat belt complies with the resident's plan of care; and

(3) the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the wheelchair self-release seat belt.

(b) A facility that advertises as a restraint-free facility is not required to comply with Subsection (a) if the facility:

(1) provides to current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request under Subsection (a); and

(2) makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt under Subsection (a).

HISTORY: Acts 2017, 85th Leg., ch. 1138 (H.B. 284), § 1, effective September 1, 2017.

Sec. 322.052. Adoption of Restraint and Seclusion Procedures.

(a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

(b-1) The rules must:

(1) authorize a registered nurse, other than the nurse who initiated the use of restraint or seclusion, who is trained to assess medical and psychiatric stability with demonstrated competence as required by rule to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, not later than one hour after the time the use of restraint or seclusion is initiated; and

(2) require a physician to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, and document clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of the restraint or seclusion.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 1240 (S.B. 1842), § 1, effective June 14, 2013.

Sec. 322.053. Notification.

The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.054. Retaliation Prohibited.

(a) A facility may not discharge or otherwise retaliate against:

(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:

(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or

(2) place on probation a facility that violates Subsection (a).

(c) A health and human services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.055. Medicaid Waiver Program.

A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 1, effective September 1, 2005.

Sec. 322.056. Reporting Requirement.

A facility shall file with the Department of State Health Services a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1240 (S.B. 1842), § 2, effective June 14, 2013.

TITLE 6

FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE B

ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

CHAPTER 467

Peer Assistance Programs

Section

467.001. Definitions.
467.002. Other Peer Assistance Programs.

Section
467.003. Programs.
467.0035. Provision of Services to Students.
467.004. Funding.
467.0041. Funding for State Board of Dental Examiners.
467.005. Reports.
467.006. Assistance to Impaired Professionals.
467.007. Confidentiality.
467.0075. Consent to Disclosure.
467.008. Civil Immunity.

Sec. 467.001. Definitions.

In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the executive commissioner and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

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

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 570 (S.B. 519), § 1, effective September 1, 1995; am. Acts 2003, 78th Leg., ch. 17 (S.B. 263), § 27, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 892 (S.B. 810), § 26, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1373 (S.B. 155), § 21, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1223, effective April 2, 2015.

Sec. 467.002. Other Peer Assistance Programs.

This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

Sec. 467.003. Programs.

(a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 2007, 80th Leg., ch. 1373 (S.B. 155), § 22, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1224, effective April 2, 2015.

Sec. 467.0035. Provision of Services to Students.

(a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 570 (S.B. 519), § 2, effective September 1, 1995.

Sec. 467.004. Funding.

(a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 194, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 493 (S.B. 770), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1314 (S.B. 877), § 24, effective September 1, 1997; am. Acts 2011, 82nd Leg., ch. 564 (H.B. 3145), § 1, effective June 17, 2011.

Sec. 467.0041. Funding for State Board of Dental Examiners.

(a) Except as provided by this section, the State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than $50 each month from a participant in an approved peer assistance program.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 14 (S.B. 404), § 195, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 2 (S.B. 18), § 19, effective February 6, 1995; am. Acts 1997, 75th Leg., ch. 493 (S.B. 770), § 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1314 (S.B. 877), § 25, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1423 (H.B. 2841), § 10.07, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1225, 3.1226, effective April 2, 2015.

Sec. 467.005. Reports.

(a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 414 (H.B. 2080), § 1, effective September 1, 1997.

Sec. 467.006. Assistance to Impaired Professionals.

(a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

Sec. 467.007. Confidentiality.

(a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired profes-

sional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 245 (S.B. 1283), § 1, effective September 1, 1991.

Sec. 467.0075. Consent to Disclosure.

An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 414 (H.B. 2080), § 2, effective September 1, 1997.

Sec. 467.008. Civil Immunity.

(a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

(1) an approved peer assistance program;

(2) the professional association or licensing or disciplinary authority operating the peer assistance program;

(3) a member, employee, or agent of the program, association, or authority;

(4) a person who reports or provides information concerning an impaired professional;

(5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and

(6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 678 (H.B. 2136), § 1, effective September 1, 1989.

TITLE 7

MENTAL HEALTH AND INTELLECTUAL DISABILITY

Subtitle
A. Services for Persons with Mental Illness or an Intellectual Disability
B. State Facilities
C. Texas Mental Health Code
D. Persons with an Intellectual Disability Act
E. Special Provisions Relating to Mental Illness and Intellectual Disability

SUBTITLE A

SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY

Chapter
531. Provisions Generally Applicable To Mental Health and Intellectual Disability Services
532. General Provisions Relating to Department of State Health Services
532A. General Provisions Relating to Department of Aging and Disability Services
533. Powers and Duties of Department of State Health Services
533A. Powers and Duties of Department of Aging and Disability Services
534. Community Services

CHAPTER 531

Provisions Generally Applicable To Mental Health and Intellectual Disability Services

Section
531.001. Purpose; Policy.
531.002. Definitions.
531.0021. Reference to State School or Superintendent

Sec. 531.001. Purpose; Policy.

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

(b) Recognizing that a variety of alternatives for serving persons with mental illness or an intellectual disability exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes:

(1) mental health facilities operated by the Department of State Health Services and community services for persons with mental illness provided by the department and other entities through contracts with the department; or

(2) state supported living centers operated by the Department of Aging and Disability Services and community services for persons with an intellectual disability provided by the department and other entities through contracts with the department.

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

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

(e) It is the public policy of this state that mental health and intellectual disability services be the responsibility of local agencies and organizations to the greatest extent possible. The Department of State Health Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of mental health services. The Department of Aging and Disability Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of intellectual disability services. Each department shall ensure that mental health and intellectual disability services, as applicable, are provided. Each department shall provide technical assistance for and regulation of the programs that receive funding through contracts with that department.

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

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

(h) It is the policy of this state that the Department of State Health Services serves as the state's mental health authority and the Department of Aging and Disability Services serves as the state's intellectual disability authority. The executive commissioner is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and intellectual disability services in this state. It is the policy of this state that, when appropriate and feasible, the executive commissioner may delegate the executive commissioner's authority to a single entity in each region of the state that may function as the local mental health or intellectual and developmental disability authority for one or more service areas in the region.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 19, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 1, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.800, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015.

Sec. 531.002. Definitions.

In this subtitle:

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

(2) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

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

(4) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

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

(6) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

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

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

(9) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

(10) "Intellectual disability services" includes all services concerned with research, prevention, and detection of intellectual disabilities, and all services related to the education, training, habilitation, care, treatment, and supervision of persons with an intellectual disability, but does not include the education of school-age persons that the public educational system is authorized to provide.

(11) "Local agency" means:

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

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

(12) "Local intellectual and developmental disability authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of intellectual disability services to persons with intellectual and developmental disabilities in the most appropriate and available setting to meet individual needs in one or more local service areas.

(13) "Local mental health authority" means an entity to which the executive commissioner delegates the ex-

ecutive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

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

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

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

(B) is likely to continue indefinitely;

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

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

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(16) "Person with an intellectual disability" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, or care in the person's home or community or in a state supported living center.

(17) "Priority population" means those groups of persons with mental illness or an intellectual disability identified by the applicable department as being most in need of mental health or intellectual disability services.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 2, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 1, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 17, effective June 11, 2009; am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 1, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015.

Sec. 531.0021. Reference to State School or Superintendent

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

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

(c) [Repealed.]

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 18, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1333, effective April 2, 2015; Acts 2023, 88th Leg., ch. 30 (H.B. 446), §§ 6.05, 14.01(1), effective September 1, 2023.

CHAPTER 532

General Provisions Relating to Department of State Health Services

Section
532.001. Definitions; Mental Health Components of Department.
532.002. Medical Director.
532.003. Heads of Departmental Mental Health Facilities.
532.0035. Board Training. [Deleted]
532.004. Advisory Committees.
532.005. Terms. [Deleted]
532.006. Chairman. [Deleted]
532.007. Removal of Board Members. [Deleted]
532.008. Prohibited Activities by Former Officers or Employees [Repealed].
532.009. Reimbursement for Expenses; Per Diem. [Deleted]
532.010. Board Meetings. [Deleted]
532.011. Commissioner. [Deleted]
532.012. Medical Director. [Renumbered]
532.013. Forensic Director.
532.0131. Forensic Work Group. [Expired]
532.014. Heads of Departmental Facilities. [Renumbered]
532.015. Rules and Policies. [Deleted]
532.016. Personnel. [Deleted]
532.017. Annual Reports [Repealed].
532.018. Audits. [Deleted]
532.019. Public Interest Information and Complaints. [Deleted]
532.020. Advisory Committees. [Renumbered]
532.021. Citizens' Planning Advisory Committee. [Deleted]

Sec. 532.001. Definitions; Mental Health Components of Department.

(a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Austin State Hospital;

(3) the Big Spring State Hospital;

(4) the Kerrville State Hospital;
(5) the Rusk State Hospital;
(6) the San Antonio State Hospital;
(7) the Terrell State Hospital;
(8) the Vernon State Hospital;
(9) the Rio Grande State Center;
(10) the Waco Center for Youth;
(11) the El Paso Psychiatric Center;
(12) the Wichita Falls State Hospital;
(13) the Panhandle State Hospital; and
(14) the Lubbock Psychiatric Center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 3, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 1, effective May 31, 1997; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 893 (H.B. 3378), § 1, effective June 14, 2001; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 19, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015; 2025, 89th Leg., ch. 214 (H.B. 913), § 1, effective September 1, 2025.

Sec. 532.002. Medical Director.

(a) The commissioner shall appoint a medical director.

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

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

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

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 222), § 4.07, effective November 12, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1232 (S.B. 652), § 2.10, effective June 17, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), 3.1334, effective April 2, 2015.

Sec. 532.003. Heads of Departmental Mental Health Facilities.

(a) The commissioner shall appoint the head of each mental health facility the department administers.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 7, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015 (renumbered from Sec. 532.014).

Sec. 532.0035. Board Training. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 2, effective September 1, 1999; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.004. Advisory Committees.

(a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's mental health programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015 (renumbered from Sec. 532.020).

Sec. 532.005. Terms. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.006. Chairman. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.007. Removal of Board Members. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.008. Prohibited Activities by Former Officers or Employees [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 14, effective September 1, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 532.009. Reimbursement for Expenses; Per Diem. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.010. Board Meetings. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.011. Commissioner. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.150, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 5, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), §§ 2.21, 13.01(3), effective September 1, 1999; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.012. Medical Director. [Renumbered]

(a) The commissioner shall appoint a medical director.

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

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

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

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 6, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.013. Forensic Director.

(a) In this section:

(1) "Forensic patient" means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure;

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) "Forensic services" means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

(b) The commissioner shall appoint a forensic director.

(c) To be qualified for appointment as forensic director, a person must have proven expertise in the social, health, and legal systems for forensic patients, and in the intersection of those systems.

(d) The forensic director reports to the commissioner and is responsible for:

(1) statewide coordination and oversight of forensic services;

(2) coordination of programs operated by the department relating to evaluation of forensic patients, transition of forensic patients from inpatient to outpatient or community-based services, community forensic monitoring, or forensic research and training; and

(3) addressing issues with the delivery of forensic services in the state, including:

(A) significant increases in populations with serious mental illness and criminal justice system involvement;

(B) adequate availability of department facilities for civilly committed forensic patients;

(C) wait times for forensic patients who require competency restoration services;

(D) interruption of mental health services of recently released forensic patients;

(E) coordination of services provided to forensic patients by state agencies;

(F) provision of input regarding the regional allocation of mental health beds for certain forensic patients and other patients with mental illness under Section 533.0515; and

(G) provision of input regarding the development and maintenance of a training curriculum for judges and attorneys for treatment alternatives to inpatient commitment to a state hospital for certain forensic patients under Section 1001.086.

HISTORY: Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 1, effective May 28, 2015; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 26, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 23, effective September 1, 2019.

Sec. 532.0131. Forensic Work Group. [Expired]

HISTORY: Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 1, effective May 28, 2015.

Sec. 532.014. Heads of Departmental Facilities. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 7, effective September 1, 1995; renumbered to Tex. Health & Safety Code § 532.003 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.015. Rules and Policies. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.016. Personnel. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 3, effective September 1, 1999; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.017. Annual Reports [Repealed].

Repealed by Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), §25(89), effective June 17, 2011.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 532.018. Audits. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.019. Public Interest Information and Complaints. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.020. Advisory Committees. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; renumbered to Tex. Health &

Safety Code §532.004 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532.021. Citizens' Planning Advisory Committee. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(7), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(90), effective June 17, 2011; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

CHAPTER 532A

General Provisions Relating to Department of Aging and Disability Services

Section
532A.001. Definitions; Intellectual Disability Components of Department.
532A.002. Medical Director.
532A.003. Heads of State Supported Living Centers.
532A.004. Advisory Committees.

Sec. 532A.001. Definitions; Intellectual Disability Components of Department.

(a) In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Abilene State Supported Living Center;

(3) the Austin State Supported Living Center;

(4) the Brenham State Supported Living Center;

(5) the Corpus Christi State Supported Living Center;

(6) the Denton State Supported Living Center;

(7) the Lubbock State Supported Living Center;

(8) the Lufkin State Supported Living Center;

(9) the Mexia State Supported Living Center;

(10) the Richmond State Supported Living Center;

(11) the San Angelo State Supported Living Center;

(12) the San Antonio State Supported Living Center; and

(13) the El Paso State Supported Living Center.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.002. Medical Director.

(a) The commissioner shall appoint a medical director.

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

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

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

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in state supported living centers or under contract to the department in relation to intellectual disability services; and

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.003. Heads of State Supported Living Centers.

(a) The commissioner shall appoint the head of each state supported living center the department administers.

(b) The head of a state supported living center serves at the will of the commissioner.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

Sec. 532A.004. Advisory Committees.

(a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's intellectual disability programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1334, effective April 2, 2015.

CHAPTER 533

Powers and Duties of Department of State Health Services

Subchapter
A. General Powers and Duties
B. Powers and Duties Relating to Provision of Mental Health Services
C. Powers and Duties Relating to ICF-MR Program
D. Powers and Duties Relating to Department Facilities
E. Jail Diversion Program

Subchapter A

General Powers and Duties

Section
533.0001. Definitions.
533.0002. Commissioner's Powers and Duties; Effect of Conflict with Other Law.
533.001. Gifts and Grants.
533.002. Competitive Review Requirement. [Deleted]
533.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.
533.004. Liens.
533.005. Easements.
533.006. Reporting of Allegations Against Physician. [Repealed]
533.007. Use Of Criminal History Record Information.
533.0075. Exchange of Employment Records.
533.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.
533.009. Exchange of Patient Records.
533.0095. Collection and Maintenance of Information

Section
Regarding Persons Found Not Guilty by Reason of Insanity.
533.010. Information Relating to Condition.
533.011. Return of Person with Mental Retardation to State of Residence. [Renumbered]
533.012. Cooperation of State Agencies.
533.013. Duplication of Rehabilitation Services. [Deleted]
533.014. Responsibility of Local Mental Health Authorities in Making Treatment Recommendations.
533.015. Unannounced Inspections.
533.016. Certain Procurements of Goods and Services by Service Providers.
533.017. Participation in Purchasing Contracts or Group Purchasing Program.
533.018. Special Olympics Texas Account. [Renumbered]

Sec. 533.0001. Definitions.

In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Department facility" means a facility listed in Section 532.001(b).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1460 (H.B. 2641), § 2.22, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0002. Commissioner's Powers and Duties; Effect of Conflict with Other Law.

To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), article 3, § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.53, effective April 1, 2025.

Sec. 533.001. Gifts and Grants.

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.002. Competitive Review Requirement. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 17.13, effective September 1, 1997; deleted by Acts 2015, ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 3, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.004. Liens.

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

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

(1) the amount the department is authorized to charge under Section 552.017 if the patient received the services in a department facility; or

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

(c) The lien attaches to:

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

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

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

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

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

(2) the patient received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient;

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.005. Easements.

The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.006. Reporting of Allegations Against Physician. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.801, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; repealed by Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 3.01(3), effective September 1, 2019.

Sec. 533.007. Use Of Criminal History Record Information.

(a) Subject to the requirements of Chapter 250, the department, in relation to services provided under this title, or a local mental health authority or community center, may deny employment or volunteer status to an applicant if:

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.02, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 790 (S.B. 510), § 46(26), effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 4, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0075. Exchange of Employment Records.

The department, in relation to services provided under this title, or a local mental health authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 2, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 5, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 655 (H.B. 1863), § 6.04, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.009. Exchange of Patient Records.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 6, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0095. Collection and Maintenance of Information Regarding Persons Found Not Guilty by Reason of Insanity.

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

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

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

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

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

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 3, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.010. Information Relating to Condition.

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

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

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

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

(1) provides information under this section;

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.011. Return of Person with Mental Retardation to State of Residence. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; renumbered to § 533A.011 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.012. Cooperation of State Agencies.

At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.134, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1325 (H.B. 3588), § 13.05, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 4.03, effective June 14, 2005; am. Acts 2007, 80th Leg., ch. 268 (S.B. 10), § 32(f)(3), effective September 1, 2008; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.013. Duplication of Rehabilitation Services. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 4, effective September 1, 1999; deleted by Acts 2015, ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.014. Responsibility of Local Mental Health Authorities in Making Treatment Recommendations.

(a) The executive commissioner shall adopt rules that:

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 3, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 2, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 1, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.015. Unannounced Inspections.

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

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 531 (S.B. 1162), § 2, effective August 28, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.016. Certain Procurements of Goods and Services by Service Providers.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local mental health authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

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

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

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

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

(1) any installation costs;

(2) the delivery terms;

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

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

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

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

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

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

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

(10) the acquisition price; and

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

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

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

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

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1045 (S.B. 1066), § 5, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.54, effective April 1, 2025.

Sec. 533.017. Participation in Purchasing Contracts or Group Purchasing Program.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local mental health authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health services to purchase goods or services with the public money by participating in:

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

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

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1045 (S.B. 1066), § 5, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.55, effective April 1, 2025.

Sec. 533.018. Special Olympics Texas Account. [Renumbered]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 475 (H.B. 811), § 1, effective September 1, 2001; renumbered to § 533A.018 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter B

Powers and Duties Relating to Provision of Mental Health Services

Section
533.031. Definitions.
533.032. Long-Range Planning.
533.0325. Continuum of Services in Campus Facilities.
533.033. Determination of Required Range of Mental Health Services.
533.0335. Comprehensive Assessment and Resource Allocation Process. [Renumbered]
533.034. Authority to Contract for Community-Based Services.
533.0345. State Agency Services Standards.
533.0346. Authority to Transfer Services to Community Centers. [Deleted]
533.035. Local Mental Health Authorities.
533.0351. Required Composition of Local Mental Health Authority Governing Body.
533.0352. Local Authority Planning for Local Service Area.
533.03521. Local Network Development Plan Creation and Approval.
533.0354. Disease Management Practices and Jail Diversion Measures of Local Mental Health Authorities.
533.0355. Local Mental Retardation Authority Responsibilities. [Renumbered]
533.03551. Flexible, Low-Cost Housing Options. [Renumbered]
533.03552. Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams. [Renumbered]
533.0356. Local Behavioral Health Authorities.
533.0357. Best Practices Clearinghouse for Local Mental Health Authorities.
533.0358. Local Mental Health Authority's Provision of Services As Provider of Last Resort.
533.0359. Rulemaking for Local Mental Health Authorities.
533.036. Report on Application for Services [Repealed].
533.037. Service Programs and Sheltered Workshops.
533.039. Client Services Ombudsman [Deleted].
533.040. Services for Children and Youth.
533.041. Services for Emotionally Disturbed Children and Youth. [Deleted]
533.0415. Memorandum of Understanding on Interagency Training.
533.042. Evaluation of Elderly Residents.
533.043. Proposals for Geriatric, Extended, and Transitional Care.
533.044. Memorandum of Understanding on Assessment Tools. [Deleted]
533.045. Use of Certain Drugs for Certain Patients. [Deleted]
533.046. Federal Funding for Mental Health Services for Children and Families. [Deleted]
533.047. Managed Care Organizations: Medicaid Program. [Deleted]
533.048. Guardianship Advisory Committee. [Deleted]
533.049. Privatization of State School. [Deleted]
533.050. Privatization of State Mental Hospital. [Deleted]
533.051. Allocation of Outpatient Mental Health Services and Beds in State Hospitals.
533.0515. Regional Allocation of Mental Health Beds.
533.052. Contracting with Certain Mental Health Service Providers and Facilities to Provide Services and Beds for Certain Persons.
533.053. Informing Courts of Commitment Options.

Sec. 533.031. Definitions.

In this subchapter:

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 1, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.032. Long-Range Planning.

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with mental illness the department serves are met.

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

(1) solicit input from:

(A) local mental health authorities;

(B) community representatives;

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

(D) other interested persons; and

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

(c) The department shall develop a report containing information and recommendations regarding the most

efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state hospitals;

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

(3) project maintenance costs for institutional facilities;

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

(5) specify how each state hospital will:

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

(B) fulfill statewide needs for specialized services.

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

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

(2) consider:

(A) the medical needs of the most medically fragile of its patients with mental illness; and

(B) input solicited from consumers of services of state hospitals.

(g) The department shall:

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

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

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 4, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(103), effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 5, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), §§ 12, 22(8), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(91), effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 10.004, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1147 (S.B. 956), § 3, effective September 1, 2023; 2025, 89th Leg., ch. 204 (H.B. 1620), § 9.003(a), effective September 1, 2025.

Sec. 533.0325. Continuum of Services in Campus Facilities.

The executive commissioner by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services under this title.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 6, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.033. Determination of Required Range of Mental Health Services.

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(9), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(92), effective June 17, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0335. Comprehensive Assessment and Resource Allocation Process. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2013; renumbered to § 533A.0335 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.034. Authority to Contract for Community-Based Services.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1), effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.73, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0345. State Agency Services Standards.

(a) The executive commissioner by rule shall develop model program standards for mental health services for

use by each state agency that provides or pays for mental health services. The department shall provide the model standards to each agency that provides mental health services as identified by the commission.

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

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 7, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0346. Authority to Transfer Services to Community Centers. [Deleted]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 7, effective September 1, 1999; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.035. Local Mental Health Authorities.

(a) The executive commissioner shall designate a local mental health authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under this chapter and the local intellectual and developmental disability authority under Chapter 533A for a service area.

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

(1) community mental health and intellectual disability services; and

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

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

(1) assembling a network of service providers;

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.03, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 8, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.74, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), §§ 2, 7, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0351. Required Composition of Local Mental Health Authority Governing Body.

(a) If a local mental health authority has a governing body, the governing body must include:

(1) for a local authority that serves only one county, the sheriff of the county as an ex officio nonvoting member;

(2) for a local authority that serves two or more counties, two sheriffs chosen in accordance with Subsection (b) as ex officio nonvoting members; and

(3) a veteran selected by a majority of the governing body members.

(b) A local mental health authority that serves two or more counties shall take the median population size of each of those counties and choose:

(1) one sheriff of a county with a population above the median population size to serve as an ex officio nonvoting member under Subsection (a); and

(2) one sheriff of a county with a population below the median population size to serve as an ex officio nonvoting member under Subsection (a).

(c) A sheriff may designate a representative to serve in the sheriff's place as an ex officio nonvoting member under Subsection (a). Except as provided by Subsection (c-1), a sheriff or representative of the sheriff serves as an ex officio nonvoting member under Subsection (a) for the duration of the applicable sheriff's term in office.

(c-1) A local mental health authority may rotate the positions of ex officio nonvoting members as chosen in accordance with Subsection (b) among the other sheriffs of the counties served by the local authority. A local authority shall consult with each sheriff of the counties served by the local authority in rotating the positions of ex officio nonvoting members under this subsection.

(d) A local mental health authority may not bar or restrict a sheriff or representative of a sheriff who serves as an ex officio nonvoting member under Subsection (a) from speaking or providing input at a meeting of the local authority's governing body.

(e) If a local mental health authority does not have a governing body, the local authority shall:

(1) for a local authority that serves only one county, consult with the sheriff of the county or a representative of the sheriff regarding the use of funds received under Section 533.035(b); or

(2) for a local authority that serves two or more counties, take the median population size of each of those counties and consult with both:

(A) a sheriff or a representative of a sheriff of a county with a population above the median population size regarding the use of funds received under Section 533.035(b); and

(B) a sheriff or a representative of a sheriff of a county with a population below the median population size regarding the use of funds received under Section 533.035(b).

(f) This section does not prevent a sheriff or representative of a sheriff from being included in the governing body of a local mental health authority as a voting member of the body.

HISTORY: Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 1, effective September 1, 2019; 2025, 89th Leg., ch. 843 (S.B. 1580), § 1, effective September 1, 2025.

Sec. 533.0352. Local Authority Planning for Local Service Area.

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

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

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

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

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health services and members of the families of those consumers;

(C) local law enforcement agencies; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) goals to divert consumers of services from the criminal justice system;

(D) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(E) opportunities for innovation in services and service delivery.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 1, effective June 18, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(52), effective September 1, 2005 (renumbered from Sec. 533.0354); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 2, effective September 1, 2019.

Sec. 533.03521. Local Network Development Plan Creation and Approval.

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

(b) The local mental health authority shall submit the local network development plan to the department for approval.

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

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

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

(A) available and appropriate; and

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

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

(e) At least biennially, the department shall review a local mental health authority's local network development

plan and determine whether the plan complies with Subsection (c).

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 4, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0354. Disease Management Practices and Jail Diversion Measures of Local Mental Health Authorities.

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

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

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

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

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

(a-1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure, to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) obsessive-compulsive disorder;

(5) anxiety disorder;

(6) attention deficit disorder;

(7) delusional disorder;

(8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or

(9) any other diagnosed mental health disorder.

(a-2) The local mental health authority shall ensure that individuals described by Subsection (a-1) are engaged with treatment services in a clinically appropriate manner.

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

(b-1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), who are not described by Subsection (b):

(1) post-traumatic stress disorder;

(2) schizoaffective disorder, including bipolar and depressive types;

(3) anxiety disorder; or

(4) delusional disorder.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.75, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(93), effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 2, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 6.06, effective January 1, 2014; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0355. Local Mental Retardation Authority Responsibilities. [Renumbered]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.76, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 5, effective June 16, 2007; am. Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 2, effective September 1, 2011; renumbered to § 533A.0355 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.03551. Flexible, Low-Cost Housing Options. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; renumbered to § 533A.03551 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.03552. Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams. [Renumbered]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; renumbered to § 533A.03552 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0356. Local Behavioral Health Authorities.

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

mental health and chemical dependency services in that service area. An authority designated under this section has:

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

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461A.056.

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

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

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

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

(1) the local mental health authority; and

(2) the department.

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

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

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 9, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0357. Best Practices Clearinghouse for Local Mental Health Authorities.

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

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

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

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

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

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

(8) developing procurement processes to protect public funds;

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

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0358. Local Mental Health Authority's Provision of Services As Provider of Last Resort.

(a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the

local authority determines that at least one of the following applies:

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0359. Rulemaking for Local Mental Health Authorities.

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

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 6, effective June 16, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.05(b), effective September 1, 2015.

Sec. 533.036. Report on Application for Services [Repealed].

Repealed by Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(10), effective September 1, 2011 and by Acts 2011, 82nd. Leg., ch. 1083 (S.B. 1179), §25(94), effective June 17, 2011.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 533.037. Service Programs and Sheltered Workshops.

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

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.039. Client Services Ombudsman [Deleted].

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 11, effective September 1, 1999; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.040. Services for Children and Youth.

(a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness, or with a dual diagnosis of mental illness and an intellectual disability, and for their families. The department shall:

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

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

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

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

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

(d) The department and the Department of Assistive and Rehabilitative Services shall:

(1) jointly develop:

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

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

(2) coordinate, if practicable, the departments' activities and services involving children with mental illness and their families.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.46, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 57 (S.B. 490), § 1, effective May 15, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.041. Services for Emotionally Disturbed Children and Youth. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0415. Memorandum of Understanding on Interagency Training.

(a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, the Department of Family and Protective Services, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

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

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

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

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

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

(b) The task force consists of:

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

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

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

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

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.04, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.47, effective September 1, 1997; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 13, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 15, effective June 17, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.042. Evaluation of Elderly Residents.

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

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

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

(d) The treating physician shall conduct the evaluation of an elderly resident of a department facility.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 5, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.043. Proposals for Geriatric, Extended, and Transitional Care.

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

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

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

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

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

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

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.044. Memorandum of Understanding on Assessment Tools. [Deleted]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 905 (S.B. 236), § 4, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 798 (H.B. 869), § 4, effective August 28, 1995; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.045. Use of Certain Drugs for Certain Patients. [Deleted]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 973 (H.B. 1713), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(31), effective September 1, 1995; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.046. Federal Funding for Mental Health Services for Children and Families. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 373 (H.B. 865), § 1, effective August 28, 1995; Enacted by Acts 1995, 74th Leg., ch. 655 (H.B. 1863), § 6.07, effective September 1, 1995; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.047. Managed Care Organizations: Medicaid Program. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 574 (H.B. 600), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(59), effective September 1, 1997 (renumbered from Sec. 533.045); vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.048. Guardianship Advisory Committee. [Deleted]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1239 (S.B. 367), § 5, effective September 1, 2001; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.049. Privatization of State School. [Deleted]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.77(a), effective September 1, 2004; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(11), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(95), effective June 17, 2011; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.050. Privatization of State Mental Hospital. [Deleted]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.78(a), effective September 1, 2004; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(12), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(96), effective June 17, 2011; vacated by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.051. Allocation of Outpatient Mental Health Services and Beds in State Hospitals.

(a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an

outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the department's Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(i) While the plan required by Subsection (a) is being developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0515. Regional Allocation of Mental Health Beds.

(a) In this section, "inpatient mental health facility" has the meaning assigned by Section 571.003.

(b) The commission, with input from local mental health authorities, local behavioral health authorities, stakeholders, and the forensic director appointed under Section 532.013, and after considering any plan developed under Section 533.051, shall divide the state into regions for the purpose of allocating to each region state-funded beds in the state hospitals and other inpatient mental health facilities for patients who are:

(1) voluntarily admitted to a state hospital or other inpatient mental health facility under Subchapter B, Chapter 462, or Chapter 572;

(2) admitted to a state hospital or other inpatient mental health facility for emergency detention under Subchapter C, Chapter 462, or Chapter 573;

(3) ordered by a court to receive at a state hospital or other inpatient mental health facility inpatient chemical dependency treatment under Subchapter D, Chapter 462, or inpatient mental health services under Chapter 574;

(4) committed to a state hospital or other inpatient mental health facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(5) committed to a state hospital or other inpatient mental health facility to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(c) The department, in conjunction with the commission, shall convene the advisory panel described by Section 533.051(c) at least quarterly in order for the advisory panel to:

(1) develop, make recommendations to the executive commissioner or department, as appropriate, and monitor the implementation of updates to:

(A) a bed day allocation methodology for allocating to each region designated under Subsection (b) a certain number of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b) based on the identification and evaluation of factors that impact the use of state-funded beds by patients in a region, including clinical acuity, the prevalence of serious mental illness, and the availability of resources in the region; and

(B) a bed day utilization review protocol that includes a peer review process to:

(i) evaluate:

(a) the use of state-funded beds in state hospitals and other inpatient mental health facilities by patients described by Subsection (b);

(b) alternatives to hospitalization for those patients;

(c) the readmission rate for those patients; and

(d) the average length of admission for those patients; and

(ii) conduct a review of the diagnostic and acuity profiles of patients described by Subsection (b) for the purpose of assisting the department, commission, and advisory panel in making informed decisions and using available resources efficiently and effectively; and

(2) receive and review status updates from the department regarding the implementation of the bed day allocation methodology and the bed day utilization review protocol.

(d) Not later than December 1 of each even-numbered year, the advisory panel shall submit to the executive commissioner for consideration a proposal for an updated bed day allocation methodology and bed day utilization review protocol, and the executive commissioner shall adopt an updated bed day allocation methodology and bed day utilization review protocol.

(e) Not later than December 1 of each even-numbered year, the department, in conjunction with the commission and the advisory panel, shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the senate finance committee, the house appropriations committee, and the standing committees of the legislature having jurisdiction over mental health and human services a report that includes:

(1) a summary of the activities of the commission, department, and advisory panel to develop or update the bed day allocation methodology and bed day utilization review protocol;

(2) the outcomes of the implementation of the bed day allocation methodology by region, including an explanation of how the actual outcomes aligned with or differed from the expected outcomes;

(3) for planning purposes, for each region, the actual value of a bed day for the two years preceding the date of the report and the projected value of a bed day for the five years following the date of the report, as calculated by the department;

(4) for each region, an evaluation of the factors in Subsection (c)(1)(A), including the availability of resources in the region, that impact the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b);

(5) the outcomes of the implementation of the bed day utilization review protocol and the impact of the use of the protocol on the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b); and

(6) any recommendations of the department, commission, or advisory panel to enhance the effective and efficient allocation of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b).

(f) **[Expired]** Notwithstanding Subsection (d), not later than March 1, 2016, the advisory panel, with assistance from the department, shall submit to the executive commissioner an initial proposal for a bed day allocation methodology and bed day utilization review protocol for review. The executive commissioner shall adopt an initial bed day allocation methodology and bed day utilization review protocol not later than June 1, 2016. Before the commission adopts the initial bed day allocation methodology, the department shall continue to allocate state-funded beds in the state hospitals and other inpatient mental health facilities according to the department's policy as it existed immediately before September 1, 2015, and the policy is continued in effect for that purpose. This subsection expires September 1, 2017.

HISTORY: Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 2,

effective May 28, 2015; enacted by Acts 2015, 84th Leg., ch. 207 (S.B. 1507), § 2, effective May 28, 2015.

Sec. 533.052. Contracting with Certain Mental Health Service Providers and Facilities to Provide Services and Beds for Certain Persons.

The department shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.053. Informing Courts of Commitment Options.

The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1306 (H.B. 3793), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter C

Powers and Duties Relating to ICF-MR Program

Section

533.061. Interagency Council on ICF-MR Facilities [Repealed].
533.062. Plan on Long-Term Care for Persons with Mental Retardation. [Renumbered]
533.063. Review of ICF-MR Rules. [Deleted]
533.064. Memorandum of Understanding on ICF-MR Services [Repealed].
533.065. ICF-MR Application Consolidation List. [Deleted]
533.066. Information Relating to ICF-MR Program. [Renumbered]

Sec. 533.061. Interagency Council on ICF-MR Facilities [Repealed].

Repealed by Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 16, effective August 30, 1993 and by Acts 1993, 73rd Leg., ch. 747 (S.B. 160), § 57, effective September 1, 1993.

Sec. 533.062. Plan on Long-Term Care for Persons with Mental Retardation. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.06, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 6, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 27, effective September 1, 1993; renumbered to § 533A.062 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.063. Review of ICF-MR Rules. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.097, effective September 1, 1995; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.064. Memorandum of Understanding on ICF-MR Services [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 533.065. ICF-MR Application Consolidation List. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.098, effective September 1, 1995; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.066. Information Relating to ICF-MR Program. [Renumbered]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.099, effective September 1, 1995; renumbered to Tex. Health & Safety Code § 533A.066 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter D

Powers and Duties Relating to Department Facilities

Section

533.081. Development of Facility Budgets.
533.082. Determination of Savings in Facilities.
533.083. Criteria for Expansion, Closure, or Consolidation of Facility.
533.084. Management of Surplus Real Property.
533.0844. Mental Health Community Services Account.
533.0846. Mental Retardation Community Services Account. [Renumbered]
533.085. Facilities for Inmate and Parolee Care.
533.086. Use of Department Facilities by Substance Abusers. [Deleted]
533.087. Lease of Real Property.

Sec. 533.081. Development of Facility Budgets.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.082. Determination of Savings in Facilities.

(a) The department shall determine the degree to which the costs of operating department facilities for

persons with mental illness in compliance with applicable standards are affected as populations in the facilities fluctuate.

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.083. Criteria for Expansion, Closure, or Consolidation of Facility.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.084. Management of Surplus Real Property.

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(5), effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 2, effective June 18, 1999; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.79, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0844. Mental Health Community Services Account.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.80, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.0846. Mental Retardation Community Services Account. [Renumbered]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.81, effective September 1, 2003; renumbered to § 533A.0846 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.085. Facilities for Inmate and Parolee Care.

(a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with mental illness in the custody of the Texas Department of Criminal Justice; or

(2) persons with mental illness paroled or released under the supervision of the Texas Department of Criminal Justice.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.107, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.086. Use of Department Facilities by Substance Abusers. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533.087. Lease of Real Property.

(a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

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

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

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

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

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

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

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

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

(e) The executive commissioner may reject any bid.

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

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

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 10, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 3, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter E

Jail Diversion Program

Section

533.101. Jail Diversion Pilot Program [Expired].
533.102. Prebooking Diversion [Expired].
533.103. Postbooking Diversion by Court [Expired].
533.104. Postbooking Diversion for Person in Jail [Expired].
533.105. Information System to Support Postbooking Diversion [Expired].
533.106. Reports to Legislature [Expired].
533.107. Expiration [Expired].
533.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

Sec. 533.101. Jail Diversion Pilot Program [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.102. Prebooking Diversion [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.103. Postbooking Diversion by Court [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.104. Postbooking Diversion for Person in Jail [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.105. Information System to Support Postbooking Diversion [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.106. Reports to Legislature [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001.

Sec. 533.107. Expiration [Expired].

Expired pursuant to Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2005.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1255 (S.B. 789), § 18, effective June 15, 2001; am. Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 2, effective September 1, 2003.

Sec. 533.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

(a) A local mental health authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or

other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health services;

(viii) co-occurring substance abuse treatment services;

(ix) psychiatric rehabilitation and service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas Correctional Office on Offenders with Medical or Mental Impairments model;

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

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1214 (S.B. 1145), § 3, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

CHAPTER 533A

Powers and Duties of Department of Aging and Disability Services

Subchapter
A. General Powers and Duties
B. Powers and Duties Relating to Provision of Intellectual Disability Services
C. Powers and Duties Relating to ICF-IID Program
D. Powers and Duties Relating to Department Facilities
E. Jail Diversion Program

Subchapter A

General Powers and Duties

Section
533A.001. Definitions.
533A.002. Commissioner's Powers and Duties; Effect of Conflict with Other Law.
533A.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.
533A.004. Liens.
533A.005. Easements.
533A.006. Reporting of Allegations Against Physician.
533A.007. Use of Criminal History Record Information.
533A.0075. Exchange of Employment Records.
533A.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.
533A.009. Exchange of Client Records.
533A.0095. Collection and Maintenance of Information Regarding Persons Found Not Guilty by Reason of Insanity.
533A.010. Information Relating to Condition.
533A.011. Return of Person with an Intellectual Disability To State Of Residence.
533A.012. Cooperation of State Agencies.
533A.015. Unannounced Inspections.
533A.016. Certain Procurements of Goods and Services by Service Providers.
533A.017. Participation in Purchasing Contracts or Group Purchasing Program.
533A.018. Revenue from Special Olympics Texas License Plates.

Sec. 533A.001. Definitions.

In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a facility listed in Section 532A.001(b).

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.002. Commissioner's Powers and Duties; Effect of Conflict with Other Law.

To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.57, effective April 1, 2025.

Sec. 533A.003. Use of Funds for Volunteer Programs in Local Authorities and Community Centers.

(a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the department may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.004. Liens.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability in an amount equal to the amount of reimbursement sought.

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

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

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

(c) The lien attaches to:

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

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

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

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

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

(2) the client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the client;

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

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

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.005. Easements.

The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.006. Reporting of Allegations Against Physician.

(a) The executive commissioner shall submit a report to the Texas Medical Board not later than 30 days after the last day of a month during which any allegation is received by the commission that a physician employed by or under contract with the commission in relation to services provided under this title has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.31, effective September 1, 2019; Acts 2021, 87th Leg., ch. 856 (S.B. 800), § 15, effective September 1, 2021.

Sec. 533A.007. Use of Criminal History Record Information.

(a) Subject to any applicable requirements of Chapter 250, the department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record

information indicates that the person is not qualified or suitable; or

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0075. Exchange of Employment Records.

The department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.008. Employment Opportunities for Individuals with Mental Illness or an Intellectual Disability.

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

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

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

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.009. Exchange of Client Records.

(a) Department facilities, local intellectual and developmental disability authorities, community centers, other designated providers, and subcontractors of intellectual disability services are component parts of one service delivery system within which client records may be exchanged without the client's consent.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0095. Collection and Maintenance of Information Regarding Persons Found Not Guilty by Reason of Insanity.

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.010. Information Relating to Condition.

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

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

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

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

(1) provides information under this section;

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.011. Return of Person with an Intellectual Disability To State Of Residence.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may return a nonresident person with an intellectual disability who is committed to a department facility in this state to the proper agency of the person's state of residence.

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

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

(d) The director of a department facility may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with an intellectual disability returned to this state.

(e) The state returning a person with an intellectual disability to another state shall bear the expenses of returning the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.011).

Sec. 533A.012. Cooperation of State Agencies.

At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.015. Unannounced Inspections.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.016. Certain Procurements of Goods and Services by Service Providers.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533A.017 or in accordance with:

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

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

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

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

(1) any installation costs;

(2) the delivery terms;

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

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

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

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

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

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

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

(10) the acquisition price; and

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.58, effective April 1, 2025.

Sec. 533A.017. Participation in Purchasing Contracts or Group Purchasing Program.

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

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

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; 2023, 88th Leg., H.B. 4611, § 2.59, effective April 1, 2025.

Sec. 533A.018. Revenue from Special Olympics Texas License Plates.

Annually, the department shall distribute the money deposited under Section 504.621, Transportation Code, to the credit of the account created in the trust fund created under Section 504.6012, Transportation Code, to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 475 (H.B. 811), § 1, effective September 1, 2001; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.018).

Subchapter B

Powers and Duties Relating to Provision of Intellectual Disability Services

Section	
533A.031.	Definitions.
533A.032.	Long-Range Planning.
533A.0325.	Continuum of Services in Department Facilities.
533A.0335.	Comprehensive Assessment and Resource Allocation Process.
533A.034.	Authority to Contract for Community-Based Services.
533A.0345.	State Agency Services Standards.
533A.035.	Local Intellectual and Developmental Disability Authorities.
533A.0352.	Local Authority Planning for Local Service Area.
533A.0355.	Local Intellectual and Developmental Disability Authority Responsibilities.
533A.03551.	Flexible, Low-Cost Housing Options.
533A.03552.	Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams.
533A.037.	Service Programs and Sheltered Workshops.
533A.038.	Facilities and Services for Clients with an Intellectual Disability.
533A.040.	Services for Children and Youth.
533A.0415.	Memorandum of Understanding on Interagency Training.
533A.042.	Evaluation of Elderly Residents.
533A.043.	Proposals for Geriatric Care.

Sec. 533A.031. Definitions.

In this subchapter:

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

(2) "ICF-IID and related waiver programs" includes ICF-IID Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with an intellectual disability.

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.032. Long-Range Planning.

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with an intellectual disability the department serves are met.

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

(1) solicit input from:

(A) local intellectual and developmental disability authorities;

(B) community representatives;

(C) consumers of intellectual disability services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

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

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

(1) project future bed requirements for state supported living centers;

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

(3) project maintenance costs for institutional facilities;

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

(5) specify how each state supported living center will:

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

(B) fulfill statewide needs for specialized services.

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

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

(2) consider:

(A) the medical needs of the most medically fragile of its clients with an intellectual disability;

(B) the provision of services to clients with a severe and profound intellectual disability and to persons with an intellectual disability who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533A.038; and

(D) input solicited from consumers of services of state supported living centers.

(g) The department shall:

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

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

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1147 (S.B. 956), § 4, effective September 1, 2023; 2025, 89th Leg., ch. 204 (H.B. 1620), § 9.004(a), effective September 1, 2025.

Sec. 533A.0325. Continuum of Services in Department Facilities.

The executive commissioner by rule shall establish criteria regarding the uses of department facilities as part of a full continuum of services under this title.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0335. Comprehensive Assessment and Resource Allocation Process.

(a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code.

(2) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 542.0001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF-IID program; or

(3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(b-1) [Expired pursuant to Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2015.]

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) [Expired]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.01, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (Renumbered from Sec. 533.0335); 2023, 88th Leg., H.B. 4611, § 2.61, effective April 1, 2025.

Sec. 533A.034. Authority to Contract for Community-Based Services.

The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based intellectual disability services.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0345. State Agency Services Standards.

(a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as identified by the commission.

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.035. Local Intellectual and Developmental Disability Authorities.

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

both the local mental health authority under Chapter 533 and the local intellectual and developmental disability authority under this chapter for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local intellectual and developmental disability authority department federal and department state funds to be spent in the local service area for community intellectual disability services.

(c) A local intellectual and developmental disability authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure intellectual disability services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of intellectual disability services; and

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

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

(e) A local intellectual and developmental disability authority may serve as a provider of ICF-IID and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533A.0355(d); or

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0352. Local Authority Planning for Local Service Area.

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

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533A.032.

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

(d) In developing the local service area plan, the local intellectual and developmental disability authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based intellectual disability services and members of the families of those consumers;

(C) consumers of services of state supported living centers, members of families of those consumers, and members of state supported living center volunteer services councils, if a state supported living center is located in the local service area of the local authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to ensure a client with an intellectual disability is placed in the least restrictive environment appropriate to the person's care;

(C) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state supported living centers for persons with an intellectual disability in the local service area of the local authority;

(D) goals to divert consumers of services from the criminal justice system; and

(E) opportunities for innovation in services and service delivery.

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

(f) The department and the local intellectual and developmental disability authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0355. Local Intellectual and Developmental Disability Authority Responsibilities.

(a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following

local intellectual and developmental disability authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility-based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring.

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

(d) In establishing a local intellectual and developmental disability authority's role as a qualified service provider of ICF-IID and related waiver programs under Section 533A.035(e), the executive commissioner shall require the local intellectual and developmental disability authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the department;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local intellectual and developmental disability authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

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

(f) At least biennially, the department shall review and determine the local intellectual and developmental disability authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located.

(g) The department shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with intellectual and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The department shall ensure that local intellectual and developmental disability authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533A.038(d), including options such as the availability and types of ICF-IID placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.76, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 478 (H.B. 2439), § 5, effective June 16, 2007; am. Acts 2011, 82nd Leg., ch. 1057 (S.B. 222), § 2, effective September 1, 2011; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.0355).

Sec. 533A.03551. Flexible, Low-Cost Housing Options.

(a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

(b) The department, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The department shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.03551); 2023, 88th Leg., H.B. 4611, § 2.62, effective April 1, 2025.

Sec. 533A.03552. Behavioral Supports for Individuals with Intellectual and Developmental Disabilities at Risk of Institutionalization; Intervention Teams.

(a) Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization.

(b) Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

(1) psychiatrist or psychologist;

(2) physician;

(3) registered nurse;

(4) pharmacist or representative of a pharmacy;

(5) behavior analyst;

(6) social worker;

(7) crisis coordinator;

(8) peer specialist; and

(9) family partner.

(c) In providing services and supports, a behavioral health intervention team established by the department shall:

(1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;

(2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;

(3) provide support to the individual's family members and other caregivers;

(4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and

(5) provide clinical and other referrals.

(d) The department shall ensure that members of a behavioral health intervention team established under this section receive training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1310 (S.B. 7), § 3.02, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.03552).

Sec. 533A.037. Service Programs and Sheltered Workshops.

(a) The department may provide intellectual disability services through halfway houses, sheltered workshops, community centers, and other intellectual disability services programs.

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

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

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

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

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.038. Facilities and Services for Clients with an Intellectual Disability.

(a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may designate all or any part of a department facility as a special facility for the diagnosis,

special training, education, supervision, treatment, or care of clients with an intellectual disability.

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

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

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

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533A.032.

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

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 10, effective September 1, 1999; am. Acts 2013, 83rd Leg., ch. 682 (H.B. 2276), § 1, effective September 1, 2013; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.038).

Sec. 533A.040. Services for Children and Youth.

The department shall ensure the development of programs and the expansion of services at the community level for children with an intellectual disability, or with a dual diagnosis of an intellectual disability and mental illness, and for their families. The department shall:

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0415. Memorandum of Understanding on Interagency Training.

(a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

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

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

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

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

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

(b) The task force consists of:

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.042. Evaluation of Elderly Residents.

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

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

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

(d) The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department facility.

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

(f) A local intellectual and developmental disability authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local intellectual and developmental disability authority shall have the right of access to all residents and records of residents who request continuing care services.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.043. Proposals for Geriatric Care.

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

(b) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

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

(2) sign a memorandum of agreement with the local intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

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

(d) The appropriate local intellectual and developmental disability authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter C

Powers and Duties Relating to ICF-IID Program

Section

533A.062. Plan on Long-Term Care for Persons with an Intellectual Disability.

533A.066. Information Relating to ICF-IID Program. [Repealed]

Sec. 533A.062. Plan on Long-Term Care for Persons with an Intellectual Disability.

(a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability.

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

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

(2) projected appropriation amounts for the biennium; and

(3) the requirements of applicable federal law.

(b-1) As part of the proposed plan, the commission shall review the statewide bed capacity of community ICF-IID facilities for individuals with an intellectual disability or a related condition and, based on the review, develop a process to reallocate beds held in suspension by the commission. The process may include:

(1) criteria by which ICF-IID program providers may apply to the commission to receive reallocated beds; and

(2) a means to reallocate the beds among health services regions.

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

(d) The commission may modify the proposed plan as necessary before its final approval.

(e) [Repealed.]

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability, the commission shall adjust the plan to ensure that the number of ICF-IID beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

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

(h) The department may submit proposed amendments to the plan to the commission.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.06, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 6, effective August 30, 1993; am.

Acts 1993, 73rd Leg., ch. 747 (H.B. 1510), § 27, effective September 1, 1993; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.062).; Acts 2019, 86th Leg., ch. 1153 (H.B. 3117), § 1, effective June 14, 2019; Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.32, effective September 1, 2019; Acts 2021, 87th Leg., ch. 856 (S.B. 800), § 25(8), effective September 1, 2021.

Sec. 533A.066. Information Relating to ICF-IID Program. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.099, effective September 1, 1995; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.066); repealed by 2025, 89th Leg., H.B. 2358, § 1, effective June 20, 2025.

Subchapter D

Powers and Duties Relating to Department Facilities

Section

533A.081. Development of Facility Budgets.
533A.082. Determination of Savings in Facilities.
533A.083. Criteria for Expansion, Closure, or Consolidation of Facility.
533A.084. Management of Surplus Real Property.
533A.0846. Intellectual Disability Community Services Account.
533A.085. Facilities for Inmate and Parolee Care.
533A.087. Lease of Real Property.

Sec. 533A.081. Development of Facility Budgets.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.082. Determination of Savings in Facilities.

(a) The department shall determine the degree to which the costs of operating department facilities for persons with an intellectual disability in compliance with applicable standards are affected as populations in the facilities fluctuate.

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

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

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

(c) The department shall allocate to community-based intellectual disability programs any savings realized in operating department facilities for persons with an intellectual disability.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.083. Criteria for Expansion, Closure, or Consolidation of Facility.

The department shall establish objective criteria for determining when a new facility may be needed and when a state supported living center may be expanded, closed, or consolidated.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.084. Management of Surplus Real Property.

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

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

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

(d) This section does not authorize the executive commissioner or department to close or consolidate a state supported living center without first obtaining legislative approval.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.0846. Intellectual Disability Community Services Account.

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

(b) The department shall deposit to the credit of the intellectual disability community services account any money donated to the state for inclusion in the account,

including life insurance proceeds designated for deposit to the account.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.81, effective September 1, 2003; am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015 (renumbered from Sec. 533.0846).

Sec. 533A.085. Facilities for Inmate and Parolee Care.

(a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with an intellectual disability in the custody of the Texas Department of Criminal Justice; or

(2) persons with an intellectual disability paroled or released under the supervision of the Texas Department of Criminal Justice.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Sec. 533A.087. Lease of Real Property.

(a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

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

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

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

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

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

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

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

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

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

Subchapter E

Jail Diversion Program

Section
533A.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

Sec. 533A.108. Prioritization of Funding for Diversion of Persons From Incarceration in Certain Counties.

(a) A local intellectual and developmental disability authority may develop and may prioritize its available funding for:

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

(A) screening and assessment services; and

(B) treatment services, including:

(i) short-term residential services;

(ii) crisis respite residential services; and

(iii) continuity of care services;

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

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

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

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1335, effective April 2, 2015.

CHAPTER 534

Community Services

Subchapter
A. Community Centers

Subchapter
B. Community-Based Mental Health Services
B-1. Community-Based Intellectual Disability Services
C. Health Maintenance Organizations

Subchapter A

Community Centers

Section
534.0001. Definitions.
534.001. Establishment.
534.0015. Purpose and Policy.
534.002. Board of Trustees for Center Established by One Local Agency.
534.003. Board of Trustees for Center Established by at Least Two Local Agencies.
534.004. Procedures Relating to Board of Trustees Membership.
534.005. Terms; Vacancies.
534.006. Training.
534.0065. Qualifications; Conflict of Interest; Removal.
534.007. Prohibited Activities by Former Officers or Employees; Offense.
534.008. Administration by Board.
534.009. Meetings.
534.010. Executive Director.
534.011. Personnel.
534.0115. Nepotism.
534.012. Advisory Committees.
534.013. Cooperation of Departments.
534.014. Budget; Request for Funds.
534.015. Provision of Services.
534.0155. For Whom Services May Be Provided.
534.016. Screening and Continuing Care Services.
534.017. Fees for Services.
534.0175. Trust Exemption.
534.018. Gifts and Grants.
534.019. Contribution by Local Agency.
534.020. Acquisition and Construction of Property and Facilities by Community Center.
534.021. Approval and Notification Requirements.
534.022. Financing of Property and Improvements.
534.023. Sale of Real Property Acquired Solely Through Private Gift or Grant.
534.024. Department Funding for Facility Renovation [Repealed].
534.025. Priorities for Funding [Repealed].
534.026. Terms of Construction or Renovation Agreement [Repealed].
534.027. Community Centers Facilities Construction and Renovation Fund [Repealed].
534.028. Transfer of Title; Release of Lien [Repealed].
534.029. Default [Repealed].
534.030. State Funds [Repealed].
534.031. Surplus Personal Property.
534.032. Research.
534.033. Limitation on Department Control and Review.
534.034. Memorandum of Understanding on Program Reviews [Repealed].
534.035. Review, Audit, and Appeal Procedures.
534.036. Financial Audit.
534.037. Program Audit.
534.038. Appointment of Manager or Management Team.
534.039. Powers and Duties of Management Team.
534.040. Restoring Management to Center.

Sec. 534.0001. Definitions.

In this subchapter:

(1) "Commissioner" means:

(A) the commissioner of state health services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the commissioner of aging and disability services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

(2) "Department" means:

(A) the Department of State Health Services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the Department of Aging and Disability Services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.001. Establishment.

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

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

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

(2) a community intellectual disability center that provides intellectual disability services; or

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

(c) A community center is:

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

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

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

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

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

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

(A) the Department of State Health Services for a proposed center that will provide mental health services;

(B) the Department of Aging and Disability Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services;

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

(3) each department from which the proposed center seeks approval determines that the center can appropriately, effectively, and efficiently provide those services in the region.

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

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

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

(1) is not operated to make a profit;

(2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and

(3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.07, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 601 (H.B. 553), § 1, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 8.276, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.82, effective September 1, 2006; am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 2, effective June 19, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0015. Purpose and Policy.

(a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state with mental illness or an intellectual disability.

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

HISTORY: Am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 3, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.002. Board of Trustees for Center Established by One Local Agency.

(a) The board of trustees of a community center established by one local agency is composed of:

(1) the members of the local agency's governing body;

(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body; and

(3) a sheriff or a representative of a sheriff of a county in the region served by the community center who is appointed by the local agency's governing body to serve as an ex officio nonvoting member.

(b) If a qualified voter appointed to a community center under Subsection (a)(2) is the sheriff of the only county in the region served by a community center, Subsection (a)(3) does not apply.

(c) If a qualified voter appointed to a community center under Subsection (a)(2) is a sheriff of a county in the region served by a community center and the region served by the community center consists of more than one county, under Subsection (a)(3) the local agency's governing body shall appoint a sheriff or a representative of a sheriff from a different county in the region served by the community center.

(d) Subsection (a)(3) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.09, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 3, effective September 1, 2019.

Sec. 534.003. Board of Trustees for Center Established by at Least Two Local Agencies.

(a) Except as provided by Subsection (a-1), the board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(a-1) In addition to the members described by Subsection (a), the board of trustees of a community center must include:

(1) if the region served by the community center consists of only one county, the sheriff of that county or a representative of the sheriff to serve as an ex officio nonvoting member; or

(2) if the region served by the community center consists of more than one county, sheriffs from at least two of the counties in the region served by the commu-

nity center or representatives of the sheriffs to serve as ex officio nonvoting members.

(a-2) Subsection (a-1) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

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

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:

(1) method of choosing the members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.10, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.200, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; Acts 2019, 86th Leg., ch. 962 (S.B. 632), § 4, effective September 1, 2019.

Sec. 534.004. Procedures Relating to Board of Trustees Membership.

(a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.11, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 12, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.005. Terms; Vacancies.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.12, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 13, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.006. Training.

(a) The executive commissioner by rule shall establish:

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

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

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

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

(2) the programs the community center operates;

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

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

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

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

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.13, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(82), (88), effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0065. Qualifications; Conflict of Interest; Removal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);

(4) violates a provision of Subsection (e);

(5) violates a provision of Section 534.0115; or

(6) does not execute the affidavit required by Subsection (f).

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.007. Prohibited Activities by Former Officers or Employees; Offense.

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

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

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

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

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.008. Administration by Board.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.14, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.009. Meetings.

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

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to each appropriate department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States Postal Service; or

(2) another method agreed to by the board of trustees and the local agency.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.15, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(84), effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.010. Executive Director.

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

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.16, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.011. Personnel.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.17, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0115. Nepotism.

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

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

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

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.18, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.012. Advisory Committees.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.19, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.013. Cooperation of Departments.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.014. Budget; Request for Funds.

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

(1) approved fiscal year operating budget;

(2) most recent annual financial audit; and

(3) staff salaries by position.

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.20, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.015. Provision of Services.

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

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

(c) With the approval of each appropriate commissioner, the board of trustees may contract with the governing body of another county or municipality to provide

mental health and intellectual disability services to residents of that county or municipality.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0155. For Whom Services May Be Provided.

(a) This subtitle does not prevent a community center from providing services to:

(1) a person with a chemical dependency;

(2) a person with a developmental disability; or

(3) a person younger than four years of age who is eligible for early childhood intervention services.

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.21, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646, § 7(a), effective August 30, 1993; Am. Acts 2009, 81st Leg., ch. 1292 (H.B. 2303), § 4, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.016. Screening and Continuing Care Services.

(a) A community center shall provide screening services for:

(1) a person who requests voluntary admission to a Department of State Health Services facility for persons with mental illness; and

(2) a person for whom proceedings for involuntary commitment to a Department of State Health Services or Department of Aging and Disability Services facility for persons with mental illness or an intellectual disability have been initiated.

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

(c) Services provided under this section must be consistent with the applicable rules and standards of each appropriate department.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.017. Fees for Services.

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.22, effective. August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0175. Trust Exemption.

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

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 166 (H.B. 367), § 1, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1020 (H.B. 1316), § 1, effective June 15, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.018. Gifts and Grants.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23, effective. August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.019. Contribution by Local Agency.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.020. Acquisition and Construction of Property and Facilities by Community Center.

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

(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the

purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.23, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.021. Approval and Notification Requirements.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646, § 9(a), effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.022. Financing of Property and Improvements.

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

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

(1) an account;

(2) a chattel paper;

(3) a commercial tort claim;

(4) a deposit account;

(5) a document;

(6) a general intangible;

(7) a health care insurance receivable;

(8) an instrument;

(9) investment property;

(10) a letter-of-credit right; and

(11) proceeds.

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

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

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

(3) bonds.

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.24, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 161 (S.B. 1322), § 1, effective May 16, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 11, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 8.277, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 826 (S.B. 812), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(13), effective September

1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(97), effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.023. Sale of Real Property Acquired Solely Through Private Gift or Grant.

(a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of each appropriate department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

(1) the center may subsequently sell the real property; and

(2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution stating:

(1) the public purpose that will be achieved by the sale; and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. Each appropriate commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The executive commissioner shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 231 (H.B. 243), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.024. Department Funding for Facility Renovation [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.025. Priorities for Funding [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.026. Terms of Construction or Renovation Agreement [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.26, effective August 30, 1993.

Sec. 534.027. Community Centers Facilities Construction and Renovation Fund [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.028. Transfer of Title; Release of Lien [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.029. Default [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.030. State Funds [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 1175 (S.B. 199), § 4, effective June 18, 1999.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.26, effective August 30, 1993.

Sec. 534.031. Surplus Personal Property.

The executive commissioner, in coordination with the appropriate department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under that department's control or jurisdiction to a community center for use in providing mental health or intellectual disability services, as appropriate.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.032. Research.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.033. Limitation on Department Control and Review.

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

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

(2) provide core or required services;

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

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

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

(c) Each appropriate department may determine whether a particular program uses funds from that department or uses required local matching funds.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.27, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.034. Memorandum of Understanding on Program Reviews [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.035. Review, Audit, and Appeal Procedures.

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

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

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

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.28, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 8, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.036. Financial Audit.

(a) The executive commissioner shall prescribe procedures for financial audits of community centers. The executive commissioner shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The executive commissioner shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068 or 534.121, as appropriate. Before prescribing or amending the procedures, the executive commissioner shall set a deadline for those state agencies and departments to submit to the executive commissioner proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center.

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

(c) The executive commissioner shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 2, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.037. Program Audit.

(a) The executive commissioner shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The procedures must be consistent with any requirements connected with federal funding received by the community center.

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

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

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

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

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

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

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 3, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.038. Appointment of Manager or Management Team.

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

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with that department;

(2) misused state or federal money;

(3) engaged in a fraudulent act, transaction, practice, or course of business;

(4) endangers or may endanger the life, health, or safety of a person served by the center;

(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;

(6) failed to respond to a deficiency in a review or audit;

(7) substantially failed to operate within the functions and purposes defined in the center's plan; or

(8) otherwise substantially failed to comply with this subchapter or rules of that department.

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

(1) the appointment of the manager or management team; and

(2) the circumstances on which the appointment is based.

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

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 839 (S.B. 464), § 1, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.039. Powers and Duties of Management Team.

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

(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;

(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;

(3) reallocate a resource and manage an asset of the center;

(4) provide technical assistance to an officer or employee of the center;

(5) require or provide staff development;

(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;

(7) redesign, modify, or terminate a center program or service;

(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;

(9) exercise a power or duty of an officer or employee of the center; or

(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

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

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

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.040. Restoring Management to Center.

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

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

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1520 (S.B. 773), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 839 (S.B. 464), § 2, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Subchapter B

Community-Based Mental Health Services

Section	
534.051.	Definitions.
534.052.	Rules and Standards.
534.053.	Required Community-Based Mental Health Services.
534.0535.	Joint Discharge Planning.
534.054.	Designation of Provider.
534.055.	Contracts for Certain Community Services.
534.056.	Coordination of Activities.
534.057.	Respite Care. [Renumbered]
534.058.	Standards of Care.
534.059.	Contract Compliance for Local Authorities.
534.060.	Program and Service Monitoring and Review of Local Authorities.
534.0601.	Coordinated Program Audits of Local Authorities.
534.0602.	Financial Audits of Local Authorities.
534.0603.	Additional Financial Audit Activity.
534.061.	Program and Service Monitoring and Review of Certain Community Services.
534.062.	Review of Crisis Residential and Hospitalization Services [Repealed].
534.063.	Peer Review Organization.
534.064.	Contract Renewal.
534.065.	Renewal of Certain Contracts for Community Services.
534.066.	Local Match Requirement.
534.067.	Fee Collection Policy.
534.0675.	Notice of Denial, Reduction, or Termination of Services.
534.068.	Audits.
534.069.	Criteria for Providing Funds for Start-Up Costs.
534.070.	Use of Prospective Payment Funds.
534.071.	Advisory Committee.

Sec. 534.051. Definitions.

In this subchapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.052. Rules and Standards.

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.29, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.053. Required Community-Based Mental Health Services.

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

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

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

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

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

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

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

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

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

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

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032, 42A.104, or 42A.506, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 4.021, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.69, effective January 1, 2017.

Sec. 534.0535. Joint Discharge Planning.

(a) The executive commissioner shall adopt or amend, and the department shall enforce, rules that require continuity of services and planning for patient care between department facilities and local mental health authorities.

(b) At a minimum, the rules must:

(1) specify the local mental health authority's responsibility for ensuring the successful transition of patients who are determined by the facility to be medically appropriate for discharge; and

(2) require participation by a department facility in joint discharge planning with a local mental health authority before the facility discharges a patient or places the patient on an extended furlough with an intent to discharge.

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

(d) The local mental health authority shall arrange for the provision of the services upon discharge.

(e) The commission shall require each facility to designate at least one employee to provide transition support services for patients who are determined medically appropriate for discharge from the facility.

(f) Transition support services provided by the local mental health authority must be designed to complement joint discharge planning efforts and may include:

(1) enhanced services and supports for complex or high-need patients, including services and supports necessary to create viable discharge or outpatient management plans; and

(2) post-discharge monitoring for up to one year after the discharge date to reduce the likelihood of readmission.

(g) The commission shall ensure that each department facility concentrates the provision of transition support services for patients who have been:

(1) admitted to and discharged from a facility multiple times during a 30-day period; or

(2) in the facility for longer than 365 consecutive days.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.30, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1035 (S.B. 26), § 6, effective September 1, 2023.

Sec. 534.054. Designation of Provider.

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

(b) [Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.]

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

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

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

(d) [Repealed by Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.31, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 12, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 5, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.055. Contracts for Certain Community Services.

(a) The executive commissioner shall design a competitive procurement or similar system that a mental health authority shall use in awarding an initial contract for the provision of services at the community level for persons with mental illness, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local mental health authority:

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

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

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

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

(1) price;

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.32, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 13, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.056. Coordination of Activities.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.33, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.057. Respite Care. [Renumbered]

HISTORY: Renumbered to § 534.1075 by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.058. Standards of Care.

(a) The executive commissioner shall develop standards of care for the services provided by a local mental health authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based mental health services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.34, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.059. Contract Compliance for Local Authorities.

(a) The department shall evaluate a local mental health authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health authority to monthly distributions.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.35, effective August 30, 1993; am. Acts 1999,

76th Leg., ch. 1209 (S.B. 542), § 9, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.060. Program and Service Monitoring and Review of Local Authorities.

(a) The department shall develop mechanisms for monitoring the services provided by a local mental health authority.

(b) The department shall review the program quality and program performance results of a local mental health authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.36, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 869 (H.B. 1734), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 10, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0601. Coordinated Program Audits of Local Authorities.

(a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local mental health authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local mental health authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0602. Financial Audits of Local Authorities.

(a) The executive commissioner shall prescribe procedures for a financial audit of a local mental health authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local mental health authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0603. Additional Financial Audit Activity.

(a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 11, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.061. Program and Service Monitoring and Review of Certain Community Services.

(a) The local mental health authority shall monitor the services of a provider who contracts with the authority to provide services for persons with mental illness to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local mental health authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local mental health authority must follow in remedying a problem with a provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 12, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.062. Review of Crisis Residential and Hospitalization Services [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 534.063. Peer Review Organization.

The department shall assist a local mental health authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.37, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.064. Contract Renewal.

The executive commissioner may refuse to renew a contract with a local mental health authority and may select other agencies, entities, or organizations to be the local mental health authority if the department's evaluation of the authority's performance under Section 534.059 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.38, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 14, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.065. Renewal of Certain Contracts for Community Services.

(a) A local mental health authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of mental health services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local mental health authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The local mental health authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 15, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 15, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.066. Local Match Requirement.

(a) The department shall include in a contract with a local mental health authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health programs, as appropriate.

(b) Patient fee income, third-party insurance income, services and facilities contributed by the local mental health authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health authority. The department may disallow or reduce the value of services claimed as support.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.38, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 16, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.067. Fee Collection Policy.

The executive commissioner shall establish a uniform fee collection policy for all local mental health authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107, § 6.38, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.0675. Notice of Denial, Reduction, or Termination of Services.

The executive commissioner by rule, in cooperation with local mental health authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107, § 6.38, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 646, § 11, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.068. Audits.

(a) As a condition to receiving funds under this subtitle, a local mental health authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by

a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local mental health authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local mental health authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.39, effective August 30, 1993; am. Acts 2013, 83rd Leg., ch. 1312 (S.B. 59), § 68, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), article 3, § 3.1336, effective April 2, 2015; Acts 2021, 87th Leg., ch. 856 (S.B. 800), § 16, effective September 1, 2021.

Sec. 534.069. Criteria for Providing Funds for Start-Up Costs.

(a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.070. Use of Prospective Payment Funds.

(a) Each local mental health authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local mental health authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local mental health authority to provide community services to certain persons with mental illness.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.071. Advisory Committee.

A local mental health authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1209 (S.B. 542), § 13, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Subchapter B-1

Community-Based Intellectual Disability Services

Section

534.101. Definitions.
534.102. Rules and Standards.
534.103. Required Community-Based Intellectual Disability Services.
534.104. Joint Discharge Planning.
534.105. Designation of Provider.
534.106. Contracts for Certain Community Services.
534.107. Coordination of Activities.
534.1075. Respite Care.
534.108. Standards of Care.
534.109. Contract Compliance for Local Authorities.
534.110. Program and Service Monitoring and Review of Local Authorities.
534.111. Coordinated Program Audits of Local Authorities.
534.112. Financial Audits of Local Authorities.
534.113. Additional Financial Audit Activity.
534.114. Program and Service Monitoring and Review of Certain Community Services.
534.115. Peer Review Organization.
534.116. Contract Renewal.

Section
534.117. Renewal of Certain Contracts for Community Services.
534.118. Local Match Requirement.
534.119. Fee Collection Policy.
534.120. Notice of Denial, Reduction, or Termination of Services.
534.121. Audits.
534.122. Criteria for Providing Funds for Start-Up Costs.
534.123. Use of Prospective Payment Funds.
534.124. Advisory Committee.

Sec. 534.101. Definitions.

In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a state supported living center, including the ICF-IID component of the Rio Grande State Center.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.102. Rules and Standards.

(a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based intellectual disability services through a local intellectual and developmental disability authority under this subchapter.

(b) The department shall send a copy of the rules to each local intellectual and developmental disability authority or other provider receiving contract funds as a local intellectual and developmental disability authority or designated provider.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.103. Required Community-Based Intellectual Disability Services.

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

(1) community-based assessments, including diagnosis and evaluation services;

(2) respite care; and

(3) case management services.

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

(c) To the extent that resources are available, the department shall ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.104. Joint Discharge Planning.

(a) The executive commissioner shall adopt, and the department shall enforce, rules that require continuity of services and planning for client care between department facilities and local intellectual and developmental disability authorities.

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

(c) The local intellectual and developmental disability authority shall plan with the department facility and determine the appropriate community services for the client.

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.105. Designation of Provider.

(a) The department shall identify and contract with a local intellectual and developmental disability authority for each service area to ensure that services are provided to client populations determined by the department. A local intellectual and developmental disability authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.102.

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

(1) cannot negotiate a contract with a local intellectual and developmental disability authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local intellectual and developmental disability authority does not have the capacity to ensure the availability of that service.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.106. Contracts for Certain Community Services.

(a) The executive commissioner shall design a competitive procurement or similar system that an intellectual and developmental disability authority shall use in awarding an initial contract for the provision of services at the community level for persons with an intellectual disability, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local intellectual and developmental disability authority:

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

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

(3) review each submitted proposal and award the contract to the applicant that the authority determines

has made the lowest and best bid to provide the needed services.

(c) Each local intellectual and developmental disability authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

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

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

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

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

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

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

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

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

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

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.107. Coordination of Activities.

A local intellectual and developmental disability authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.1075. Respite Care.

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

(b) The rules must:

(1) encourage the use of existing local providers;

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

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

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

(B) reimbursing providers;

(C) handling appeals from providers;

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

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The executive commissioner shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The executive commissioner shall establish the standards from information obtained from the families of clients receiving in-home respite care and from providers of in-home respite care. The executive commissioner may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the executive commissioner under Subsection (c) must:

(1) prescribe minimum personnel qualifications the executive commissioner determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the executive commissioner determines that additional training is necessary.

HISTORY: Am. Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015 (renumbered from Sec. 534.057).

Sec. 534.108. Standards of Care.

(a) The executive commissioner shall develop standards of care for the services provided by a local intellectual and developmental disability authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of community-based intellectual disability services is consistent with the quality of care available in department facilities.

(c) In conjunction with local intellectual and developmental disability authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.109. Contract Compliance for Local Authorities.

(a) The department shall evaluate a local intellectual and developmental disability authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local intellectual and developmental disability authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local intellectual and developmental disability authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local intellectual and developmental disability authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local intellectual and developmental disability authority to monthly distributions.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.110. Program and Service Monitoring and Review of Local Authorities.

(a) The department shall develop mechanisms for monitoring the services provided by a local intellectual and developmental disability authority.

(b) The department shall review the program quality and program performance results of a local intellectual and developmental disability authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local intellectual and developmental disability authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.111. Coordinated Program Audits of Local Authorities.

(a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local intellectual and developmental disability authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local intellectual and developmental disability authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local intellectual and developmental disability authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local intellectual and developmental disability authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.112. Financial Audits of Local Authorities.

(a) The executive commissioner shall prescribe procedures for a financial audit of a local intellectual and developmental disability authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local intellectual and developmental disability authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.121.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local intellectual and developmental disability authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local intellectual and developmental disability authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.113. Additional Financial Audit Activity.

(a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local intellectual and developmental disability authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local intellectual and developmental disability authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.114. Program and Service Monitoring and Review of Certain Community Services.

(a) The local intellectual and developmental disability authority shall monitor the services of a provider who contracts with the authority to provide services to persons with an intellectual disability to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local intellectual and develop-

mental disability authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local intellectual and developmental disability authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local intellectual and developmental disability authority must follow in remedying a problem with a provider.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.115. Peer Review Organization.

The department shall assist a local intellectual and developmental disability authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.110.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.116. Contract Renewal.

The executive commissioner may refuse to renew a contract with a local intellectual and developmental disability authority and may select other agencies, entities, or organizations to be the local intellectual and developmental disability authority if the department's evaluation of the authority's performance under Section 534.109 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.117. Renewal of Certain Contracts for Community Services.

(a) A local intellectual and developmental disability authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of intellectual disability services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local intellectual and developmental disability authority may renew the contract only if the contract meets the criteria provided by Section 533A.016.

(c) The local intellectual and developmental disability authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.118. Local Match Requirement.

(a) The department shall include in a contract with a local intellectual and developmental disability authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other intellectual disability programs, as appropriate.

(b) Client fee income, third-party insurance income, services and facilities contributed by the local intellectual and developmental disability authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local intellectual and developmental disability authority. The department may disallow or reduce the value of services claimed as support.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.119. Fee Collection Policy.

The executive commissioner shall establish a uniform fee collection policy for all local intellectual and developmental disability authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.120. Notice of Denial, Reduction, or Termination of Services.

The executive commissioner by rule, in cooperation with local intellectual and developmental disability authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local intellectual and developmental disability authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.121. Audits.

(a) As a condition to receiving funds under this subtitle, a local intellectual and developmental disability authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of inde-

pendence and quality, the local intellectual and developmental disability authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local intellectual and developmental disability authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local intellectual and developmental disability authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local intellectual and developmental disability authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.122. Criteria for Providing Funds for Start-Up Costs.

(a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with an intellectual disability.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.123. Use of Prospective Payment Funds.

(a) Each local intellectual and developmental disability authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local intellectual and developmental disability authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local intellectual and developmental disability authority to provide community services to certain persons with an intellectual disability.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.124. Advisory Committee.

A local intellectual and developmental disability authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of intellectual disability services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Subchapter C

Health Maintenance Organizations

Section

534.151. Health Maintenance Organization Certificate of Authority.
534.152. Laws and Rules.
534.153. Application of Laws and Rules.
534.154. Applicability of Specific Laws.
534.155. Consideration of Bids.
534.156. Conditions for Certain Contracts.

Sec. 534.151. Health Maintenance Organization Certificate of Authority.

(a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by each appropriate department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by each appropriate department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health

maintenance organization pursuant to Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. Each appropriate department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by each appropriate department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1229 (S.B. 753), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.530, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.152. Laws and Rules.

A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, and rules of the Texas Department of Insurance.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.531, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.153. Application of Laws and Rules.

A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.532, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.154. Applicability of Specific Laws.

(a) A nonprofit health maintenance organization created under Section 534.151 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.802, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 10A.533, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.155. Consideration of Bids.

Each appropriate department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 835 (H.B. 587), § 2, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

Sec. 534.156. Conditions for Certain Contracts.

A contract between each appropriate department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 16, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1336, effective April 2, 2015.

SUBTITLE B

STATE FACILITIES

Chapter
551. General Provisions
552. State Hospitals
554. State Centers and Homes
555. State Supported Living Centers

CHAPTER 551

General Provisions

Subchapter
A. General Powers and Duties Relating to State Facilities
B. Provisions Applicable to Facility Superintendent or Director
C. Powers and Duties Relating to Patient or Client Care

Subchapter A

General Powers and Duties Relating to State Facilities

Section
551.001. Definitions.
551.002. Prohibition of Interest.
551.003. Deposit of Patient or Client Funds.
551.004. Benefit Fund.
551.005. Disbursement of Patient or Client Funds.
551.006. Facility Standards.
551.007. Building and Improvement Program.
551.008. Transfer of Facilities. [Deleted]
551.008. Regional Laundry Centers.
551.009. Hill Country Local Mental Health Authority Crisis Stabilization Unit.

Sec. 551.001. Definitions.

In this subtitle:

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

(2) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

(3) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

(4) "Department facility" means:

(A) a facility for persons with mental illness under the jurisdiction of the Department of State Health Services; and

(B) a facility for persons with an intellectual disability under the jurisdiction of the Department of Aging and Disability Services.

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

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.002. Prohibition of Interest.

The superintendent or director of a department facility or a person connected with that department facility may not:

(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2) have an interest in a contract with a department facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.003. Deposit of Patient or Client Funds.

(a) The superintendent or director of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b) The superintendent or director may deposit or invest those funds in:

(1) a bank in this state;

(2) federal bonds or obligations; or

(3) bonds or obligations for which the faith and credit of the United States are pledged.

(c) The superintendent or director may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The person performing the function of business manager at that facility shall maintain records of the amount of funds on deposit for each facility patient or client.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.004. Benefit Fund.

(a) The superintendent or director may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent or director is the trustee of the fund.

(b) The superintendent or director may spend money from the benefit fund for:

(1) educating or entertaining the patients or clients;

(2) barber or cosmetology services for the patients or clients; and

(3) the actual expense incurred in maintaining the fund.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.005. Disbursement of Patient or Client Funds.

Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent or director and the person performing the function of business manager at that facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.006. Facility Standards.

(a) The executive commissioner by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) Each department shall approve facilities of that department that meet applicable standards and, when requested, shall certify the approval to the Centers for Medicare and Medicaid Services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.007. Building and Improvement Program.

(a) The executive commissioner, in coordination with the appropriate department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The executive commissioner may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The executive commissioner shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c) If the legislature appropriates money to the commission for the purpose of the construction, expansion, or operation of certain inpatient mental health facilities under authority conferred by Sections 2155.144(b-2) and 2166.251, Government Code, the commission may award the money as a one-time grant directly to an entity for that purpose.

(c) to (g) [Deleted by Acts 2015, 84th Leg., ch. 1 (SB 219), § 3.1337, effective April 2, 2015.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015; 2025, 89th Leg., ch. 367 (H.B. 109), § 1, effective September 1, 2025.

Sec. 551.008. Transfer of Facilities. [Deleted]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 312 (H.B. 2278), § 2, effective June 5, 1995; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 24, effective June 8, 2007; deleted by Acts 2015, ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.008. Regional Laundry Centers.

A regional laundry center operated by the commission to provide laundry services to department facilities may contract with federal agencies, other state agencies, or local political subdivisions to provide or receive laundry services.

HISTORY: Acts 2019, 86th Leg., ch. 111 (S.B. 1234), § 1, effective May 22, 2019.

Sec. 551.009. Hill Country Local Mental Health Authority Crisis Stabilization Unit.

(a) In this section, "department" means the Department of State Health Services.

(a-1) The department shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care to the local mental health authority operating a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults committed to or court ordered to a department facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1188 (H.B. 654), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 83 (S.B. 1054), §§ 1—3, effective May 20, 2009; Acts 2015, 84th Leg., ch.

1 (S.B. 219), § 3.1337, effective April 2, 2015; Acts 2019, 86th Leg., ch. 111 (S.B. 1234), § 2, effective May 22, 2019.

Subchapter B

Provisions Applicable to Facility Superintendent or Director

Section

551.021. Qualifications of Certain Superintendents [Repealed].
551.022. Powers and Duties of Superintendent.
551.0225. Powers and Duties of State Supported Living Center Director.
551.023. Reports from Superintendent [Repealed].
551.024. Superintendent's or Director's Duty to Admit Commissioner and Executive Commissioner.
551.025. Duty to Report Missing Patient or Client.
551.026. Person Performing Business Manager Function.

Sec. 551.021. Qualifications of Certain Superintendents [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 551.022. Powers and Duties of Superintendent.

(a) The superintendent of a department facility for persons with mental illness is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients;

(2) keep a register of all patients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with department rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' interest and welfare;

(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 17, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 20, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.0225. Powers and Duties of State Supported Living Center Director.

(a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

(1) oversee the admission and discharge of residents and clients;

(2) keep a register of all residents and clients admitted to or discharged from the center;

(3) ensure that the civil rights of residents and clients of the center are protected;

(4) ensure the health, safety, and general welfare of residents and clients of the center;

(5) supervise repairs and improvements to the center;

(6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 21, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.023. Reports from Superintendent [Repealed].

Repealed by Acts 1995, 74th Leg., ch. 821 (H.B. 2377), § 18, effective September 1, 1995.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 551.024. Superintendent's or Director's Duty to Admit Commissioner and Executive Commissioner.

(a) The superintendent or director shall admit into every part of the department facility the commissioner of that department and the executive commissioner.

(b) The superintendent or director shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner of that department or the executive commissioner.

(c) The superintendent or director shall give to the commissioner of that department or the executive commissioner any requested copy, abstract, or report.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.025. Duty to Report Missing Patient or Client.

If a person receiving inpatient intellectual disability services or court-ordered inpatient mental health services leaves a department facility without notifying the facility or without the facility's consent, the facility director or superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.026. Person Performing Business Manager Function.

(a) The person performing the function of business manager of a department facility is the chief disbursing officer of the department facility.

(b) The person performing the function of business manager of a department facility is directly responsible to the superintendent or director.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Subchapter C

Powers and Duties Relating to Patient or Client Care

Section
551.041. Medical and Dental Treatment.
551.042. Outpatient Clinics.
551.043. Mental Hygiene Clinic Service. [Deleted]
551.044. Occupational Therapy Programs.

Sec. 551.041. Medical and Dental Treatment.

(a) Each department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to that department's care. Each department may perform this duty through an authorized agent.

(b) Each department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing facility or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If a department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent or director of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three primary care providers, at least two of whom are physicians licensed by the Texas Medical Board; or

(2) dental treatment or services for the person on the advice and consent of two dentists licensed by the State Board of Dental Examiners and of one physician licensed by the Texas Medical Board.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

(e) For purposes of this section, "primary care provider" means a health care professional who provides health care services to a defined population of residents. The term includes a physician licensed by the Texas Medical Board, an advanced practice registered nurse licensed by the Texas Board of Nursing, and a physician assistant licensed by the Texas Physician Assistant Board.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015; Acts 2017, 85th Leg., ch. 437 (S.B. 1565), § 1, effective September 1, 2017.

Sec. 551.042. Outpatient Clinics.

(a) If funds are available, the Department of State Health Services may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b) As necessary to establish and operate the clinics:

(1) the department may:

(A) acquire facilities;

(B) hire personnel; and

(C) contract with persons, corporations, and local, state, and federal agencies; and

(2) the executive commissioner may adopt rules.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.043. Mental Hygiene Clinic Service. [Deleted]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.49, effective September 1, 1997; deleted by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

Sec. 551.044. Occupational Therapy Programs.

(a) Each department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent or director of a department facility may, in accordance with rules of that department, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the applicable department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' or clients' benefit fund, the patients' or clients' trust fund, or a revolving fund for use by the patients or clients. A patient or client may keep the finished product if the patient or client purchases the material for the product from the state.

(d) Each department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to the policy of that department.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1337, effective April 2, 2015.

CHAPTER 552

State Hospitals

Subchapter

A.	General Provisions
B.	Indigent and Nonindigent Patients
C.	Powers and Duties of Department Relating to State Hospitals
D.	Inspector General Duties
E.	State Hospital Operations

Subchapter A

General Provisions

Section

552.001.	Hospital Districts.
552.0011.	Definitions.
552.0012.	Study Regarding New Location for Austin State Hospital. [Expired]
552.002.	Carrying of Handgun by License Holder in State Hospital.

Sec. 552.001. Hospital Districts.

(a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

Sec. 552.0011. Definitions.

In this chapter:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.]

(2) "Department" means the Department of State Health Services.

(3) "Direct care employee" means a state hospital employee who provides direct delivery of services to a patient.

(4) "Direct supervision" means supervision of the employee by the employee's supervisor with the supervisor physically present and providing the employee with direction and assistance while the employee performs his or her duties.

(5) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.]

(6) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(7) "Patient" means an individual who is receiving voluntary or involuntary mental health services at a state hospital.

(8) "State hospital" means a hospital operated by the department primarily to provide inpatient care and treatment for persons with mental illness.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 2, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(104), effective April 2, 2015.

Sec. 552.0012. Study Regarding New Location for Austin State Hospital. [Expired]

HISTORY: Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.26, effective September 1, 2015; expired by Acts 2015, 84th Leg., ch. 837 (S.B. 200), § 2.26, effective September 1, 2017.

Sec. 552.002. Carrying of Handgun by License Holder in State Hospital.

(a) In this section:

(1) "License holder" has the meaning assigned by Section 46.03, Penal Code.

(2) "State hospital" means the following facilities:

(A) the Austin State Hospital;

(B) the Big Spring State Hospital;

(C) the El Paso Psychiatric Center;

(D) the Kerrville State Hospital;

(E) the Vernon State Hospital;

(F) the Rio Grande State Center;

(G) the Rusk State Hospital;

(H) the San Antonio State Hospital;

(I) the Terrell State Hospital;

(J) the Waco Center for Youth;

(K) the Wichita Falls State Hospital;

(L) the Panhandle State Hospital; and

(M) the Lubbock Psychiatric Center.

(3) "Written notice" means a sign that is posted on property and that:

(A) includes in both English and Spanish written language identical to the following: "Pursuant to Section 552.002, Health and Safety Code (carrying of handgun by license holder in state hospital), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun";

(B) appears in contrasting colors with block letters at least one inch in height; and

(C) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(b) A state hospital may prohibit a license holder from carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of the hospital by providing written notice.

(c) A license holder who carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of a state hospital at which written notice is provided is liable for a civil penalty in the amount of:

(1) $100 for the first violation; or

(2) $500 for the second or subsequent violation.

(d) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

HISTORY: Acts 2017, 85th Leg., ch. 1143 (H.B. 435), § 7, effective September 1, 2017; Acts 2021, 87th Leg., ch. 809 (H.B. 1927), § 12, effective September 1, 2021; 2025, 89th Leg., ch. 214 (H.B. 913), § 2, effective September 1, 2025.

Subchapter B

Indigent and Nonindigent Patients

Section

552.011. Definition [Repealed].
552.012. Classification and Definition of Patients.
552.013. Support of Indigent and Nonindigent Patients.
552.014. Child Support Payments for Benefit of Patient.
552.015. Investigation to Determine Means of Support.
552.016. Fees.
552.017. Sliding Fee Schedule.
552.018. Trust Principals.
552.019. Filing of Claims.
552.020. Application.
552.031. Security at San Antonio State Hospital [Repealed].
552.041. Austin State Hospital Annex [Repealed].

Sec. 552.011. Definition [Repealed].

Repealed by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 7, effective June 14, 2013.

Sec. 552.012. Classification and Definition of Patients.

(a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

(1) possesses no property;

(2) has no person legally responsible for the patient's support; and

(3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

(1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2) has a person legally responsible for the patient's support.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (), §.1, effective September 1, 1991.

Sec. 552.013. Support of Indigent and Nonindigent Patients.

(a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

(1) of the patient's spouse, if able to do so; or

(2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (), §.1, effective September 1, 1991.

Sec. 552.014. Child Support Payments for Benefit of Patient.

(a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1) the patient's parent fails to pay child support as required by the order; or

(2) the patient's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (), §.1, effective September 1, 1991.

Sec. 552.015. Investigation to Determine Means of Support.

(a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (), §.1, effective September 1, 1991.

Sec. 552.016. Fees.

(a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The executive commissioner may use the projected cost of providing inpatient services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish the maximum fee according to one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § . 1, effective. September. 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1338, effective April 2, 2015.

Sec. 552.017. Sliding Fee Schedule.

(a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The executive commissioner shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their current financial statement or most recent federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 278 (S.B. 605), § 1, effective June 5, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1339, effective April 2, 2015.

Sec. 552.018. Trust Principals.

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

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1020 (H.B. 1316), § 2, effective June 15, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1340, effective April 2, 2015; Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 8, effective September 1, 2019.

Sec. 552.019. Filing of Claims.

(a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment.

(b) On a sufficient showing, the court may enter judgment against the person responsible for the patient for the costs of the patient's support, maintenance, and treatment.

(c) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the superintendent of the hospital in which the patient is being treated, or has been treated, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section, "person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § . 1, effective. September. 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1341, effective April 2, 2015.

Sec. 552.020. Application.

Except as provided by Subchapter C, Chapter 73, Education Code, this subchapter does not apply to The University of Texas M. D. Anderson Cancer Center.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 3 (S.B. 192), § 4, effective September 1, 1995.

Sec. 552.031. Security at San Antonio State Hospital [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(1), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 552.041. Austin State Hospital Annex [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 3(1), effective May 31, 1997.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter C

Powers and Duties of Department Relating to State Hospitals

Section

552.051. Reports of Illegal Drug Use; Policy.
552.052. State Hospital Employee Training.
552.053. Information Management, Reporting, and Tracking System.
552.054. Risk Assessment Protocols.

Sec. 552.051. Reports of Illegal Drug Use; Policy.

The executive commissioner shall adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the superintendent of the state hospital.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.052. State Hospital Employee Training.

(a) Before a state hospital employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Upon completion of such training and instruction, the department shall evaluate the employee for competency. The department shall ensure the basic state hospital employee competency course focuses on:

(1) the uniqueness of the individuals the state hospital employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental illness; and

(3) the conduct expected of state hospital employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding topics relevant to providing care for individuals with mental illness, including:

(1) the general operation and layout of the state hospital at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental illness;

(3) an introduction to substance abuse;

(4) an introduction to dual diagnosis;

(5) the rights of individuals with mental illness who receive services from the department;

(6) respecting personal choices made by patients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental illness;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of state hospital employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each patient for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of patients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination; and

(7) trauma-informed care.

(d) In addition to the training required by Subsection (c), the department shall provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding:

(1) seizure safety;

(2) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(3) working with aging patients;

(4) assisting patients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(5) communicating with patients who use augmentative and alternative devices for communication;

(6) assisting patients with personal hygiene;

(7) recognizing appropriate food textures;

(8) using proper feeding techniques to assist patients with meals; and

(9) physical and nutritional management plans.

(e) The executive commissioner shall adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.053. Information Management, Reporting, and Tracking System.

The department shall develop an information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.054. Risk Assessment Protocols.

The department shall develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Subchapter D

Inspector General Duties

Section

552.101. Assisting Law Enforcement Agencies with Certain Investigations.
552.102. Summary Report.
552.103. Annual Status Report. [Effective until September 1, 2026]
552.103. Annual Status Report. [Effective September 1, 2026]
552.104. Retaliation Prohibited.

Sec. 552.101. Assisting Law Enforcement Agencies with Certain Investigations.

The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.124, effective January 1, 2025.

Sec. 552.102. Summary Report.

(a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(9) state auditor; and

(10) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.103. Annual Status Report. [Effective until September 1, 2026]

(a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual state hospital regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a state hospital employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) Family and Protective Services Council;

(6) governor;

(7) lieutenant governor;

(8) speaker of the house of representatives;

(9) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(10) state auditor; and

(11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Sec. 552.103. Annual Status Report. [Effective September 1, 2026]

(a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual state hospital regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a state hospital employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(9) state auditor; and

(10) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013; 2025, 89th Leg., ch. 541 (H.B. 140), § 2, effective September 1, 2026.

Sec. 552.104. Retaliation Prohibited.

The department or a state hospital may not retaliate against a department employee, a state hospital employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 395 (S.B. 152), § 3, effective June 14, 2013.

Subchapter E

State Hospital Operations

Section

552.151. Transition Planning for Contracted Operations of a Certain State Hospital.
552.152. Plan Requirements.
552.153. Report.
552.154. State Hospital Superintendent.

Sec. 552.151. Transition Planning for Contracted Operations of a Certain State Hospital.

The commission shall establish a plan under which the commission may contract with a local public institution of higher education to transfer the operations of Austin State Hospital from the commission to a local public institution of higher education.

HISTORY: Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

Sec. 552.152. Plan Requirements.

(a) In developing the plan, the commission shall:

(1) consult with local public institutions of higher education;

(2) establish procedures and policies to ensure that a local public institution of higher education that contracts with the commission to operate Austin State Hospital operates the hospital at a quality level at least equal to the quality level achieved by the commission; and

(3) establish procedures and policies to monitor the care of affected state hospital patients.

(b) The procedures and policies required to be established under Subsection (a) must ensure that the commission is able to obtain and maintain information on activities carried out under the contract without violating privacy or confidentiality rules. The procedures and policies must account for the commission obtaining and maintaining information on:

(1) client outcomes;

(2) individual and average lengths of stay, including computation of lengths of stay according to the number of days a patient is in the facility during each calendar year, regardless of discharge and readmission;

(3) the number of incidents in which patients were restrained or secluded;

(4) the number of incidents of serious assaults in the hospital setting; and

(5) the number of occurrences in the hospital setting involving contacts with law enforcement personnel.

HISTORY: Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

Sec. 552.153. Report.

Not later than September 1, 2020, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature a written report containing the plan and any recommendations for legislation or other actions necessary.

HISTORY: Acts 2019, 86th Leg., ch. 676 (S.B. 2111), § 1, effective September 1, 2019.

Sec. 552.154. State Hospital Superintendent.

The executive commissioner by rule shall require each state hospital to employ a superintendent.

HISTORY: 2025, 89th Leg., ch. 395 (S.B. 152), § 3, effective September 1, 2025.

CHAPTER 554

State Centers and Homes

Subchapter A

Waco Center for Youth

Section
554.0001. Definition.
554.001. Admission of Certain Juveniles.
554.002. Services.

Sec. 554.0001. Definition.

In this chapter, "department" means the Department of State Health Services.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1345, effective April 2, 2015.

Sec. 554.001. Admission of Certain Juveniles.

(a) The department shall designate state facilities for use as residential treatment facilities for emotionally disturbed juveniles who:

(1) have been admitted under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Department of Family and Protective Services and have been admitted under Subtitle C to a state facility designated by the department under this section.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 8.077, effective September 1, 1995; am. Acts 2011, 82nd Leg., ch. 427 (S.B. 957), § 1, effective June 17, 2011; 2025, 89th Leg., H.B. 109, § 2, effective September 1, 2025.

Sec. 554.002. Services.

(a) The department shall provide without charge appropriate education services for all clients residing at state facilities designated by the department under Section 554.001.

(b) The department shall pay for the services described by Subsection (a) from funds appropriated for that purpose.

(c) A client of a state facility designated by the department under Section 554.001 who is not a resident of the school district that serves the geographical area in which the facility is located may receive education services from the district only with the prior approval of the superintendent of the district.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, Sec. 1, effective September 1, 1991; 2025, 89th Leg., ch. 367 (H.B. 109), § 3, effective September 1, 2025.

CHAPTER 555

State Supported Living Centers

Subchapter
A. General Provisions
B. Powers and Duties
C. Office of Independent Ombudsman for State Supported Living Centers
D. Inspector General Duties
E. Electronic Monitoring of Resident's Room
F. Right to Essential Caregiver Visits

Subchapter A

General Provisions

Section
555.001. Definitions.
555.002. Forensic State Supported Living Centers.
555.003. Determination of High-Risk Alleged Offender Status.

Sec. 555.001. Definitions.

In this chapter:

(1) "Alleged offender resident" means a person with an intellectual disability who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-IID component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-IID component of the Rio Grande State Center.

(4) "Client" means a person with an intellectual disability who receives ICF-IID services from a state supported living center or the ICF-IID component of the Rio Grande State Center.

(5) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(107), effective April 2, 2015.]

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-IID component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(107), effective April 2, 2015.]

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(10-a) "ICF-IID" has the meaning assigned by Section 531.002.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with an intellectual disability who resides in a state supported living center or the ICF-IID component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1346, 3.1639(107), effective April 2, 2015.

Sec. 555.002. Forensic State Supported Living Centers.

(a) The department shall designate separate forensic state supported living centers for the care of high-risk alleged offender residents. The department shall designate the Mexia and San Angelo State Supported Living Centers for this purpose.

(b) In establishing the forensic state supported living centers, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to a forensic state supported living center;

(2) place high-risk alleged offender residents in appropriate homes at a forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in a forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from a forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of a forensic state supported living center.

(c) An alleged offender resident committed to a forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that each forensic state supported living center:

(1) complies with the requirements for ICF-IID certification under the Medicaid program, as appropriate; and

(2) has a sufficient number of center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Juvenile Justice Department or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1347, effective April 2, 2015; Acts 2017, 85th Leg., ch. 207 (S.B. 1300), §§ 1, 2, effective September 1, 2017.

Sec. 555.003. Determination of High-Risk Alleged Offender Status.

(a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported

living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

(1) the department;

(2) the director of the state supported living center;

(3) the independent ombudsman;

(4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and

(5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Subchapter B

Powers and Duties

Section

555.021. Required Criminal History Checks for Employees, Contractors, and Volunteers.
555.022. Drug Testing; Policy.
555.023. Reports of Illegal Drug Use; Policy.
555.024. Center Employee Training.
555.025. Video Surveillance.
555.026. Drinking Water Quality: Texas Commission on Environmental Quality Guidance on Lead and Copper Testing.
555.027. Anatomical Gift.

Sec. 555.021. Required Criminal History Checks for Employees, Contractors, and Volunteers.

(a) The department, the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency;

(D) an applicant for a volunteer position with the agency;

(E) an applicant for a contract with the agency; or

(F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 1027 (H.B. 2673), § 10, effective June 14, 2013.

Sec. 555.022. Drug Testing; Policy.

(a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.023. Reports of Illegal Drug Use; Policy.

The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.024. Center Employee Training.

(a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with an intellectual disability; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with an intellectual disability who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with an intellectual disability;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of residents and clients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination;

(7) seizure safety;

(8) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(9) working with aging residents and clients;

(10) assisting residents and clients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(11) communicating with residents and clients who use augmentative and alternative devices for communication;

(12) assisting residents and clients with personal hygiene;

(13) recognizing appropriate food textures;

(14) using proper feeding techniques to assist residents and clients with meals;

(15) physical and nutritional management plans; and

(16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an ICF-IID licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with an intellectual disability to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1348, effective April 2, 2015.

Sec. 555.025. Video Surveillance.

(a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

(1) a bedroom;

(2) a bathroom;

(3) a place in which a resident or client receives medical or nursing services;

(4) a place in which a resident or client meets privately with visitors; or

(5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-IID certification.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 184

(S.B. 33), § 1, effective May 25, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1349, effective April 2, 2015.

Sec. 555.026. Drinking Water Quality: Texas Commission on Environmental Quality Guidance on Lead and Copper Testing.

To ensure the quality of water provided by public drinking water supply systems to state supported living centers, the department or its successor agency, with guidance from the Texas Commission on Environmental Quality, shall:

(1) develop:

(A) a testing plan and monitoring strategy;

(B) outreach and educational materials for distribution to residents and department staff;

(C) requirements for using an accredited laboratory and sample chain of custody procedures; and

(D) guidance for compliance with the federal lead and copper rules (40 C.F.R. Part 141, Subpart I);

(2) review:

(A) public notification procedures to staff, residents, and visitors regarding water quality;

(B) sampling protocols and procedures;

(C) locations of taps used for monitoring;

(D) analytical data on lead or copper levels exceeding the applicable action level;

(E) remediation activities; and

(F) customer service inspection reports;

(3) compile a list of qualified customer service inspectors; and

(4) perform:

(A) on-site training and evaluation of sampling; and

(B) on-site evaluation of customer service inspections through licensed customer service inspectors.

HISTORY: Acts 2017, 85th Leg., ch. 559 (S.B. 546), § 1, effective June 9, 2017.

Sec. 555.027. Anatomical Gift.

(a) The executive commissioner by rule shall prescribe a form that a resident's guardian may sign on behalf of a resident if the resident's guardian elects to make an anatomical gift on behalf of the resident in accordance with Chapter 692A.

(b) Subsection (a) does not preclude a guardian from executing a document in accordance with Chapter 692A that supersedes the form executed under that subsection.

HISTORY: Acts 2019, 86th Leg., ch. 843 (H.B. 2734), § 1, effective September 1, 2019.

Subchapter C

Office of Independent Ombudsman for State Supported Living Centers

Section
555.051. Establishment; Purpose.
555.052. Independence.
555.053. Appointment of Independent Ombudsman.
555.054. Assistant Ombudsmen.
555.055. Conflict of Interest.
555.056. Report.
555.057. Communication and Confidentiality.
555.058. Promotion of Awareness of Office.
555.059. Duties and Powers.
555.060. Retaliation Prohibited.
555.061. Toll-Free Number.

Sec. 555.051. Establishment; Purpose.

The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1350, effective April 2, 2015.

Sec. 555.052. Independence.

The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.053. Appointment of Independent Ombudsman.

(a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual disability.

(c) A person appointed as independent ombudsman may be reappointed.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; am. Acts 2013, 83rd Leg., ch. 573 (S.B. 747), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1351, effective April 2, 2015.

Sec. 555.054. Assistant Ombudsmen.

(a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual disability.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1352, effective April 2, 2015.

Sec. 555.055. Conflict of Interest.

A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.056. Report.

(a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation; or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.057. Communication and Confidentiality.

(a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-IID standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1353, effective April 2, 2015.

Sec. 555.058. Promotion of Awareness of Office.

The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

(1) how the office may be contacted;

(2) the purpose of the office; and

(3) the services the office provides.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.059. Duties and Powers.

(a) The independent ombudsman shall:

(1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1354, effective April 2, 2015.

Sec. 555.060. Retaliation Prohibited.

The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Sec. 555.061. Toll-Free Number.

(a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Subchapter D

Inspector General Duties

Section

555.101. Assisting Law Enforcement Agencies with Certain Investigations.
555.102. Summary Report.
555.103. Annual Status Report.
555.104. Retaliation Prohibited.

Sec. 555.101. Assisting Law Enforcement Agencies with Certain Investigations.

The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged

criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.125, effective January 1, 2025.

Sec. 555.102. Summary Report.

(a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor;

(7) independent ombudsman and the assistant ombudsman for the center involved in the report; and

(8) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.33, effective September 1, 2019.

Sec. 555.103. Annual Status Report.

(a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor; and

(7) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009; Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.34, effective September 1, 2019.

Sec. 555.104. Retaliation Prohibited.

The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 22, effective June 11, 2009.

Subchapter E

Electronic Monitoring of Resident's Room

Section	
555.151.	Definitions.
555.152.	Criminal and Civil Liability.
555.153.	Covert Use of Electronic Monitoring Device; Liability of Department or Center.
555.154.	Required Form on Admission.
555.155.	Authorized Electronic Monitoring: Who May Request.
555.156.	Authorized Electronic Monitoring: Form of Request; Consent of Other Residents in Room.
555.157.	Authorized Electronic Monitoring: General Provisions.
555.158.	Reporting Abuse, Neglect, or Exploitation.
555.159.	Use of Tape or Recording by Agency or Court.
555.160.	Notice at Entrance to Center.
555.161.	Enforcement.
555.162.	Interference with Device; Criminal Penalty.

Sec. 555.151. Definitions.

In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013; Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 3.14, effective January 1, 2019.

Sec. 555.152. Criminal and Civil Liability.

(a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in a resident's room.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in a resident's room or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Article 18A.001, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013; Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 3.15, effective January 1, 2019.

Sec. 555.153. Covert Use of Electronic Monitoring Device; Liability of Department or Center.

(a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

(1) the placement and use of the device are not open and obvious; and

(2) the center and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.154. Required Form on Admission.

The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in a resident's room or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.155. Authorized Electronic Monitoring: Who May Request.

(a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist centers, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.156. Authorized Electronic Monitoring: Form of Request; Consent of Other Residents in Room.

(a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

(1) release the center from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the executive commissioner, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 555.155(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the executive commissioner under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in a resident's room and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the center; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.157. Authorized Electronic Monitoring: General Provisions.

(a) A center shall permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) The center shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) A center may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.158. Reporting Abuse, Neglect, or Exploitation.

(a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

(1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and

(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.159. Use of Tape or Recording by Agency or Court.

(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.160. Notice at Entrance to Center.

Each center shall post a notice at the entrance to the center stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.161. Enforcement.

The department may impose appropriate sanctions under this chapter on a director of a center who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the center because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Sec. 555.162. Interference with Device; Criminal Penalty.

(a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 184 (S.B. 33), § 2, effective May 25, 2013.

Subchapter F

Right to Essential Caregiver Visits

Section
555.201. Definition.
555.202. Resident's Right to Essential Caregiver Visits.

Sec. 555.201. Definition.

In this chapter, "essential caregiver" means a family member, friend, guardian, or other individual selected by

a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

HISTORY: Acts 2021, 87th Leg., ch. 531 (S.B. 25), § 3, effective September 1, 2021.

Sec. 555.202. Resident's Right to Essential Caregiver Visits.

(a) A resident of a state supported living center, the resident's guardian, or the resident's legally authorized representative has the right to designate an essential caregiver with whom the center may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist state supported living centers in establishing essential caregiver visitation policies and procedures. The guidelines must require the centers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the center's safety protocols and any other rules adopted under this section.

(c) A state supported living center may revoke an individual's designation as an essential caregiver if the essential caregiver violates the center's safety protocols or rules adopted under this section. If a state supported living center revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a state supported living center for an essential caregiver under this section may not be more stringent than safety protocols for center staff.

(e) A state supported living center may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the state supported living center's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A state supported living center may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a period that exceeds seven days, and a state supported living center must separately request each extension. A state supported living center may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a state supported living center may not require an essential caregiver to provide necessary care.

HISTORY: Acts 2021, 87th Leg., ch. 531 (S.B. 25), § 3, effective September 1, 2021.

SUBTITLE C

TEXAS MENTAL HEALTH CODE

Chapter

571. General Provisions
572. Voluntary Mental Health Services
573. Emergency Detention
574. Court-ordered Mental Health Services
575. Admission and Transfer Procedures for Inpatient Services
576. Rights of Patients
577. Private Mental Hospitals and Other Mental Health Facilities
577A. Psychiatric Residential Youth Treatment Facilities
578. Electroconvulsive and Other Therapies

CHAPTER 571

General Provisions

Section

571.001. Short Title.
571.002. Purpose.
571.003. Definitions.
571.004. Least Restrictive Appropriate Setting.
571.005. Texas Mental Health Code Information Program.
571.006. Executive Commissioner and Department Powers.
571.0065. Treatment Methods.
571.0066. Prescription Medication Information.
571.0067. Restraint and Seclusion.
571.007. Delegation of Powers and Duties.

Sec. 571.001. Short Title.

This subtitle may be cited as the Texas Mental Health Code.

Sec. 571.002. Purpose.

The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

(1) facilitating treatment in an appropriate setting;

(2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;

(3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;

(4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;

(5) defining the criteria the state must meet to order involuntary care and treatment;

(6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;

(7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and

(8) safeguarding the rights of the person who voluntarily requests inpatient care.

Sec. 571.003. Definitions.

In this subtitle:

(1) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), 3.1639(108), effective April 2, 2015.]

(2) "Commissioner" means the commissioner of state health services.

(3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.

(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5) "Department" means the Department of State Health Services.

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

(6) "Facility administrator" means the individual in charge of a mental health facility.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat persons who are physically ill.

(8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the department;

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

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

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center;

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or

(D) with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

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

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

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

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state;

(E) a licensed marriage and family therapist licensed to practice in this state; or

(F) a physician assistant licensed to practice in this state who has expertise in psychiatry or is currently working in a mental health facility.

(16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) [Repealed by Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 19, effective September 1, 2001.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.01, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(15), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 500 (S.B. 1057), § 2, effective May 31, 1997; am. Acts 1999, 76th Leg., ch. 75 (H.B. 677), § 1, effective May 12, 1999; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 2, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 722 (S.B. 684), § 1, effective June 13, 2001; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), §§ 4, 19, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 892 (S.B. 810), § 27, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 169 (S.B. 1889), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1355, 3.1639(108), effective April 2, 2015; Acts 2021, 87th Leg., ch. 335 (H.B. 2093), § 1, effective September 1, 2021.

Sec. 571.004. Least Restrictive Appropriate Setting.

The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1) is available;

(2) provides the patient with the greatest probability of improvement or cure; and

(3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective Sept. 1, 1991.

Sec. 571.005. Texas Mental Health Code Information Program.

(a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § 1, effective Sept. 1, 1991.

Sec. 571.006. Executive Commissioner and Department Powers.

(a) The executive commissioner may adopt rules as necessary for the proper and efficient treatment of persons with mental illness.

(b) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(2) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(3) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(4) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76, § . 1, effective. September. 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1356, effective April 2, 2015.

Sec. 571.0065. Treatment Methods.

(a) The executive commissioner by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the department.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the executive commissioner.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 3.01(a), effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 1, effective May 31, 1997; am. Acts 2011, 82nd Leg., ch. 1050 (S.B. 71), § 22(14), effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1083 (S.B. 1179), § 25(98), effective June 17, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1357, effective April 2, 2015.

Sec. 571.0066. Prescription Medication Information.

(a) The executive commissioner by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(32), effective September 1, 1995 (renumbered from Sec. 571.0065); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1358, effective April 2, 2015.

Sec. 571.0067. Restraint and Seclusion.

A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 698 (S.B. 325), § 6, effective September 1, 2005.

Sec. 571.007. Delegation of Powers and Duties.

(a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

CHAPTER 572

Voluntary Mental Health Services

Section

572.001. Request for Admission.
572.002. Admission.
572.0022. Information on Medications.
572.0025. Intake, Assessment, and Admission.
572.0026. Voluntary Admission Restrictions.
572.003. Rights of Patients.
572.004. Discharge.
572.005. Application for Court-Ordered Treatment.
572.0051. Transportation of Patient to Another State.

Sec. 572.001. Request for Admission.

(a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. Subject to Subsection (c-1), the parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) A person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, may request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. The petitioner for temporary authorization may be represented by the county attorney or district attorney.

(a-2) Except as provided by Subsection (c-1), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age to an inpatient mental health facility only as provided by Subsection (c-2) or pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, Chapter 55, Family Code, or department rule.

(c-2) The Department of Family and Protective Services may request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

(1) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(2) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and Protective Services shall provide notice of the significant event:

(1) in accordance with that section to all parties entitled to notice under that section; and

(2) to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.

(c-4) The Department of Family and Protective Services periodically shall review the need for continued inpatient treatment of a minor admitted to an inpatient mental health facility under Subsection (c-2). If following the review that department determines there is no longer a need for continued inpatient treatment, that department shall notify the facility administrator designated to detain the minor that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

(1) the person's discharge; or

(2) the period prescribed by Section 572.004.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.01, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 393 (H.B. 2094), § 1, effective August 28, 1995; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 1, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 2, effective June 14, 2013; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 41, effective September 1, 2018; Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 2, effective September 1, 2019.

Sec. 572.002. Admission.

The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is 16 years of age or older; or

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 393 (H.B. 2094), § 2, effective August 28, 1995; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 2, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 3, effective June 14, 2013.

Sec. 572.0022. Information on Medications.

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.03(a), effective May 1, 1994; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 2, effective May 27, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1363, effective April 2, 2015.

Sec. 572.0025. Intake, Assessment, and Admission.

(a) The executive commissioner shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with department rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(f-1) A person who is admitted to a facility before the performance of the physical and psychiatric examination required by Subsection (f) must be discharged by the physician immediately if the physician conducting the physical and psychiatric examination determines the person does not meet the clinical standards to receive inpatient mental health services.

(f-2) A facility that discharges a patient under the circumstances described by Subsection (f-1) may not bill the patient or the patient's third-party payor for the temporary admission of the patient to the inpatient mental health facility.

(f-3) Section 572.001(c-2) applies to the admission of a minor in the managing conservatorship of the Department of Family and Protective Services to an inpatient mental health facility.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.03, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 422 (S.B. 513), § 1, effective June 9, 1995; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.83, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1364, effective April 2, 2015; Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 3, effective September 1, 2019.

Sec. 572.0026. Voluntary Admission Restrictions.

The facility administrator of an inpatient mental health facility or the administrator's designee may only approve the admission of a person for whom a proper request for voluntary inpatient services is filed if, at the time the request is filed, there is available space at the inpatient mental health facility.

HISTORY: Acts 2023, 88th Leg., ch. 1035 (S.B. 26), § 7, effective September 1, 2023.

Sec. 572.003. Rights of Patients.

(a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

(1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and

(2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The executive commissioner by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.02, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 3, effective June 20, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1365, effective April 2, 2015.

Sec. 572.004. Discharge.

(a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1) a written withdrawal of the request for discharge is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient dis-

charged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

(h) The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.46, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.02, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 1000 (H.B. 21), § 4, effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 48 (H.B. 224), § 1, effective May 17, 2005.

Sec. 572.005. Application for Court-Ordered Treatment.

(a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1) a request for release of the patient has been filed with the facility administrator; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered mental health services and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary psychiatric treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.04, effective August 30, 1993.

Sec. 572.0051. Transportation of Patient to Another State.

A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 566 (S.B. 718), § 4, effective June 14, 2013.

CHAPTER 573

Emergency Detention

Subchapter
A. Apprehension By Peace Officer or Transportation for Emergency Detention By Guardian
B. Judge's or Magistrate's Order for Emergency Apprehension and Detention
C. Emergency Detention, Release, and Rights

Subchapter A

Apprehension By Peace Officer or Transportation for Emergency Detention By Guardian

Section
573.0001. Definitions.
573.001. Apprehension by Peace Officer Without Warrant.
573.002. Peace Officer's Notification of Emergency Detention.
573.0021. Duty of Peace Officer to Notify Probate Courts.
573.003. Transportation for Emergency Detention by Guardian.
573.004. Guardian's Application for Emergency Detention.
573.005. Transportation for Emergency Detention by Emergency Medical Services Provider; Memorandum of Understanding.

Sec. 573.0001. Definitions.

In this chapter:

(1) "Emergency medical services personnel" and "emergency medical services provider" have the meanings assigned by Section 773.003.

(2) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

HISTORY: Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 1, effective June 9, 2017.

Sec. 573.001. Apprehension by Peace Officer Without Warrant.

(a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer has reason to believe and does believe that:

(1) the person is a person with mental illness and because of that mental illness:

(A) there is a substantial risk of serious harm to the person or to others;

(B) the person evidences severe emotional distress and deterioration in the person's mental condition; or

(C) the person evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person; and

(3) there is not sufficient time to obtain a warrant before taking the person into custody.

(b) [Repealed.]

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately:

(1) transport the apprehended person to:

(A) the nearest appropriate inpatient mental health facility; or

(B) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or

(2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

(h) 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.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 5, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 776 (S.B. 1189), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1366, effective April 2, 2015; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(33), effective September 1, 2015; Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 2, effective June 9, 2017; Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 4, effective September 1, 2019; 2025, 89th Leg., ch. 800 (S.B. 1164), §§ 1, 12(1), effective September 1, 2025.

Sec. 573.002. Peace Officer's Notification of Emergency Detention.

(a) A peace officer shall immediately file with a facility a notification of emergency detention after transporting a person to that facility in accordance with Section 573.001. Emergency medical services personnel of an emergency medical services provider who transport a person to a facility at the request of a peace officer made in accordance with a memorandum of understanding executed under Section 573.005 shall immediately file with the facility the notification of emergency detention completed by the peace officer who made the request.

(b) The notification of emergency detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(5) a detailed description of the specific behavior, acts, attempts, or threats; and

(6) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person's clinical file the notification of emergency detention described by this section.

(d) The peace officer shall provide the notification of emergency detention in substantially the following form:

Notification—Emergency Detention

NO. _____

DATE: _____ TIME: _____

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF: _____

DOB: _____

RACE: _____

GENDER: _____

PHONE NUMBER: _____

ADDRESS: _____

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____, of the State of Texas, and states as follows:

I have reason to believe and do believe that (name of person to be detained) _____ evidences mental illness;

I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based on the person's behavior or evidence the person is experiencing severe emotional distress and deterioration to the extent the person cannot remain at liberty; and

I have reason to believe and do believe that the risk of harm is imminent unless the above-named person is immediately restrained.

1. My above-stated beliefs are based upon the following recent behavior, severe emotional distress and deterioration, overt acts, attempts, statements, or threats observed by me or reliably reported to me (may use attachments to report additional information):

_____

_____

_____

_____

2. The names, addresses, phone numbers, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

_____

_____

_____

_____

ADULT 65 YEARS OF AGE OR OLDER? ☐ YES ☐ NO
If yes, age: _____
CHILD 17 YEARS OF AGE OR YOUNGER? ☐ YES ☐ NO
If yes, age: _____

FOR A CHILD 17 YEARS OF AGE OR YOUNGER (if yes): My belief the child is at risk of imminent serious harm unless immediately removed from the parents' custody is based on the above-stated facts showing the parents or guardians are presently unable to protect the child from imminent serious harm. I provided notice to the child's parents or guardians of my intention to file this notification. I was not able to provide notice to the child's parents or guardians of my intention to file this notification because: _____

Parent/Guardian Contact Information: _____

USE OF RESTRAINT

Was the person physically restrained in any way?
Yes ☐ No ☐
If yes, reason for physical restraint?
☐ Officer Safety ☐ Person's Safety
☐ Other _____
CALL ORIGINATED AT:
☐ Public Area ☐ Residence ☐ School/University
☐ Group Home ☐ Hospital
☐ Other _____

OBSERVATIONS/HISTORY

If YES to any question below, provide additional information:

	YES	NO	UNKNOWN	NOTES
Harm to self or stating an intention to harm self?				
Previous attempt to commit suicide?				
Harm to others or stating an intention to harm others?				
Previous serious harm or injury to others?				
Previous psychiatric hospital treatment?				
Reported mental health diagnosis?				
Prescribed psychiatric medications?				
Current psychiatric medications taken?				
Sleeping difficulty?				
Substance use disorder?				

TRANSPORTED TO:
☐ Hospital/Emergency Room
☐ Mental Health Facility
☐ Other _____

For the above reasons, I present this notification to seek temporary admission to the (name of facility)

_____

inpatient mental health facility or hospital facility for the detention of (name of person to be detained)

_____

on an emergency basis.

PEACE OFFICER'S PRINTED NAME:

_____

BADGE NO. _____
PEACE OFFICER'S SIGNATURE: _____
Address: _____
Zip Code: _____
Telephone: _____

SIGNATURE OF EMERGENCY MEDICAL SERVICES PERSONNEL (if applicable):

_____

PRINTED NAME OF PERSONNEL: _____
Address: _____
Zip Code: _____
Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, Health and Safety Code.

(f) A peace officer who transports an apprehended person to a facility under Section 573.001(d)(1) or emergency medical services personnel of an emergency medical services provider who transports a person to a facility under Section 573.001(d)(2):

(1) is not required to remain at the facility while the apprehended person is medically screened or treated or while the person's insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate facility staff; and

(B) the notification of emergency detention required by this section is provided to the facility.

(e) A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001 and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 2, effective September 1, 2013; Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 3, effective June 9, 2017; 2025, 89th Leg., ch. 800 (S.B. 1164), §§ 2, 3, effective September 1, 2025.

Sec. 573.0021. Duty of Peace Officer to Notify Probate Courts.

As soon as practicable, but not later than the first working day after the date a peace officer takes a person

who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

HISTORY: Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 13, effective September 1, 2017.

Sec. 573.003. Transportation for Emergency Detention by Guardian.

(a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is a person with mental illness and because of that mental illness:

(A) there is a substantial risk of serious harm to the ward or to others;

(B) the ward evidences severe emotional distress and deterioration in the ward's mental condition; or

(C) the ward evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and

(2) the ward is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

(b) [Repealed.]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 6, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1367, effective April 2, 2015; 2025, 89th Leg., S.B. 1164, §§ 4, 12, effective September 1, 2025.

Sec. 573.004. Guardian's Application for Emergency Detention.

(a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;

(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;

(3) a specific description of the risk of harm;

(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;

(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 6, effective September 1, 2003.

Sec. 573.005. Transportation for Emergency Detention by Emergency Medical Services Provider; Memorandum of Understanding.

(a) A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

(b) A memorandum of understanding must:

(1) address responsibility for the cost of transporting the person taken into custody; and

(2) be approved by the county in which the law enforcement agency is located and the local mental health authority that provides services in that county with respect to provisions of the memorandum that address the responsibility for the cost of transporting the person.

(c) A peace officer may request that emergency medical services personnel transport a person taken into custody by the officer under Section 573.001 only if:

(1) the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section; and

(2) the officer determines that transferring the person for transport is safe for both the person and the personnel.

(d) Emergency medical services personnel may, at the request of a peace officer, transport a person taken into custody by the officer under Section 573.001 to the appropriate facility, as provided by that section, if the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section.

(e) A peace officer who transfers a person to emergency medical services personnel under a memorandum of understanding executed under this section for transport to the appropriate facility must provide:

(1) to the person the notice described by Section 573.001(g); and

(2) to the personnel a completed notification of detention about the person on the form provided by Section 573.002(d).

HISTORY: Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 4, effective June 9, 2017.

Subchapter B

Judge's or Magistrate's Order for Emergency Apprehension and Detention

Section
573.011. Application for Emergency Detention.
573.012. Issuance of Warrant.

Sec. 573.011. Application for Emergency Detention.

(a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 573.012. Issuance of Warrant.

(a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsections (g) and (h), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness and because of that mental illness the person evidences:

(A) a substantial risk of serious harm to himself or others;

(B) severe emotional distress and deterioration in the person's mental condition; or

(C) an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) [Repealed.]

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(d-1) A peace officer who transports an apprehended person to a facility in accordance with this section:

(1) is not required to remain at the facility while the person is medically screened or treated or while the person's insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate facility staff; and

(B) the peace officer provides to the facility the required documentation.

(e) A person apprehended under this section who is not physically located in a mental health facility at the time the warrant is issued under Subsection (h-1) shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

(h) A judge or magistrate shall permit an applicant who is a physician or a licensed mental health professional employed by 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) another 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.

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

(1) a judge or magistrate transmits a warrant to the facility under Subsection (h-1) for the detention of the person; and

(2) the person is not under an order under this chapter or Chapter 574.

(h-3) The Office of Court Administration of the Texas Judicial System shall develop and implement a process for an applicant for emergency detention to electronically present the application under Subsection (h) and for a judge or magistrate to electronically transmit a warrant under Subsection (h-1).

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed

patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 15 (H.B. 7), § 5.19, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 243 (H.B. 2093), § 3, effective August 28, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 6, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1145 (S.B. 778), § 1, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 510 (H.B. 1829), § 1, effective September 1, 2011; Acts 2023, 88th Leg., ch. 982 (S.B. 2479), § 3, effective September 1, 2023; Acts 2023, 88th Leg., ch. 939 (S.B. 1624), § 18, effective September 1, 2023; 2025, 89th Leg., ch. 800 (S.B. 1164), §§ 5, 12(c), effective September 1, 2025.

Subchapter C

Emergency Detention, Release, and Rights

Section

573.021. Preliminary Examination.
573.022. Emergency Admission and Detention.
573.023. Release from Emergency Detention.
573.024. Transportation After Release.
573.025. Rights of Persons Apprehended, Detained, or Transported for Emergency Detention.
573.026. Transportation After Detention.

Sec. 573.021. Preliminary Examination.

(a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a).

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 623 (S.B. 1588), § 1, effective June 11, 2001; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 7, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 202 (H.B. 518), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 333 (H.B. 888), § 1, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 3, effective September 1, 2013; Acts 2017, 85th Leg., ch. 541 (S.B. 344), § 5, effective June 9, 2017.

Sec. 573.022. Emergency Admission and Detention.

(a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1) is acceptable to the facility;

(2) states after a preliminary examination it is the physician's opinion that:

(A) the person is a person with mental illness and because of that mental illness the person evidences:

(i) a substantial risk of serious harm to the person or to others;

(ii) severe emotional distress and deterioration in the person's mental condition; or

(iii) an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(B) the described risk of harm is imminent unless the person is immediately restrained; and

(C) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 842 (H.B. 1797), § 1, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 7, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 510 (H.B. 1829), § 2, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1368,

effective April 2, 2015; 2025, 89th Leg., ch. 800 (S.B. 1164), § 6, effective September 1, 2025.

Sec. 573.023. Release from Emergency Detention.

(a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(a)(2) no longer applies.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 8, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1369, effective April 2, 2015.

Sec. 573.024. Transportation After Release.

(a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 9, effective September 1, 2003.

Sec. 573.025. Rights of Persons Apprehended, Detained, or Transported for Emergency Detention.

(a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;

(4) to be released from a facility as provided by Section 573.023;

(5) to be advised that communications with a mental health professional may be used in proceedings for further detention;

(6) to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 10, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 318 (H.B. 1738), § 4, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1370, effective April 2, 2015.

Sec. 573.026. Transportation After Detention.

A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 3, effective September 1, 1999.

CHAPTER 574

Court-ordered Mental Health Services

Subchapter

A. Application for Commitment and Prehearing Procedures
B. Protective Custody
C. Proceedings for Court-ordered Mental Health Services
D. Designation of Facility and Transportation of Patient
E. Post-commitment Proceedings
F. Furlough, Discharge, and Termination of Court-ordered Mental Health Services
G. Administration of Medication to Patient Under Court Order for Mental Health Services
H. Voluntary Admission for Certain Persons for Whom Motion for Court-ordered Services Has Been Filed
I. Use of Video Technology at Proceedings

Subchapter A

Application for Commitment and Prehearing Procedures

Section

574.001. Application for Court-Ordered Mental Health Services.
574.002. Form of Application.
574.003. Appointment of Attorney.
574.004. Duties of Attorney.
574.005. Setting on Application.
574.006. Notice.
574.007. Disclosure of Information.
574.008. Court Jurisdiction and Transfer.

Section
574.0085. Associate Judges.
574.009. Requirement of Medical Examination.
574.010. Independent Psychiatric Evaluation and Expert Testimony.
574.011. Certificate of Medical Examination for Mental Illness.
574.012. Recommendation for Treatment.
574.0125. Identification of Person Responsible for Court-Ordered Outpatient Mental Health Services.
574.013. Liberty Pending Hearing.
574.014. Compilation of Mental Health Commitment Records.

Sec. 574.001. Application for Court-Ordered Mental Health Services.

(a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is located at the time the application is filed;

(3) was apprehended under Chapter 573; or

(4) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 4, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 38, effective June 19, 1997; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 10, effective January 1, 2004; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1371, effective April 2, 2015; 2025, 89th Leg., h. 800 (S.B. 1164), § 7, effective September 1, 2025.

Sec. 574.002. Form of Application.

(a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, 574.035, or 574.0355 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 11, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 166 (S.B. 118), § 2, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1372, effective April 2, 2015; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 8, effective September 1, 2019.

Sec. 574.003. Appointment of Attorney.

(a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.004. Duties of Attorney.

(a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed

patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

(1) the application is dismissed;

(2) an appeal from an order directing treatment is taken;

(3) the time for giving notice of appeal expires by operation of law; or

(4) another attorney assumes responsibility for the case.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.005. Setting on Application.

(a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.006. Notice.

(a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

(1) parent, if the proposed patient is a minor;

(2) appointed guardian, if the proposed patient is the subject of a guardianship; or

(3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any material issue, without regard to whether such evidence is on behalf of the state or of the proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 623 (H.B. 1495), § 1, effective August 28, 1995.

Sec. 574.007. Disclosure of Information.

(a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;

(2) the reasons voluntary outpatient services are not considered appropriate for the proposed patient;

(3) the name, address, and telephone number of each witness who may testify at the hearing;

(4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and

(5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

(1) orally and in the presence of the court; or

(2) in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 1, effective September 1, 1997.

Sec. 574.008. Court Jurisdiction and Transfer.

(a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended inpatient mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 5, effective June 16, 1995.

Sec. 574.0085. Associate Judges.

(a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioners court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioners courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the

associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(*l*) An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.47, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 6, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 7.45, effective September 1, 1997; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 3, effective September 1, 2009.

Sec. 574.009. Requirement of Medical Examination.

(a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for mental illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.48, effective August 30, 1993.

Sec. 574.010. Independent Psychiatric Evaluation and Expert Testimony.

(a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.011. Certificate of Medical Examination for Mental Illness.

(a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined person's physical and mental condition;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined person is a person with mental illness; and

(B) as a result of that illness the examined person is likely to cause serious harm to the person or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) not able to make a rational and informed decision as to whether to submit to treatment.

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 2, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1373, effective April 2, 2015; 2025, 89th Leg., ch. 800 (S.B. 1164), § 8, effective September 1, 2025; 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 11B.01, effective September 17, 2025.

Sec. 574.012. Recommendation for Treatment.

(a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 3, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 8, effective September 1, 2001.

Sec. 574.0125. Identification of Person Responsible for Court-Ordered Outpatient Mental Health Services.

Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge intends to designate to be responsible for those services under Section 574.037.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 1, effective September 1, 2013.

Sec. 574.013. Liberty Pending Hearing.

The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.014. Compilation of Mental Health Commitment Records.

(a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Office of Court Administration shall make the reported information available to the Health and Human Services Commission annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 4, effective September 1, 1997; Acts 2019, 86th Leg., ch. 573 (S.B. 241), § 1.35, effective September 1, 2019.

Subchapter B

Protective Custody

Section
574.021. Motion for Order of Protective Custody.
574.022. Issuance of Order.
574.023. Apprehension Under Order.
574.024. Appointment of Attorney.
574.025. Probable Cause Hearing.
574.026. Order for Continued Detention.
574.027. Detention in Protective Custody.
574.028. Release from Detention.

Sec. 574.021. Motion for Order of Protective Custody.

(a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1278 (S.B. 1767), § 1, effective June 15, 2001; am. Acts 2007, 80th Leg., ch. 202 (H.B. 518), § 2, effective September 1, 2007.

Sec. 574.022. Issuance of Order.

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion

that the proposed patient is a person with mental illness; and

(2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1374, effective April 2, 2015.

Sec. 574.023. Apprehension Under Order.

(a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 4, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 9, effective September 1, 2001.

Sec. 574.024. Appointment of Attorney.

(a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

(1) that the proposed patient has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.025. Probable Cause Hearing.

(a) A hearing must be held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the associate judge serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 101 (H.B. 2028), § 1, effective May 16, 1995; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 4, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1375, effective April 2, 2015.

Sec. 574.026. Order for Continued Detention.

(a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that

he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ____ day of _____, 20____ , the undersigned hearing officer heard evidence concerning the need for protective custody of _____(hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____(attorney)have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____(date of notice).

I have examined the certificate of medical examination for mental illness and _____(other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to the proposed patient (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient cannot be at liberty pending final hearing because _____ _____(reasons for finding; type of risk found).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 5, effective September 1, 2009; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1376, effective April 2, 2015.

Sec. 574.027. Detention in Protective Custody.

(a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

(e) [Repealed by Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 19, effective September. 1, 2001.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), §§ 10, 19, effective September 1, 2001.

Sec. 574.028. Release from Detention.

(a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 6, effective September 1, 2009.

Subchapter C

Proceedings for Court-ordered Mental Health Services

Section	
574.031.	General Provisions Relating to Hearing.
574.032.	Right to Jury.
574.033.	Release After Hearing.
574.034.	Order for Temporary Inpatient Mental Health Services.
574.0345.	Order for Temporary Outpatient Mental Health Services.
574.035.	Order for Extended Inpatient Mental Health Services.
574.0355.	Order for Extended Outpatient Mental Health Services.
574.036.	Order of Care or Commitment.
574.037.	Court-Ordered Outpatient Services.

Sec. 574.031. General Provisions Relating to Hearing.

(a) Except as provided by Subsection (b), the judge may

hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.

(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2) In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(e) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018.

(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1354 (H.B. 591), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1252 (S.B. 581), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.006, effective September 1, 2001; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 9, effective September 1, 2019.

Sec. 574.032. Right to Jury.

(a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) In a hearing before a jury, the jury shall determine if the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1377, effective April 2, 2015.

Sec. 574.033. Release After Hearing.

(a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with mental illness and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1378, effective April 2, 2015.

Sec. 574.034. Order for Temporary Inpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others;

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

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

(b) [Repealed.]

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(e) [Repealed.]

(f) [Repealed.]

(g) An order for temporary inpatient mental health services shall provide for a period of treatment not to exceed 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) A judge may not issue an order for temporary inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) [Repealed by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.49, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 7, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 5, effective September 1, 1997; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1379, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 33, effective September 1, 2017; Acts 2019, 86th Leg., ch. 582 (S.B. 362), §§ 10, 11, 27(1), effective September 1, 2019; 2025, 89th Leg., ch. 800 (S.B. 1164), § 9, effective September 1, 2025; 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 11B.02, effective September 17, 2025.

Sec. 574.0345. Order for Temporary Outpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

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

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

(A) the proposed patient is a person with severe and persistent mental illness;

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

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

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

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

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

(b) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c) An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d) A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

HISTORY: Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 12, effective September 1, 2019.

Sec. 574.035. Order for Extended Inpatient Mental Health Services.

(a) The judge may order a proposed patient to receive

court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others;

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

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

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

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) [Repealed.]

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(f) [Repealed.]

(g) [Repealed.]

(h) An order for extended inpatient mental health services must provide for a period of treatment not to exceed 12 months.

(i) A judge may not issue an order for extended inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) [Repealed by Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013.]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 8, effective June 16, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 5, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 238 (H.B. 330), § 1, effective May 28, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 12, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 166 (S.B. 118), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 11, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1380, effective April 2, 2015; Acts 2019, 86th Leg., ch. 582 (S.B. 362), §§ 13, 14, 27(2), effective September 1, 2019; 2025, 89th Leg., ch. 800 (S.B. 1164), § 10, effective September 1, 2025; 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 11B.03, effective September 1, 2025.

Sec. 574.0355. Order for Extended Outpatient Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

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

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

(A) the proposed patient is a person with severe and persistent mental illness;

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

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

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

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

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

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

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b) The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d) An order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months.

(e) A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

HISTORY: Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 15, effective September 1, 2019.

Sec. 574.036. Order of Care or Commitment.

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be a person with mental illness and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2) committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.0345(a) or 574.0355(a).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 7, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1381, effective April 2, 2015; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 16, effective September 1, 2019.

Sec. 574.037. Court-Ordered Outpatient Services.

(a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as responsible for those services or may designate a different person if necessary. The person designated must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services:

(1) in the region in which the committing court is located; or

(2) in a county where a patient has previously received mental health services.

(b) The person responsible for the services shall submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.0345 or 574.0355 or before the court modifies an order under Section 574.061, as appropriate.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

(2) any substantial change in the general program of treatment that occurs before the order expires.

(c-1) A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order.

(c-2) A court may set a status conference in accordance with Section 574.0665.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 2, effective September 1, 2013; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 17, effective September 1, 2019.

Subchapter D

Designation of Facility and Transportation of Patient

Section
574.041. Designation of Facility.
574.0415. Information on Medications.
574.042. Commitment to Private Facility.
574.043. Commitment to Federal Facility.
574.044. Commitment to Facility of Texas Department of Criminal Justice.
574.045. Transportation of Patient.
574.0455. List of Qualified Transportation Service Providers.
574.0456. Transportation of Patient to Another State.
574.046. Writ of Commitment.
574.047. Transcript.
574.048. Acknowledgment of Patient Delivery.

Sec. 574.041. Designation of Facility.

(a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health authority for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 543 (S.B. 261), § 3, effective June 18, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 11, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.108, effective September 1, 2009.

Sec. 574.0415. Information on Medications.

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.05(a), effective May 1, 1994; am. Acts 1997, 75th Leg., ch. 337 (S.B. 264), § 3, effective May 27, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1382, effective April 2, 2015.

Sec. 574.042. Commitment to Private Facility.

The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.043. Commitment to Federal Facility.

(a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 12, effective September 1, 2001.

Sec. 574.044. Commitment to Facility of Texas Department of Criminal Justice.

The court shall commit an inmate patient to an inpatient mental health facility of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist under Section 501.057, Government Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.45, effective August 30, 1993; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.109, effective September 1, 2009.

Sec. 574.045. Transportation of Patient.

(a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

(1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;

(2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;

(3) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;

(4) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located;

(5) the sheriff or constable; or

(6) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses.

(a-1) A person who under Subsection (a)(1), (2), or (5) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient's physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

(*l*) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 15 (H.B. 7), § 5.20, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 20, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 5, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.804, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1122 (H.B. 167), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 889 (H.B. 978), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 1129), § 1, effective June 17, 2015.

Sec. 574.0455. List of Qualified Transportation Service Providers.

(a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The executive commissioner shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1122 (H.B. 167), § 2, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1383, effective April 2, 2015.

Sec. 574.0456. Transportation of Patient to Another State.

A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 889 (H.B. 978), § 2, effective September 1, 2013.

Sec. 574.046. Writ of Commitment.

The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of

commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.047. Transcript.

(a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.048. Acknowledgment of Patient Delivery.

The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter E

Post-commitment Proceedings

Section

574.061. Modification of Order for Inpatient Treatment.
574.062. Motion for Modification of Order for Outpatient Treatment.
574.063. Order for Temporary Detention.
574.064. Apprehension and Release Under Temporary Detention Order.
574.065. Order of Modification of Order for Outpatient Services.
574.066. Renewal of Order for Extended Mental Health Services.
574.0665. Status Conference.
574.067. Motion for Rehearing.
574.068. Request for Reexamination.
574.069. Hearing on Request for Reexamination.
574.070. Appeal.

Sec. 574.061. Modification of Order for Inpatient Treatment.

(a) The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services.

(b) A facility administrator's recommendation under Subsection (a) must explain in detail the reason for the recommendation. The recommendation must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation.

(c) The patient shall be given notice of a facility administrator's recommendation under Subsection (a).

(d) On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's recommendation that the court modify the commitment order. The court shall appoint an attorney to represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make a decision regarding a facility administrator's recommendation based on:

(1) the recommendation;

(2) the supporting certificate; and

(3) consultation with the local mental health authority concerning available resources to treat the patient.

(f) If the court modifies the order, the court shall designate a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may extend beyond the term of the original order, but may not exceed the term of the original order by more than 60 days.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 3, effective September 1, 2013; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 18, effective September 1, 2019.

Sec. 574.062. Motion for Modification of Order for Outpatient Treatment.

(a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more

continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 191 (H.B. 1312), § 1, effective September 1, 1997.

Sec. 574.063. Order for Temporary Detention.

(a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1) the patient meets the criteria described by Section 574.064(a-1); and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 4, effective September 1, 2013.

Sec. 574.064. Apprehension and Release Under Temporary Detention Order.

(a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(a-1) A physician shall evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness:

(1) presents a substantial risk of serious harm to the patient or others;

(2) evidences severe emotional distress and deterioration in the person's mental condition;

(3) evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and

(4) is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person to the extent that the patient cannot be at liberty pending the probable cause hearing under Subsection (b).

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1) after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2) after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 191 (H.B. 1312), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 13, effective September 1, 2001;

am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 7, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 5, effective September 1, 2013; 2025, 89th Leg., ch. 800 (S.B. 1164), § 11, effective September 1, 2025.

Sec. 574.065. Order of Modification of Order for Outpatient Services.

(a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 744 (H.B. 1039), § 8, effective September 1, 1997; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 6, effective September 1, 2013.

Sec. 574.066. Renewal of Order for Extended Mental Health Services.

(a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.0665. Status Conference.

A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

HISTORY: Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 19, effective September 1, 2019.

Sec. 574.067. Motion for Rehearing.

(a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.068. Request for Reexamination.

(a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.069. Hearing on Request for Reexamination.

(a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 20, effective September 1, 2019.

Sec. 574.070. Appeal.

(a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter F

Furlough, Discharge, and Termination of Court-ordered Mental Health Services

Section

574.081. Continuing Care Plan Before Furlough or Discharge.
574.082. Pass or Furlough from Inpatient Care.
574.083. Return to Facility Under Certificate of Facility Administrator or Court Order.
574.084. Revocation of Furlough.
574.085. Discharge on Expiration of Court Order.
574.086. Discharge Before Expiration of Court Order.
574.087. Certificate of Discharge.
574.088. Relief from Disabilities in Mental Health Cases.
574.089. Transportation Plan for Furlough or Discharge.

Sec. 574.081. Continuing Care Plan Before Furlough or Discharge.

(a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health author-

ity shall be informed of and must participate in planning the discharge of a patient.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician.

(c-1) Except as otherwise specified in the plan and subject to available funding provided to the Health and Human Services Commission and paid to a private mental health facility for this purpose, a private mental health facility is responsible for providing or paying for psychoactive medication and any other medication prescribed to the patient to counteract adverse side effects of psychoactive medication on furlough or discharge sufficient to last until the patient can see a physician.

(c-2) The Health and Human Services Commission shall adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. The executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B. 160), § 12, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), §§ 4.04, 4.05, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(33), effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 14, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1066 (H.B. 2004), § 1, effective June 15, 2001; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 21, effective September 1, 2019.

Sec. 574.082. Pass or Furlough from Inpatient Care.

(a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.083. Return to Facility Under Certificate of Facility Administrator or Court Order.

(a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate issued or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is war-

ranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1016 (H.B. 2892), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 19, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 15, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1006 (H.B. 1072), § 1, effective September 1, 2001.

Sec. 574.084. Revocation of Furlough.

(a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.085. Discharge on Expiration of Court Order.

The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.086. Discharge Before Expiration of Court Order.

(a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1) a furlough under Section 574.082; or

(2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.087. Certificate of Discharge.

The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 574.088. Relief from Disabilities in Mental Health Cases.

(a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) the person is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's disability to purchase a firearm is in the public interest.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 950 (H.B. 3352), § 2, effective September 1, 2009.

Sec. 574.089. Transportation Plan for Furlough or Discharge.

(a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

(1) who is responsible for transporting the person;

(2) when the person will be transported; and

(3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1020 (H.B. 4276), § 1, effective September 1, 2009.

Subchapter G

Administration of Medication to Patient Under Court Order for Mental Health Services

Section	
574.101.	Definitions.
574.102.	Application of Subchapter.
574.103.	Administration of Medication to Patient Under Court-Ordered Mental Health Services.
574.104.	Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.
574.105.	Rights of Patient.
574.106.	Hearing and Order Authorizing Psychoactive Medication.
574.1065.	Finding That Patient Presents a Danger.
574.107.	Costs.
574.108.	Appeal.
574.109.	Effect of Order.
574.110.	Expiration of Order.

Sec. 574.101. Definitions.

In this subchapter:

(1) "Capacity" means a patient's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993.

Sec. 574.102. Application of Subchapter.

This subchapter applies to the application of medication to a patient subject to a court order for mental health services under this chapter or other law.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 9, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 1, effective June 17, 2005; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 8, effective September 1, 2013.

Sec. 574.103. Administration of Medication to Patient Under Court-Ordered Mental Health Services.

(a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 692 (H.B. 2679), § 11, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 1170 (S.B. 646), § 9, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1384, effective April 2, 2015.

Sec. 574.104. Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.

(a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the patient;

(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed for the patient; and

(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the patient to take;

(3) whether an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed;

(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the patient; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under those sections and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 322 (S.B. 96), § 2, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 10, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 2, effective June 17, 2005; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 22, effective September 1, 2019.

Sec. 574.105. Rights of Patient.

A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 11, effective June 16, 1995.

Sec. 574.106. Hearing and Order Authorizing Psychoactive Medication.

(a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is under a court order to receive inpatient mental health services; or

(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

(*l*) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

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

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

(m) An order issued under this section authorizes the taking of a patient's blood sample to conduct reasonable and medically necessary evaluations and laboratory tests to safely administer a psychoactive medication authorized by the order.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 12, effective June 16, 1995; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), §§ 3, 4, effective June 17, 2005; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 8, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 1, effective June 19, 2009; Acts 2023, 88th Leg., ch. 982 (S.B. 2479), § 4, effective September 1, 2023.

Sec. 574.1065. Finding That Patient Presents a Danger.

In making a finding under Section 574.106(a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 5, effective June 17, 2005; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 2, effective June 19, 2009.

Sec. 574.107. Costs.

(a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

(1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or

(2) a patient who:

(A) is awaiting trial after having been determined to be competent to stand trial; and

(B) was ordered to receive mental health services as described by Section 574.106(a)(2).

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 20, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 3, effective June 19, 2009.

Sec. 574.108. Appeal.

(a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.107).

Sec. 574.109. Effect of Order.

(a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.108).

Sec. 574.110. Expiration of Order.

(a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.08, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 770 (S.B. 572), § 13, effective June 16, 1995 (renumbered from Sec. 574.109); am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 6, effective June 17, 2005; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 5, effective September 1, 2011.

Subchapter H

Voluntary Admission for Certain Persons for Whom Motion for Court-ordered Services Has Been Filed

Section
574.151. Applicability.
574.152. Capacity to Consent to Voluntary Admission.
574.153. Rights of Person Admitted to Voluntary Inpatient Treatment.
574.154. Participation in Research Program.

Sec. 574.151. Applicability.

This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034, 574.0345, 574.035, or 574.0355 and who requests voluntary admission to an inpatient mental health facility:

(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 23, effective September 1, 2019.

Sec. 574.152. Capacity to Consent to Voluntary Admission.

A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Sec. 574.153. Rights of Person Admitted to Voluntary Inpatient Treatment.

(a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Sec. 574.154. Participation in Research Program.

Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and

(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 1, effective June 16, 2001.

Subchapter I

Use of Video Technology at Proceedings

Section
574.201. Application of Subchapter.

Section
574.202. Certain Testimony by Closed-Circuit Video Teleconferencing Permitted.
574.203. Use of Secure Electronic Communication Method in Certain Proceedings Under This Chapter.

Sec. 574.201. Application of Subchapter.

This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 3, effective June 18, 2003.

Sec. 574.202. Certain Testimony by Closed-Circuit Video Teleconferencing Permitted.

(a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 358 (S.B. 1182), § 3, effective June 18, 2003.

Sec. 574.203. Use of Secure Electronic Communication Method in Certain Proceedings Under This Chapter.

(a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge or associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge or associate judge or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1145 (S.B. 778), § 3, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 334 (H.B. 890), § 9, effective September 1, 2009.

CHAPTER 575

Admission and Transfer Procedures for Inpatient Services

Subchapter
A. Admission Procedures
B. Transfer Procedures

Subchapter A

Admission Procedures

Section
575.001. Authorization for Admission.
575.002. Admission of Voluntary Patient to Private Mental Hospital.
575.003. Admission of Persons with Chemical Dependency and Persons Charged with Criminal Offense.

Sec. 575.001. Authorization for Admission.

(a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under

an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.002. Admission of Voluntary Patient to Private Mental Hospital.

This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.003. Admission of Persons with Chemical Dependency and Persons Charged with Criminal Offense.

This subtitle does not affect the admission to a state mental health facility of:

(1) a person with a chemical dependency admitted under Chapter 462; or

(2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 13, effective January 1, 2004; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1385, effective April 2, 2015.

Subchapter B

Transfer Procedures

Section

575.011. Transfer to Department Mental Health Facility or Local Mental Health Authority.
575.012. Transfer of Person with an Intellectual Disability to an Inpatient Mental Health Facility Operated by the Department.
575.013. Transfer of Person with an Intellectual Disability to State Supported Living Center.
575.014. Transfer to Private Mental Hospital.
575.015. Transfer to Federal Facility.
575.016. Transfer from Facility of Texas Department of Criminal Justice.
575.017. Transfer of Records.

Sec. 575.011. Transfer to Department Mental Health Facility or Local Mental Health Authority.

(a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

(1) another inpatient mental health facility operated by the department; or

(2) a mental health facility deemed suitable by the local mental health authority if the authority consents.

(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 16, effective September 1, 2001.

Sec. 575.012. Transfer of Person with an Intellectual Disability to an Inpatient Mental Health Facility Operated by the Department.

(a) An inpatient mental health facility may not transfer a patient who is also a person with an intellectual disability to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for persons with an intellectual disability who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 17, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1386, effective April 2, 2015.

Sec. 575.013. Transfer of Person with an Intellectual Disability to State Supported Living Center.

(a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state supported living center for persons with an intellectual disability if:

(1) an examination of the patient indicates that the patient has symptoms of an intellectual disability to the extent that training, education, rehabilitation, care, treatment, and supervision in a state supported living center are in the patient's best interest;

(2) the director of the state supported living center to which the patient is to be transferred agrees to the transfer; and

(3) the facility administrator coordinates the transfer with the director of that state supported living center.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state supported living center shall be furnished to the committing court.

(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 367 (S.B. 1386), § 18, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1387, 3.1388, effective April 2, 2015.

Sec. 575.014. Transfer to Private Mental Hospital.

The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;

(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3) written notice of the transfer is sent to the committing court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.015. Transfer to Federal Facility.

The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 575.016. Transfer from Facility of Texas Department of Criminal Justice.

(a) The Texas Department of Criminal Justice shall transfer a patient committed to an inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 25.110, 25.111, effective September 1, 2009.

Sec. 575.017. Transfer of Records.

The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state supported living center to which the patient is transferred.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1389, effective April 2, 2015.

CHAPTER 576

Rights of Patients

Subchapter
A. General Rights
B. Rights Relating to Treatment

Subchapter A

General Rights

Section
576.001. Rights Under Constitution and Law.
576.002. Presumption of Competency.
576.003. Writ of Habeas Corpus.
576.004. Effect on Guardianship.
576.005. Confidentiality of Records.
576.0055. Disclosure of Name and Birth and Death Dates for Certain Purposes.
576.006. Rights Subject to Limitation.
576.007. Notification of Release.
576.008. Notification of Protection and Advocacy System.
576.009. Notification of Rights.
576.010. Notification of Trust Exemption.

Sec. 576.001. Rights Under Constitution and Law.

(a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

(1) the right to register and vote at an election;

(2) the right to acquire, use, and dispose of property, including contractual rights;

(3) the right to sue and be sued;

(4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;

(5) the right to religious freedom; and

(6) all rights relating to domestic relations.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.002. Presumption of Competency.

(a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Estates Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 2, effective June 16, 2001; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.047, effective September 1, 2017.

Sec. 576.003. Writ of Habeas Corpus.

A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2011, 82nd Leg., ch. 994 (H.B. 2096), § 1, effective June 17, 2011.

Sec. 576.004. Effect on Guardianship.

This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.005. Confidentiality of Records.

Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 1007 (H.B. 1462), § 1, effective June 19, 1993; am. Acts 1997, 75th Leg., ch. 481 (S.B. 208), § 1, effective September 1, 1997.

Sec. 576.0055. Disclosure of Name and Birth and Death Dates for Certain Purposes.

(a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 174 (S.B. 1764), § 1, effective May 27, 2003.

Sec. 576.006. Rights Subject to Limitation.

(a) A patient in an inpatient mental health facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.06, effective August 30, 1993.

Sec. 576.007. Notification of Release.

(a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.008. Notification of Protection and Advocacy System.

A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.51, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.10(a), effective September 1, 1993.

Sec. 576.009. Notification of Rights.

A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.07, effective August 30, 1993.

Sec. 576.010. Notification of Trust Exemption.

(a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 481 (S.B. 584), § 1, effective June 19, 2009.

Subchapter B

Rights Relating to Treatment

Section

576.021. General Rights Relating to Treatment.
576.022. Adequacy of Treatment.
576.023. Periodic Examination.
576.024. Use of Physical Restraint.
576.025. Administration of Psychoactive Medication.
576.026. Independent Evaluation.
576.027. List of Medications.

Sec. 576.021. General Rights Relating to Treatment.

(a) A patient receiving mental health services under this subtitle has the right to:

(1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program;

(4) an individualized treatment plan and to participate in developing the plan; and

(5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2001, 77th Leg., ch. 1309 (H.B. 1887), § 3, effective June 16, 2001.

Sec. 576.022. Adequacy of Treatment.

(a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.023. Periodic Examination.

The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.024. Use of Physical Restraint.

(a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 576.025. Administration of Psychoactive Medication.

(a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was

given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.09, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 322 (S.B. 96), § 3, effective August 28, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 31, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 14, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 48 (H.B. 224), § 2, effective May 17, 2005; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 7, effective June 17, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 4, effective September 1, 2005.

Sec. 576.026. Independent Evaluation.

(a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.09, effective August 30, 1993.

Sec. 576.027. List of Medications.

(a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.10, effective August 30, 1993.

CHAPTER 577

Private Mental Hospitals and Other Mental Health Facilities

Subchapter A

General Provisions; Licensing and Penalties

Section	
577.001.	License Required.
577.0011.	Definitions. [Repealed]
577.002.	Exemptions.
577.003.	Additional License Not Required.
577.004.	License Application.
577.005.	Investigation and License Issuance.
577.006.	Fees.
577.007.	Change in Bed Capacity.
577.008.	Requirement of Physician in Charge.
577.009.	Limitation on Certain Contracts.
577.010.	Rules and Standards.
577.0101.	Notification of Transfer or Referral.
577.011.	Records and Reports.
577.012.	Destruction of Records.
577.013.	Investigations.
577.014.	Oaths.
577.015.	Subpoenas.
577.016.	Denial, Suspension, Probation, or Revocation of License.
577.017.	Hearings.
577.018.	Judicial Review of Department Decision.

Section
577.019. Injunction.

Sec. 577.001. License Required.

(a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the department to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.02, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1390, effective April 2, 2015.

Sec. 577.0011. Definitions. [Repealed]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.03, effective September 1, 1993; repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(109), effective April 2, 2015.

Sec. 577.002. Exemptions.

(a) A mental health facility operated by the department or a federal agency need not be licensed under this chapter.

(b) This chapter does not apply to a psychiatric residential youth treatment facility certified under Chapter 577A.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1391, effective April 2, 2015; Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 3, effective September 1, 2021.

Sec. 577.003. Additional License Not Required.

A mental hospital licensed under this chapter that the department designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1392, effective April 2, 2015.

Sec. 577.004. License Application.

(a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility;

(7) the name and address of the person responsible for the daily operations of the mental hospital or mental health facility; and

(8) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; 2025, 89th Leg., ch. 276 (H.B. 3560), § 2, effective September 1, 2025.

Sec. 577.005. Investigation and License Issuance.

(a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.006. Fees.

(a) The department shall charge each hospital every two years a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees authorized by Subsection (a) in accordance with Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) The executive commissioner by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(109), effective April 2, 2015.]

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee and a maximum fee for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the

estimated costs to and level of effort expended by the department.

(g) The executive commissioner may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited to the credit of the general revenue fund.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1411 (H.B. 2085), § 8.01, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1393, 3.1639(109), effective April 2, 2015.

Sec. 577.007. Change in Bed Capacity.

A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.008. Requirement of Physician in Charge.

Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.009. Limitation on Certain Contracts.

A community center or other entity the department designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.04, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1394, effective April 2, 2015.

Sec. 577.010. Rules and Standards.

(a) The executive commissioner shall adopt rules and standards the executive commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 573 (S.B. 210), § 4.05, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1395, effective April 2, 2015.

Sec. 577.0101. Notification of Transfer or Referral.

(a) The executive commissioner shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 4.07, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1396, effective April 2, 2015.

Sec. 577.011. Records and Reports.

The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.012. Destruction of Records.

(a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.013. Investigations.

(a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

(1) inspect the facilities and conditions;

(2) observe the hospital's or facility's care and treatment program; and

(3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) Except as provided by Subsection (e), all information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the commission or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the commission in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the licensed mental hospital's alleged violation, which must include the provisions of law the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the number of investigations the commission has conducted of the licensed mental hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the licensed mental hospital for the alleged violation;

(4) the outcome of each investigation the commission conducted of the licensed mental hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount; and

(5) a final decision, investigative report, or order issued by the commission to address the alleged violation.

(f) Not later than the 90th day after the date the commission issues a final decision, investigative report, or order to address a licensed mental hospital's alleged violation, the commission shall post on the commission's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the licensed mental hospital;

(3) the geographic location of the licensed mental hospital;

(4) the date the commission issued the final decision, investigative report, or order; and

(5) the outcome of the commission's investigation of the licensed mental hospital that includes the information described by Subsection (e)(4).

(g) The commission may not remove information posted on the commission's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Nothing in this section precludes a licensed mental hospital from releasing medical records in the licensed mental hospital's possession:

(1) on request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

(i) In this section, "commission" means the Health and Human Services Commission.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1444 (H.B. 2824), § 16, effective August 30, 1999; Acts 2023, 88th Leg., ch. 42 (H.B. 49), § 2, effective September 1, 2023.

Sec. 577.014. Oaths.

The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.015. Subpoenas.

(a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.016. Denial, Suspension, Probation, or Revocation of License.

(a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

(1) department rules;

(2) this subtitle; or

(3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental

hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.12, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 802 (S.B. 162), §§ 14, 15, effective June 20, 2003.

Sec. 577.017. Hearings.

(a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.018. Judicial Review of Department Decision.

(a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 577.019. Injunction.

(a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 3.13, effective September 1, 1993.

CHAPTER 577A

Psychiatric Residential Youth Treatment Facilities

Subchapter

A. General Provisions
B. Certification, Fees, and Inspections
C. Regulation of Certified Psychiatric Residential Youth Treatment Facilities
D. Enforcement

Subchapter A

General Provisions

Section

577A.001. Definitions.
577A.002. Exemptions.
577A.003. Licensing and Other Requirements Not Affected.
577A.004. Rules.

Sec. 577A.001. Definitions.

In this chapter:

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

(2) "Executive commissioner" means the executive commissioner of the commission.

(3) "Psychiatric residential youth treatment facility" means a private facility that provides psychiatric health treatments and services in a residential, nonhospital setting exclusively to individuals who are 21 years of age or younger and is licensed as a general residential operation under Chapter 42, Human Resources Code.

The term includes a facility that provides room and board.

(4) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.002. Exemptions.

This chapter does not apply to:

(1) a mental hospital; or

(2) a private mental hospital or other mental health facility licensed under Chapter 577.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.003. Licensing and Other Requirements Not Affected.

This chapter does not affect any licensing or other requirements of or create a separate license for a psychiatric residential youth treatment facility under Chapter 42, Human Resources Code.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.004. Rules.

The executive commissioner shall adopt rules necessary to implement this chapter.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Subchapter B

Certification, Fees, and Inspections

Section

577A.051. Voluntary Quality Standards Certification.
577A.052. Certificate Application.
577A.053. Fees.
577A.054. Issuance and Renewal of Certificate.
577A.055. Inspections.

Sec. 577A.051. Voluntary Quality Standards Certification.

The commission shall, using existing resources to the extent feasible, develop and implement a voluntary quality standards certification process to certify a psychiatric residential youth treatment facility that meets standards for certification under this chapter.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.052. Certificate Application.

(a) To obtain a certificate under this chapter, an applicant must submit to the commission an application in the form and manner prescribed by the commission.

(b) Each application must be accompanied by a fee established by the executive commissioner under Section 577A.053.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.053. Fees.

The executive commissioner by rule shall establish a nonrefundable certificate application fee and a nonrefundable certificate renewal fee in amounts necessary to cover the costs of administering this chapter.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.054. Issuance and Renewal of Certificate.

(a) The commission shall issue a certificate to an applicant if on inspection and investigation the commission determines the applicant meets the requirements of this chapter and commission rules. The commission may not issue to an applicant a certificate under this chapter unless the applicant is licensed as a general residential operation under Chapter 42, Human Resources Code.

(b) A certificate issued under this chapter expires on the second anniversary of the date the certificate is issued or renewed.

(c) The commission shall renew a certificate if:

(1) the certificate holder submits to the commission a fee established by the executive commissioner under Section 577A.053; and

(2) on inspection and investigation the commission determines the certificate holder meets the requirements of this chapter and commission rules.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.055. Inspections.

In addition to the inspections required under Section 577A.054, the commission shall conduct an inspection not later than the first anniversary of the date a certificate is issued or renewed to ensure the certificate holder remains in compliance with the requirements of this chapter and commission rules.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Subchapter C

Regulation of Certified Psychiatric Residential Youth Treatment Facilities

Section

577A.101. Minimum Standards.
577A.102. Admission Criteria.

Sec. 577A.101. Minimum Standards.

The executive commissioner by rule shall establish minimum standards for the certification of psychiatric residential youth treatment facilities under this chapter. The minimum standards must require a facility to:

(1) obtain accreditation by The Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or another accrediting organization approved by the commission; and

(2) provide and prescribe guidelines for the provision of the following activities, treatments, and services:

(A) development and implementation of individual plans of care, including the provision of services provided by a licensed psychiatrist or physician to develop individual plans of care;

(B) individual therapy;

(C) family engagement activities;

(D) consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(E) 24-hour nursing services; and

(F) direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Sec. 577A.102. Admission Criteria.

A facility certified under this chapter may not admit or provide treatments or services to an individual unless the individual:

(1) is 21 years of age or younger;

(2) has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition; and

(4) was referred for treatments or services in a psychiatric residential youth treatment facility by a licensed mental health professional.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

Subchapter D

Enforcement

Section
577A.151. Penalties.

Sec. 577A.151. Penalties.

A facility certified under this chapter is subject to a civil penalty under Section 571.023 or an administrative penalty under Section 571.025, as applicable, for a violation of this chapter or a rule adopted under this chapter.

HISTORY: Acts 2021, 87th Leg., ch. 1032 (H.B. 3121), § 2, effective September 1, 2021.

CHAPTER 578

Electroconvulsive and Other Therapies

Section
578.001. Application.
578.002. Use of Electroconvulsive Therapy.
578.003. Consent to Therapy.
578.004. Withdrawal of Consent.
578.005. Physician Requirement.
578.006. Registration of Equipment.
578.007. Reports.
578.008. Use of Information.

Sec. 578.001. Application.

This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993.

Sec. 578.002. Use of Electroconvulsive Therapy.

(a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

(1) a person who is 16 years of age or older and who is voluntarily receiving mental health services; or

(2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective August 30, 1993.

Sec. 578.003. Consent to Therapy.

(a) The executive commissioner by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The executive commissioner by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the executive commissioner shall consider recommendations of the panel. Use of the consent form prescribed by the executive commissioner in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1323 (S.B. 1309), § 1, effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 137 (H.B. 740), § 1, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1397, effective April 2, 2015.

Sec. 578.004. Withdrawal of Consent.

(a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993.

Sec. 578.005. Physician Requirement.

(a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.805, effective September 1, 2001.

Sec. 578.006. Registration of Equipment.

(a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by department rule.

(c) The application must be accompanied by a nonrefundable application fee. The executive commissioner by rule shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by department rule.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The executive commissioner by rule may prohibit the registration and use of equipment of a type, model, or age the executive commissioner determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under Chapter 2001, Government Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(49), effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1398, effective April 2, 2015.

Sec. 578.007. Reports.

(a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by department rule.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1399, effective April 2, 2015.

Sec. 578.008. Use of Information.

The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 705 (S.B. 205), § 5.01, effective September 1, 1993; Acts 2021, 87th Leg., ch. 856 (S.B. 800), § 17, effective September 1, 2021.

SUBTITLE D

PERSONS WITH AN INTELLECTUAL DISABILITY ACT

Chapter
591. General Provisions
592. Rights of Persons with an Intellectual Disability
593. Admission and Commitment to Intellectual Disability Services
594. Transfer and Discharge
595. Records
597. Capacity of Clients to Consent to Treatment

CHAPTER 591

General Provisions

Subchapter
A. General Provisions
B. Duties of Department
C. Penalties and Remedies

Subchapter A

General Provisions

Section
591.001. Short Title.
591.002. Purpose.
591.003. Definitions.
591.004. Rules.
591.005. Least Restrictive Alternative.
591.006. Consent.

Sec. 591.001. Short Title.

This subtitle may be cited as the Persons with an Intellectual Disability Act.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1401, effective April 2, 2015.

Sec. 591.002. Purpose.

(a) It is the public policy of this state that persons with an intellectual disability have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with an intellectual disability in this state.

(c) The state's responsibility to persons with an intellectual disability does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with an intellectual disability.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential care facility is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with an intellectual disability have been denied rights solely because they are persons with an intellectual disability, the general public should be educated to the fact that persons with an intellectual disability who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with an intellectual disability in acquiring and maintaining rights and in participating in community life as fully as possible.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1402, effective April 2, 2015.

Sec. 591.003. Definitions.

In this subtitle:

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

(2) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.]

(3) "Care" means the life support and maintenance services or other aid provided to a person with an intellectual disability, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving intellectual disability services from the department or a community center. The term includes a resident.

(4-a) "Commission" means the Health and Human Services Commission.

(5) "Commissioner" means the commissioner of aging and disability services.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides intellectual disability services.

(7) "Department" means the Department of Aging and Disability Services.

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

(8) "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.

(9) "Director" means the director or superintendent of a residential care facility.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with an intellectual disability voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) [Repealed.]

(14) "Intellectual disability services" means programs and assistance for persons with an intellectual disability that may include a determination of an intellectual disability, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority removed for general purposes.

(15-a) "Person with an intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

(16) [Repealed.]

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a state supported living center or the ICF-IID component of the Rio Grande Center.

(19) "Service provider" means a person who provides intellectual disability services.

(20) "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 tests used.

(21) [Repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.]

(22) "Training" means the process by which a person with an intellectual disability is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 1, effective September 1, 1993; am. Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 5, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1403, 3.1639(110), effective April 2, 2015; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 14.01(2), effective September 1, 2023.

Sec. 591.004. Rules.

The executive commissioner by rule shall ensure the implementation of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1404, effective April 2, 2015.

Sec. 591.005. Least Restrictive Alternative.

The least restrictive alternative is:

(1) the available program or facility that is the least confining for a client's condition; and

(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.006. Consent.

(a) Consent given by a person is legally adequate if the person:

(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(2) understands the information; and

(3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and understand:

(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;

(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and

(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter B

Duties of Department

Section
591.011. Department Responsibilities.
591.012. Cooperation with Other Agencies. [Repealed]

Section
591.013. Long-Range Plan.

Sec. 591.011. Department Responsibilities.

(a) Subject to the executive commissioner's authority to adopt rules and policies, the department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with an intellectual disability who needs intellectual disability services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with an intellectual disability the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533A.034, a continuum of services to persons with an intellectual disability; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with an intellectual disability committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with an intellectual disability to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with an intellectual disability to which the department has assigned persons with an intellectual disability.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all clients and records of clients who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 646 (S.B.160), § 13, effective August 30, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1405, effective April 2, 2015.

Sec. 591.012. Cooperation with Other Agencies. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(110), effective April 2, 2015.

Sec. 591.013. Long-Range Plan.

(a) The commission shall develop a long-range plan for services to persons with intellectual and developmental disabilities.

(b) The executive commissioner shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with intellectual and developmental disabilities.

(c) In developing the plan, the commission shall consider existing plans or studies made by the commission or department.

(d) The plan must address at least the following topics:

(1) the needs of persons with intellectual and developmental disabilities;

(2) how state services should be structured to meet those needs;

(3) how the ICF-IID program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with intellectual and developmental disabilities;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-IID program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The commission and the department shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with intellectual and developmental disabilities to incorporate the provisions of the plan.

(f) The commission shall review and revise the plan biennially. The commission and the department shall consider the most recent revision of the plan in any modifications of the commission's or department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the commission and the department to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-IID program" means the medical assistance program serving persons with intellectual and developmental disabilities who receive care in intermediate care facilities.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1406, effective April 2, 2015.

Subchapter C

Penalties and Remedies

Section
591.021. Criminal Penalty.
591.022. Civil Penalty.
591.023. Injunctive Relief; Civil Penalty.

Section
591.024. Civil Action Against Department Employee.
591.025. Liability.

Sec. 591.021. Criminal Penalty.

(a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.022. Civil Penalty.

(a) A person who intentionally violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $1,000.

(c) A person who intentionally releases confidential information or records of a person with an intellectual disability in violation of law is liable to the person injured by the unlawful disclosure for $1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

(1) the injured person;

(2) the injured person's parent, if the person is a minor;

(3) a guardian, if the person has been adjudicated incompetent; or

(4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1407, effective April 2, 2015.

Sec. 591.023. Injunctive Relief; Civil Penalty.

(a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

(1) restrain and prevent a person from violating this subtitle or a rule adopted by the executive commissioner under this subtitle; or

(2) enforce compliance with this subtitle or a rule adopted by the executive commissioner under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than $5,000 for each violation, but not to exceed a total of $20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in intellectual disability services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1408, effective April 2, 2015.

Sec. 591.024. Civil Action Against Department Employee.

(a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 591.025. Liability.

An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 592

Rights of Persons with an Intellectual Disability

Subchapter
A. General Provisions
B. Basic Bill of Rights
C. Rights of Clients
D. Rights of Residents
E. Use of Restraints in State Supported Living Centers
F. Administration of Psychoactive Medications

Subchapter A

General Provisions

Section
592.001. Purpose.
592.002. Rules.

Sec. 592.001. Purpose.

The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1410, effective April 2, 2015.

Sec. 592.002. Rules.

The executive commissioner by rule shall ensure the implementation of the rights guaranteed in this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1411, effective April 2, 2015.

Subchapter B

Basic Bill of Rights

Section
592.011. Rights Guaranteed.
592.012. Protection From Exploitation and Abuse.
592.013. Least Restrictive Living Environment.
592.014. Education.
592.015. Employment.
592.016. Housing.
592.017. Treatment and Services.
592.018. Determination of an Intellectual Disability.
592.019. Administrative Hearing.
592.020. Independent Determination of an Intellectual Disability.
592.021. Additional Rights.

Sec. 592.011. Rights Guaranteed.

(a) Each person with an intellectual disability in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with an intellectual disability have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.012. Protection From Exploitation and Abuse.

Each person with an intellectual disability has the right to protection from exploitation and abuse because of the person's intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.013. Least Restrictive Living Environment.

Each person with an intellectual disability has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

(1) alone;

(2) in a group home;

(3) with a family; or

(4) in a supervised, protective environment.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.014. Education.

Each person with an intellectual disability has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of:

(1) the person's chronological age;

(2) the degree of the person's intellectual disability;

(3) the person's accompanying disabilities or handicaps; or

(4) the person's admission or commitment to intellectual disability services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.015. Employment.

An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's intellectual disability, unless:

(1) the person's intellectual disability significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or

(2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.016. Housing.

An owner, lessee, sublessee, assignee, or managing agent or other person having the right to sell, rent, or

lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with an intellectual disability or a group that includes one or more persons with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.017. Treatment and Services.

Each person with an intellectual disability has the right to receive for the person's intellectual disability adequate treatment and habilitative services that:

(1) are suited to the person's individual needs;

(2) maximize the person's capabilities;

(3) enhance the person's ability to cope with the person's environment; and

(4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.018. Determination of an Intellectual Disability.

A person thought to be a person with an intellectual disability has the right promptly to receive a determination of an intellectual disability using diagnostic techniques that are adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of intellectual disability services as provided by Subchapter A, Chapter 593.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.019. Administrative Hearing.

A person who files an application for a determination of an intellectual disability has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.020. Independent Determination of an Intellectual Disability.

A person for whom a determination of an intellectual disability is performed or a person who files an application for a determination of an intellectual disability under Section 593.004 and who questions the validity or results of the determination of an intellectual disability has the right to an additional, independent determination of an intellectual disability performed at the person's own expense.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 2, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Sec. 592.021. Additional Rights.

Each person with an intellectual disability has the right to:

(1) presumption of competency;

(2) due process in guardianship proceedings; and

(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1412, effective April 2, 2015.

Subchapter C

Rights of Clients

Section
592.031. Rights in General.
592.032. Least Restrictive Alternative.
592.033. Individualized Plan.
592.034. Review and Reevaluation.
592.035. Participation in Planning.
592.036. Withdrawal from Voluntary Services.
592.037. Freedom from Mistreatment.
592.038. Freedom from Unnecessary Medication.
592.039. Grievances.
592.040. Information About Rights.

Sec. 592.031. Rights in General.

(a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.032. Least Restrictive Alternative.

Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.033. Individualized Plan.

(a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to intellectual disability services.

(d) The content of an individualized habilitation plan is as required by department rule and as may be required by the department by contract.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60

(H.B.771), § 3, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1413, effective April 2, 2015.

Sec. 592.034. Review and Reevaluation.

(a) Each client has the right to have the individualized habilitation plan reviewed at least:

(1) once a year if the client is in a residential care facility; or

(2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:

(1) measure progress;

(2) modify objectives and programs if necessary; and

(3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic reassessment.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 4, effective September 1, 1993.

Sec. 592.035. Participation in Planning.

(a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:

(1) participate in planning the client's treatment and habilitation; and

(2) be informed in writing at reasonable intervals of the client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.036. Withdrawal from Voluntary Services.

(a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from intellectual disability services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1414, effective April 2, 2015.

Sec. 592.037. Freedom from Mistreatment.

Each client has the right not to be mistreated, neglected, or abused by a service provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.038. Freedom from Unnecessary Medication.

(a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:

(1) as punishment;

(2) for the convenience of the staff;

(3) as a substitute for a habilitation program; or

(4) in quantities that interfere with the client's habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter F.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 1, effective September 1, 2013.

Sec. 592.039. Grievances.

A client, or a person acting on behalf of a person with an intellectual disability or a group of persons with an intellectual disability, has the right to submit complaints or grievances regarding the infringement of the rights of a person with an intellectual disability or the delivery of intellectual disability services against a person, group of persons, organization, or business to the Health and Human Services Commission's ombudsman for individuals with an intellectual or developmental disability as provided under Section 523.0360, Government Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1415, effective April 2, 2015; Acts 2023, 88th Leg., ch. 741 (H.B. 3462), § 16, effective June 12, 2023; 2025, 89th Leg., ch. 204 (H.B. 1620), § 9.005, effective September 1, 2025.

Sec. 592.040. Information About Rights.

(a) On admission for intellectual disability services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1416, effective April 2, 2015.

Subchapter D

Rights of Residents

Section

592.051. General Rights of Residents.
592.052. Medical and Dental Care and Treatment.
592.053. Standards of Care.
592.054. Duties of Director.
592.055. Unusual or Hazardous Treatment.
592.056. Notification of Trust Exemption.

Sec. 592.051. General Rights of Residents.

Each resident has the right to:

(1) a normal residential environment;

(2) a humane physical environment;

(3) communication and visits; and

(4) possess personal property.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.052. Medical and Dental Care and Treatment.

Each resident has the right to prompt, adequate, and

necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.053. Standards of Care.

Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.054. Duties of Director.

(a) Except as limited by this subtitle, the director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

(b) Notwithstanding Subsection (a), consent is required for:

(1) all surgical procedures; and

(2) as provided by Section 592.153, the administration of psychoactive medications.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 2, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1417, 3.1418, effective April 2, 2015.

Sec. 592.055. Unusual or Hazardous Treatment.

This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 592.056. Notification of Trust Exemption.

(a) At the time a resident is admitted to a residential care facility, the facility shall provide to the resident, and the parent if the resident is a minor or the guardian of the person of the resident, written notice, in the person's primary language, that a trust that qualifies under Section 593.081 is not liable for the resident's support. In addition, the facility shall ensure that, within 24 hours after the resident is admitted to the facility, the notification is explained to the resident, and the parent if the resident is a minor or the guardian of the person of the resident:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the resident's support.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 481 (S.B. 584), § 2, effective June 19, 2009.

Subchapter E

Use of Restraints in State Supported Living Centers

Section

592.101. Definition. [Repealed]
592.102. Use of Restraints.
592.103. Standing Orders for Restraints Prohibited.
592.104. Straitjackets Prohibited.
592.105. Duty to Report.
592.106. Conflict with Other Law.

Sec. 592.101. Definition. [Repealed]

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011; repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(111), effective April 2, 2015.

Sec. 592.102. Use of Restraints.

(a) The executive commissioner shall adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.103. Standing Orders for Restraints Prohibited.

(a) A person may not issue a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) A person may not administer mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.104. Straitjackets Prohibited.

A person may not use a straitjacket to restrain a resident of a state supported living center.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.105. Duty to Report.

A state supported living center shall report to the executive commissioner each incident in which a physical

or mechanical restraint is administered to a resident of a state supported living center. The report must contain information and be in the form required by rules of the executive commissioner.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Sec. 592.106. Conflict with Other Law.

To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 361 (S.B. 41), § 1, effective June 17, 2011.

Subchapter F

Administration of Psychoactive Medications

Section

592.151. Definitions.
592.152. Administration of Psychoactive Medication.
592.153. Administration of Medication to Client Committed to Residential Care Facility.
592.154. Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.
592.155. Rights of Client.
592.156. Hearing and Order Authorizing Psychoactive Medication.
592.157. Finding That Client Presents a Danger.
592.158. Appeal.
592.159. Effect of Order.
592.160. Expiration of Order.

Sec. 592.151. Definitions.

In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a client to prevent:

(A) imminent probable death or substantial bodily harm to the client because the client:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the client is unable to satisfy the client's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.152. Administration of Psychoactive Medication.

(a) A person may not administer a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

(1) the client is having a medication-related emergency;

(2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;

(3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or

(4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provides the following information, in a standard format approved by the department, to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health care consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) If a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency:

(1) the physician shall document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the client with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.153. Administration of Medication to Client Committed to Residential Care Facility.

(a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

(1) the client is having a medication-related emergency;

(2) the client is under an order issued under Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) the client is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1419, effective April 2, 2015.

Sec. 592.154. Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing.

(a) A physician who is treating a client may file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

(1) the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care facility under Subchapter C, Chapter 593, or other law or an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed for the client.

(b) An application filed under this section must state:

(1) that the physician believes that the client lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section must be filed separately from an application for commitment to a residential care facility.

(d) The hearing on the application may be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.155. Rights of Client.

A client for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled:

(1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;

(3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) to be present at the hearing;

(6) to request from the court an independent expert; and

(7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.156. Hearing and Order Authorizing Psychoactive Medication.

(a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a client who:

(1) has been committed to a residential care facility; or

(2) is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the client; or

(2) if the client was committed to a residential care facility by a criminal court with jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.157; or

(B) the client:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) In making the finding that treatment with the proposed medication is in the best interest of the client, the court shall consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the client is entitled to have provided to the client and the client's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order entered under this section shall authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the department.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(*l*) For a client described by Subsection (b)(2)(B), an order issued under this section:

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

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

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.157. Finding That Client Presents a Danger.

In making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the client's present mental condition; and

(2) whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.158. Appeal.

(a) A client may appeal an order under this subchapter in the manner provided by Section 593.056 for an appeal of an order committing the client to a residential care facility.

(b) An order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.159. Effect of Order.

(a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.156.

(b) The issuance of an order under Section 592.156 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

Sec. 592.160. Expiration of Order.

(a) Except as provided by Subsection (b), an order issued under Section 592.156 expires on the anniversary of the date the order was issued.

(b) An order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. An order continued under this subsection shall be reviewed by the issuing court every six months.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 3, effective September 1, 2013.

CHAPTER 593

Admission and Commitment to Intellectual Disability Services

Subchapter

A. General Provisions
B. Application and Admission to Voluntary Intellectual Disability Services
C. Commitment to Residential Care Facility
D. Fees
E. Admission and Commitment Under Prior Law

Subchapter A

General Provisions

Section

593.001. Admission.
593.002. Consent Required.
593.003. Requirement of Determination of an Intellectual Disability.
593.004. Application for Determination of an Intellectual Disability.
593.005. Determination of an Intellectual Disability.
593.006. Report.
593.007. Notification of Certain Rights.
593.008. Administrative Hearing.
593.009. Hearing Report; Final Decision.
593.010. Appeal.
593.011. Fees for Services.
593.012. Absent Without Authority.
593.013. Interdisciplinary Team Recommendation.
593.014. Epilepsy.

Sec. 593.001. Admission.

A person may be admitted for intellectual disability services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1421, effective April 2, 2015.

Sec. 593.002. Consent Required.

(a) Except as provided by Subsection (b), the department or a community center may not provide intellectual disability services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential intellectual disability services, including a determination of an intellectual disability, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The executive commissioner by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 5, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1422, effective April 2, 2015.

Sec. 593.003. Requirement of Determination of an Intellectual Disability.

Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1423, effective April 2, 2015.

Sec. 593.004. Application for Determination of an Intellectual Disability.

(a) In this section, "authorized provider" means:

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

(2) a psychologist licensed to practice in this state;

(3) a professional licensed to practice in this state and certified by the department; or

(4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with an intellectual disability, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of an intellectual disability using forms provided by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2013, 83rd Leg., ch. 883 (H.B. 807), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1424, 3.1425, effective April 2, 2015.

Sec. 593.005. Determination of an Intellectual Disability.

(a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider shall perform the determination of an intellectual disability. The department may charge a reasonable fee for certifying an authorized provider.

(b) The authorized provider shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The authorized provider may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a physician or psychologist if the authorized provider determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of an intellectual disability shall be performed at the department's expense by an authorized provider.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; am. Acts 2013, 83rd Leg., ch. 883 (H.B. 807), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1426, 3.1427, effective April 2, 2015.

Sec. 593.006. Report.

A person who files an application for a determination of an intellectual disability under Section 593.004 shall be promptly notified in writing of the findings.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1428, effective April 2, 2015.

Sec. 593.007. Notification of Certain Rights.

The department shall inform the person who filed an application for a determination of an intellectual disability of the person's right to:

(1) an independent determination of an intellectual disability under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of an intellectual disability to contest the findings.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 6, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1429, effective April 2, 2015.

Sec. 593.008. Administrative Hearing.

(a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of an intellectual disability; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The executive commissioner by rule shall implement the hearing procedures.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 7, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1430, effective April 2, 2015.

Sec. 593.009. Hearing Report; Final Decision.

(a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.010. Appeal.

(a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.011. Fees for Services.

(a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.012. Absent Without Authority.

(a) The director of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 1016 (H.B. 2892), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1187 (S.B. 358), § 20, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1006 (H.B. 1072), § 2, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1431, effective April 2, 2015.

Sec. 593.013. Interdisciplinary Team Recommendation.

(a) Except as provided by Section 593.0511, a person may not be admitted or committed to a residential care facility unless an interdisciplinary team recommends that placement.

(b) An interdisciplinary team shall:

(1) interview the person with an intellectual disability, the person's parent if the person is a minor, and the person's guardian;

(2) review the person's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(c) The interdisciplinary team shall give the person, the person's parent if the person is a minor, and the person's guardian an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the interdisciplinary team determines that the assessment, social history, or record is valid.

(e) The interdisciplinary team shall prepare a written report of its findings and recommendations that is signed by each team member and shall promptly send a copy of the report and recommendations to the person, the person's parent if the person is a minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with an intellectual disability or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1432, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1145 (S.B. 944), §§ 1, 2, effective September 1, 2023.

Sec. 593.014. Epilepsy.

A person may not be denied admission to a residential care facility because the person suffers from epilepsy.

HISTORY: Amended by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1343, effective April 2, 2015 (Renumbered from Tex. Health & Safety Code Sec. 553.001).

Subchapter B

Application and Admission to Voluntary Intellectual Disability Services

Section	
593.021.	Application for Voluntary Services.
593.022.	Admission to Voluntary Intellectual Disability Services.
593.023.	Rules Relating to Planning of Services or Treatment.
593.024.	Application for Voluntary Residential Care Services.
593.025.	Placement Preference.
593.026.	Regular Voluntary Admission.
593.027.	Emergency Admission.
593.0275.	Emergency Services.
593.028.	Respite Care.
593.029.	Treatment of Minor Who Reaches Majority.
593.030.	Withdrawal From Services.

Sec. 593.021. Application for Voluntary Services.

(a) The proposed client or the parent if the proposed client is a minor may apply for voluntary intellectual disability services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 9, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 809 (H.B. 3135), § 1, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1434, effective April 2, 2015.

Sec. 593.022. Admission to Voluntary Intellectual Disability Services.

(a) An eligible person who applies for intellectual dis-

ability services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1435, 3.1436, effective April 2, 2015.

Sec. 593.023. Rules Relating to Planning of Services or Treatment.

(a) The executive commissioner by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015—594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1437, effective April 2, 2015.

Sec. 593.024. Application for Voluntary Residential Care Services.

(a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.025. Placement Preference.

Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.026. Regular Voluntary Admission.

A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility director determines that the facility provides services that meet the needs of the proposed resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1438, effective April 2, 2015.

Sec. 593.027. Emergency Admission.

(a) An emergency admission to a residential care facility is permitted without a determination of an intellectual disability and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility director determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of an intellectual disability and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 9, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1439, effective April 2, 2015.

Sec. 593.0275. Emergency Services.

(a) A person may receive emergency services without a determination of an intellectual disability if:

(1) there is persuasive evidence that the person is a person with an intellectual disability;

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of an intellectual disability for the person served under this section shall be performed within 30 days after the date the services begin.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 10, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1440, effective April 2, 2015.

Sec. 593.028. Respite Care.

(a) A person may be admitted to a residential care facility for respite care without a determination of an intellectual disability and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which respite care is requested;

(3) the facility director determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility director determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 11, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1441, effective April 2, 2015.

Sec. 593.029. Treatment of Minor Who Reaches Majority.

When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the facility director shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1442, effective April 2, 2015.

Sec. 593.030. Withdrawal From Services.

A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility director determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;

(2) the facility director files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1443, effective April 2, 2015.

Subchapter C

Commitment to Residential Care Facility

Section
593.041. Application for Placement; Jurisdiction.
593.042. Form of Application.
593.043. Representation by Counsel; Appointment of Attorney.
593.044. Order for Protective Custody.
593.045. Detention in Protective Custody.
593.046. Release from Protective Custody.
593.047. Setting on Application.
593.048. Hearing Notice.
593.049. Hearing Before Jury; Procedure.
593.050. Conduct of Hearing.
593.051. Dismissal After Hearing.
593.0511. Long-Term Placement Without Interdisciplinary Team Recommendation.
593.052. Order for Commitment.
593.053. Decision.
593.054. Not a Judgment of Incompetence.
593.055. Designation of Facility.
593.056. Appeal.

Sec. 593.041. Application for Placement; Jurisdiction.

(a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of an intellectual disability of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the director of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with an intellectual disability to residential care facilities.

(d) Except as provided by Section 593.0511, a person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.

(e) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 12, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 39, effective June 19, 1997; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1444, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1145 (S.B. 944), § 3, effective September 1, 2023.

Sec. 593.042. Form of Application.

(a) An application for commitment of a person to a residential care facility must:

(1) be executed under oath; and

(2) include:

(A) the name, birth date, sex, and address of the proposed resident;

(B) the name and address of the proposed resident's parent or guardian, if applicable;

(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and

(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.

(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 13, effective September 1, 1993.

Sec. 593.043. Representation by Counsel; Appointment of Attorney.

(a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.

(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.

(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.

Sec. 593.044. Order for Protective Custody.

(a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with an intellectual disability; and

(2) likely to cause injury to the proposed resident or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or

(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or

(2) another suitable location to which the resident may be transported under Subsection (b).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1445, effective April 2, 2015.

Sec. 593.045. Detention in Protective Custody.

(a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.046. Release from Protective Custody.

(a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.047. Setting on Application.

On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.048. Hearing Notice.

(a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of an intellectual disability and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of an intellectual disability under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 14, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1446, effective April 2, 2015.

Sec. 593.049. Hearing Before Jury; Procedure.

(a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.050. Conduct of Hearing.

(a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of an intellectual disability and the current interdisciplinary team report and recommendations, except in the case of a long-term placement under Section 593.0511, shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B. 771), § 15, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 10.007, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1447, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1145 (S.B. 944), § 4, effective September 1, 2023.

Sec. 593.051. Dismissal After Hearing.

If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.0511. Long-Term Placement Without Interdisciplinary Team Recommendation.

A court may commit a proposed resident to long-term placement in a residential care facility without an interdisciplinary team recommendation under Section 593.013 if the court determines beyond a reasonable doubt that the proposed resident meets the requirements for commitment to a residential care facility under Section 593.052.

HISTORY: Acts 2023, 88th Leg., ch. 1145 (S.B. 944), § 5, effective September 1, 2023.

Sec. 593.052. Order for Commitment.

(a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with an intellectual disability;

(2) a petition to the court to issue a commitment order by the guardian of the proposed resident or, if the proposed resident is a minor, the parent of the proposed resident or the current interdisciplinary team report and recommendations, if applicable, show that because of the proposed resident's intellectual disability, the proposed resident:

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

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

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

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1448, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1145 (S.B. 944), § 6, effective September 1, 2023.

Sec. 593.053. Decision.

The court in each case shall promptly report in writing the decision and findings of fact.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.054. Not a Judgment of Incompetence.

An order for commitment is not an adjudication of mental incompetency.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.055. Designation of Facility.

If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

(1) space in the facility is unavailable;

(2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or

(3) there are other compelling reasons.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.056. Appeal.

(a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter D

Fees

Section

593.071. Application of Subchapter.
593.072. Inability to Pay.
593.073. Determination of Residential Costs.
593.074. Maximum Fees.
593.075. Sliding Fee Schedule.

Section
593.076. Fee Schedule for Divorced Parents.
593.077. Child Support Payments for Benefit of Resident.
593.078. Payment for Adult Residents.
593.079. Previous Fee Agreements. [Repealed]
593.080. State Claims for Unpaid Fees.
593.081. Trust Exemption.
593.082. Filing of Claims.

Sec. 593.071. Application of Subchapter.

This subchapter applies only to a resident admitted to a residential care facility operated by the department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.072. Inability to Pay.

A resident may not be denied residential care because of an inability to pay for the care.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.073. Determination of Residential Costs.

The executive commissioner by rule may determine the cost of support, maintenance, and treatment of a resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1449, effective April 2, 2015.

Sec. 593.074. Maximum Fees.

(a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The executive commissioner may use the projected cost of providing residential services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish maximum fees on one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1450, effective April 2, 2015.

Sec. 593.075. Sliding Fee Schedule.

(a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The executive commissioner by rule shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 278 (S.B. 605), § 2, effective June 5, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1451, effective April 2, 2015.

Sec. 593.076. Fee Schedule for Divorced Parents.

(a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.077. Child Support Payments for Benefit of Resident.

(a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the:

(1) department may be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) executive commissioner by rule may establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

(1) the resident's parent fails to pay child support as required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1452, effective April 2, 2015.

Sec. 593.078. Payment for Adult Residents.

(a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.079. Previous Fee Agreements. [Repealed]

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; repealed by Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1639(112), effective April 2, 2015.

Sec. 593.080. State Claims for Unpaid Fees.

(a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.081. Trust Exemption.

(a) If the resident is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 498 (S.B. 1623), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1453, effective April 2, 2015; Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 9, effective September 1, 2019.

Sec. 593.082. Filing of Claims.

(a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1454, effective April 2, 2015.

Subchapter E

Admission and Commitment Under Prior Law

Section
593.091. Admission and Commitment.
593.092. Discharge of Person Voluntarily Admitted to Residential Care Facility.
593.093. Reimbursement to County.

Sec. 593.091. Admission and Commitment.

A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 593.092. Discharge of Person Voluntarily Admitted to Residential Care Facility.

(a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the facility director receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The facility director may detain the resident for more than 96 hours in accordance with Section 593.030.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1455, effective April 2, 2015.

Sec. 593.093. Reimbursement to County.

(a) The state shall reimburse a county an amount not to exceed $50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 594

Transfer and Discharge

Subchapter
A. General Provisions
B. Transfer or Discharge
C. Transfer to State Mental Hospital

Subchapter A

General Provisions

Section
594.001. Applicability of Chapter.
594.002. Leave; Furlough.
594.003. Habeas Corpus.

Sec. 594.001. Applicability of Chapter.

(a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(b) This chapter does not apply to the:

(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;

(2) voluntary withdrawal of a client from intellectual disability services; or

(3) discharge of a client by a director because the person is not a person with an intellectual disability according to the results of the determination of an intellectual disability.

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the determination of an intellectual disability is requested.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 60 (H.B.771), § 16, effective September 1, 1993; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1456, effective April 2, 2015.

Sec. 594.002. Leave; Furlough.

The director may grant or deny a resident a leave of absence or furlough.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), 3.1457, effective April 2, 2015.

Sec. 594.003. Habeas Corpus.

This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Subchapter B

Transfer or Discharge

Section
594.011. Service Provider.
594.012. Request by Client, Parent, or Guardian.
594.013. Notice of Transfer or Discharge; Approval.
594.014. Right to Administrative Hearing.
594.015. Administrative Hearing.
594.016. Decision.
594.017. Appeal.
594.018. Notice to Committing Court.
594.019. Alternative Services.

Sec. 594.011. Service Provider.

A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

(1) that the client's placement is no longer appropriate to the person's individual needs; or

(2) that the client can be better treated and habilitated in another setting; and

(3) placement in another setting that can better treat and habilitate the client has been secured.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.012. Request by Client, Parent, or Guardian.

(a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.013. Notice of Transfer or Discharge; Approval.

(a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.014. Right to Administrative Hearing.

(a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or discharged from intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1458, effective April 2, 2015.

Sec. 594.015. Administrative Hearing.

(a) An administrative hearing to contest a transfer or discharge decision must be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the director have the right to:

(1) be present and represented at the hearing; and

(2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1459, effective April 2, 2015.

Sec. 594.016. Decision.

(a) After each case, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported, unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the director shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1460, effective April 2, 2015.

Sec. 594.017. Appeal.

(a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.018. Notice to Committing Court.

When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.019. Alternative Services.

(a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the local intellectual and developmental disability authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1461, effective April 2, 2015.

Subchapter C

Transfer to State Mental Hospital

Section	
594.0301.	Definition.
594.031.	Transfer of Voluntary Resident.
594.032.	Transfer of Court-Committed Resident.
594.033.	Evaluation; Court Order.
594.034.	Request for Transfer Order.
594.035.	Hearing Date.
594.036.	Notice.

Section
594.037. Hearing Location.
594.038. Hearing Before Jury.
594.039. Resident Present at Hearing.
594.040. Open Hearing.
594.041. Medical Evidence.
594.042. Hearing Determination.
594.043. Discharge of Resident.
594.044. Transfer To Residential Care Facility.
594.045. Return of Court-Ordered Transfer Resident.

Sec. 594.0301. Definition.

In this subchapter, "state mental hospital" has the meaning assigned by Section 571.003.

HISTORY: Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1462, effective April 2, 2015.

Sec. 594.031. Transfer of Voluntary Resident.

A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.032. Transfer of Court-Committed Resident.

(a) The director may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if:

(1) an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer; and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1463, effective April 2, 2015.

Sec. 594.033. Evaluation; Court Order.

The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.034. Request for Transfer Order.

(a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

(1) a person with mental illness; and

(2) requires observation or treatment in a mental hospital.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.035. Hearing Date.

When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the proposed transfer.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.036. Notice.

(a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated and a guardian has been appointed in a proceeding under Title 3, Estates Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 1039 (H.B. 2029), § 1, effective September 1, 1995; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1464, effective April 2, 2015; Acts 2019, 86th Leg., ch. 846 (H.B. 2780), § 10, effective September 1, 2019.

Sec. 594.037. Hearing Location.

(a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.038. Hearing Before Jury.

(a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.039. Resident Present at Hearing.

The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.040. Open Hearing.

The transfer hearing must be open to the public unless the court:

(1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.041. Medical Evidence.

(a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a state mental hospital except on competent medical or psychiatric testimony.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1465, effective April 2, 2015.

Sec. 594.042. Hearing Determination.

The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.043. Discharge of Resident.

A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 594.044. Transfer To Residential Care Facility.

(a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the director of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The director shall immediately provide for the return of the resident to the facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 3.1466, 3.1467, effective April 2, 2015.

Sec. 594.045. Return of Court-Ordered Transfer Resident.

(a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of the resident's intellectual disability; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1468, effective April 2, 2015.

CHAPTER 595

Records

Section	
595.001.	Confidentiality of Records.
595.002.	Rules.
595.003.	Consent to Disclosure.
595.004.	Right to Personal Record.
595.005.	Exceptions.
595.0055.	Disclosure of Name and Birth and Death Dates for Certain Purposes.
595.006.	Use of Record in Criminal Proceedings.
595.007.	Confidentiality of Past Services.
595.008.	Exchange of Records.
595.009.	Receipt of Information by Persons Other Than Client or Patient.
595.010.	Disclosure of Physical or Mental Condition.

Sec. 595.001. Confidentiality of Records.

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1469, effective April 2, 2015.

Sec. 595.002. Rules.

The executive commissioner shall adopt rules to carry out this chapter that are necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or

(2) facilitate compliance with the chapter.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1470, effective April 2, 2015.

Sec. 595.003. Consent to Disclosure.

(a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

(1) the person about whom the record is maintained;

(2) the person's parent if the person is a minor;

(3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or

(4) if the person is dead:

(A) the executor or administrator of the deceased's estate; or

(B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.004. Right to Personal Record.

(a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

(1) the person is a client; and

(2) the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.005. Exceptions.

(a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;

(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or

(3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with an intellectual disability.

(b) A person who receives confidential information under Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1471, effective April 2, 2015.

Sec. 595.0055. Disclosure of Name and Birth and Death Dates for Certain Purposes.

(a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the director of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 174 (S.B. 1764), § 2, effective May 27, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1472, effective April 2, 2015.

Sec. 595.006. Use of Record in Criminal Proceedings.

Except as authorized by a court order under Section 595.005, a confidential record may not be used to:

(1) initiate or substantiate a criminal charge against a person receiving services; or

(2) conduct an investigation of a person receiving services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.007. Confidentiality of Past Services.

The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.008. Exchange of Records.

The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

(1) delivery of services to clients; or

(2) payment for intellectual disability services as defined in this subtitle.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1473, effective April 2, 2015.

Sec. 595.009. Receipt of Information by Persons Other Than Client or Patient.

(a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 595.010. Disclosure of Physical or Mental Condition.

This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with an intellectual disability to the person's parent, guardian, relative, or friend.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1474, effective April 2, 2015.

CHAPTER 597

Capacity of Clients to Consent to Treatment

Subchapter
A. General Provisions
B. Assessment of Client's Capacity; Incapacitated Clients Without Guardians
C. Surrogate Consent for ICF-IID Clients

Subchapter A

General Provisions

Section
597.001. Definitions.
597.002. Rules.
597.003. Exceptions.

Sec. 597.001. Definitions.

In this chapter:

(1) "Highly restrictive procedure" means the application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.

(2) "Client" means a person receiving services in a community-based ICF-IID.

(3) "Committee" means a surrogate consent committee established under Section 597.042.

(4) "ICF-IID" has the meaning assigned by Section 531.002.

(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for individuals with intellectual and developmental disabilities.

(6) "Major medical and dental treatment" means a medical, surgical, dental, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.

(7) "Psychoactive medication" means any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an ICF-IID.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1475, effective April 2, 2015.

Sec. 597.002. Rules.

The executive commissioner may adopt rules necessary to implement this chapter.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1476, effective April 2, 2015.

Sec. 597.003. Exceptions.

(a) This chapter does not apply to decisions for the following:

(1) experimental research;

(2) abortion;

(3) sterilization;

(4) management of client funds; and

(5) electroconvulsive treatment.

(b) This chapter does not apply to campus-based facilities operated by the department.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Subchapter B

Assessment of Client's Capacity; Incapacitated Clients Without Guardians

Section
597.021. ICF-IID Assessment of Client's Capacity to Consent to Treatment.

Sec. 597.021. ICF-IID Assessment of Client's Capacity to Consent to Treatment.

(a) The executive commissioner by rule shall require an ICF-IID certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.

(b) The rules must require the use of a uniform assessment process prescribed by department rule to determine a client's capacity to make treatment decisions.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1477, effective April 2, 2015.

Subchapter C

Surrogate Consent for ICF-IID Clients

Section
597.041. Surrogate Decision-Makers.

Section
597.042. Surrogate Consent Committee Established; Departmental Support.
597.043. Committee Membership.
597.044. Application for Treatment Decision.
597.045. Notice of Review of Application for Treatment Decision.
597.046. Prereview of Application.
597.047. Confidential Information.
597.048. Review of Application.
597.049. Determination of Best Interest.
597.050. Notice of Determination.
597.051. Effect of Committee's Determination.
597.052. Scope of Consent.
597.053. Appeals.
597.054. Procedures.
597.055. Expiration [Repealed].

Sec. 597.041. Surrogate Decision-Makers.

(a) If the results of an assessment conducted in accordance with Section 597.021 indicate that an adult client who does not have a legal guardian or a client under 18 years of age who has no parent, legal guardian, or managing or possessory conservator lacks the capacity to make a major medical or dental treatment decision, an adult surrogate from the following list, in order of descending preference, who has decision-making capacity and who is willing to consent on behalf of the client may consent to major medical or dental treatment on behalf of the client:

(1) an actively involved spouse;

(2) an actively involved adult child who has the waiver and consent of all other actively involved adult children of the client to act as the sole decision-maker;

(3) an actively involved parent or stepparent;

(4) an actively involved adult sibling who has the waiver and consent of all other actively involved adult siblings of the client to act as the sole decision-maker; and

(5) any other actively involved adult relative who has the waiver and consent of all other actively involved adult relatives of the client to act as the sole decision-maker.

(b) Any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

(c) Consent given by the surrogate decision-maker is valid and competent to the same extent as if the client had the capacity to consent and had consented.

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under Title 3, Estates Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1479, effective April 2, 2015.

Sec. 597.042. Surrogate Consent Committee Established; Departmental Support.

(a) For cases in which there is no guardian or surrogate decision-maker available, the department shall establish and maintain a list of individuals qualified to serve on a surrogate consent committee.

(b) The department shall provide the staff and assistance necessary to perform the duties prescribed by this subchapter.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.043. Committee Membership.

(a) A surrogate consent committee considering an application for a treatment decision shall be composed of at least three but not more than five members, and consent on behalf of clients shall be based on consensus of the members.

(b) A committee considering an application for a treatment decision must consist of individuals who:

(1) are not employees of the facility;

(2) do not provide contractual services to the facility;

(3) do not manage or exercise supervisory control over:

(A) the facility or the employees of the facility; or

(B) any company, corporation, or other legal entity that manages or exercises control over the facility or the employees of the facility;

(4) do not have a financial interest in the facility or in any company, corporation, or other legal entity that has a financial interest in the facility; and

(5) are not related to the client.

(c) The list of qualified individuals from which committee members are drawn shall include:

(1) health care professionals licensed or registered in this state who have specialized training in medicine, psychopharmacology, nursing, or psychology;

(2) persons with an intellectual disability or parents, siblings, spouses, or children of a person with an intellectual disability;

(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with an intellectual disability or to the families of persons with an intellectual disability;

(4) members of private organizations that advocate on behalf of persons with an intellectual disability; and

(5) persons with demonstrated expertise or interest in the care and treatment of persons with an intellectual disability.

(d) At least one member of the committee must be an individual listed in Subsection (c)(1) or (5).

(e) A member of a committee shall participate in education and training as required by department rule.

(f) The department shall designate a committee chair.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1480, effective April 2, 2015.

Sec. 597.044. Application for Treatment Decision.

(a) If the results of the assessment conducted in accordance with Section 597.021 indicate that a client who does not have a legal guardian or surrogate decision-maker lacks the capacity to make a treatment decision about major medical or dental treatment, psychoactive medication, or a highly restrictive procedure, the ICF-IID must file an application for a treatment decision with the department.

(b) An application must be in the form prescribed by the department, must be signed by the applicant, and must:

(1) state that the applicant has reason to believe and does believe that the client has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;

(2) specify the condition proposed to be treated;

(3) provide a description of the proposed treatment, including the risks and benefits to the client of the proposed treatment;

(4) provide a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons the alternatives were rejected;

(5) state the applicant's opinion on whether the proposed treatment promotes the client's best interest and the grounds for the opinion;

(6) state the client's opinion about the proposed treatment, if known;

(7) provide any other information necessary to determine the client's best interest regarding the treatment; and

(8) state that the client does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the client who is able and willing to become the client's guardian or surrogate decision-maker.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1481, effective April 2, 2015.

Sec. 597.045. Notice of Review of Application for Treatment Decision.

(a) Following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b), the department shall appoint a surrogate consent committee.

(b) The ICF-IID with assistance from the department shall schedule a review of the application.

(c) The ICF-IID with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by department rule. The ICF-IID shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 3, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1482, effective April 2, 2015.

Sec. 597.046. Prereview of Application.

(a) Before the date of the review of an application for a treatment decision the committee chair shall review the application to determine whether additional information may be necessary to assist the committee in determining the client's best interest under the circumstances.

(b) A committee member may consult with a person who might assist in the determination of the best interest of the client or in learning the personal opinions, beliefs, and values of the client.

(c) If a committee that does not include in its membership an individual listed in Section 597.043(c)(1) is to review an application for a treatment decision about psychoactive medication, the department shall provide consultation with a health care professional licensed or registered in this state to assist the committee in the determination of the best interest of the client.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.047. Confidential Information.

Notwithstanding any other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with an intellectual disability, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1483, effective April 2, 2015.

Sec. 597.048. Review of Application.

(a) The committee shall review the application at the time, place, and date provided in the notice under Section 597.045.

(b) A person notified under Section 597.045 is entitled to be present and to present evidence personally or through a representative.

(c) The committee may take testimony or review evidence from any person who might assist the committee in determining a client's best interest.

(d) Formal rules of evidence do not apply to committee proceedings.

(e) If practicable, the committee shall interview and observe the client before making a determination of the client's best interest, and in those cases when a client is not interviewed, the reason must be documented in the committee's record.

(f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the Estates Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 5, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1484, effective April 2, 2015.

Sec. 597.049. Determination of Best Interest.

(a) The committee shall make a determination, based on clear and convincing evidence, of whether the proposed treatment promotes the client's best interest and a determination that:

(1) a person has not been appointed as the guardian of the client's person before the sixth day after proceedings are suspended under Section 597.048(f); or

(2) there is a medical necessity, based on clear and convincing evidence, that the determination about the proposed treatment occur before guardianship proceedings are completed.

(b) In making its determination of the best interest of the client, the committee shall consider fully the preference of the client as articulated at any time.

(c) According to its determination of the client's best interest, the committee shall consent or refuse the treatment on the client's behalf.

(d) The committee shall determine a date on which the consent becomes effective and a date on which the consent expires.

(e) A person serving on a committee who consents or refuses to consent on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.050. Notice of Determination.

(a) The committee shall issue a written opinion containing each of its determinations and a separate statement of the committee's findings of fact.

(b) The ICF-IID shall send a copy of the committee's opinion to:

(1) each person notified under Section 597.045; and

(2) the department.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 7, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1485, effective April 2, 2015.

Sec. 597.051. Effect of Committee's Determination.

This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.052. Scope of Consent.

(a) The committee or the surrogate decision-maker may consent to the release of records related to the client's condition or treatment to facilitate treatment to which the committee or surrogate decision-maker has consented.

(b) The interdisciplinary team may consent to psychoactive medication subsequent to the initial consent for administration of psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.

(c) Unless another decision-making mechanism is provided for by law, a client, a client's authorized surrogate decision-maker if available, or the client's interdisciplinary team may consent to decisions which involve risk to client protection and rights not specifically reserved to surrogate decision-makers or surrogate consent committees.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.053. Appeals.

(a) A person notified under Section 597.045 may appeal the committee's decision by filing a petition in the probate court or court having probate jurisdiction for the county in which the client resides or in Travis County. The person must file the appeal not later than the 15th day after the effective date of the committee's determination.

(b) If the hearing is to be held in a probate court in which the judge is not a licensed attorney, the person filing the appeal may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The probate court judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(c) A copy of the petition must be served on all parties of record in the proceedings before the committee.

(d) After considering the nature of the condition of the client, the proposed treatment, and the need for timely medical attention, the court may issue a temporary restraining order to facilitate the appeal. If the order is granted, the court shall expedite the trial.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999.

Sec. 597.054. Procedures.

(a) Each ICF-IID shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

(b) A committee is not subject to Chapter 2001, Government Code, Chapter 551, Government Code, or Chapter 552, Government Code.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(49), (82), (88), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 9, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 538 (S.B. 209), § 1, effective June 18, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1486, effective April 2, 2015.

Sec. 597.055. Expiration [Repealed].

Repealed by Acts 1997, 75th Leg., ch. 450 (S.B. 85), § 10, effective September 1, 1997.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 530 (S.B. 1142), § 1, effective August 30, 1993.

SUBTITLE E

SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND INTELLECTUAL DISABILITY

Chapter
611. Mental Health Records
612. Interstate Compact On Mental Health
614. Texas Correctional Office On Offenders With Medical or Mental Impairments
615. Miscellaneous Provisions

CHAPTER 611

Mental Health Records

Section
611.001. Definitions.
611.002. Confidentiality of Information and Prohibition Against Disclosure.
611.003. Persons Who May Claim Privilege of Confidentiality.
611.004. Authorized Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.
611.0041. Required Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.
611.0045. Right to Mental Health Record.
611.005. Legal Remedies for Improper Disclosure or Failure to Disclose.
611.006. Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding.
611.007. Revocation of Consent.
611.008. Request by Patient.

Sec. 611.001. Definitions.

In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 611.002. Confidentiality of Information and Prohibition Against Disclosure.

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

(b-1) No exception to the privilege of confidentiality under Section 611.004 may be construed to create an independent duty or requirement to disclose the confidential information to which the exception applies.

(c) This section applies regardless of when the patient received services from a professional.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.11, effective August 30, 1993; Acts 2021, 87th Leg., ch. 633 (H.B. 549), § 1, effective September 1, 2021.

Sec. 611.003. Persons Who May Claim Privilege of Confidentiality.

(a) The privilege of confidentiality may be claimed by:

(1) the patient;

(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

HISTORY: Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 611.004. Authorized Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.

(a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical, mental health, or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(a-1) No civil, criminal, or administrative cause of action exists against a person described by Section 611.001(2)(A) or (B) for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against the person for the disclosure of the confidential information must be dismissed with prejudice.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 8, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 1264 (S.B. 1217), § 1, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 138 (H.B. 741), § 1, effective September 1, 2005; Acts 2021, 87th Leg., ch. 633 (H.B. 549), § 2, effective September 1, 2021.

Sec. 611.0041. Required Disclosure of Confidential Information Other Than in Judicial or Administrative Proceeding.

(a) In this section:

(1) "Patient" has the meaning assigned by Section 552.0011.

(2) "State hospital" has the meaning assigned by Section 552.0011.

(b) To the extent permitted by federal law, a professional shall disclose confidential information to the descendant of a patient of a state hospital if:

(1) the patient has been deceased for at least 50 years; and

(2) the professional does not have information indicating that releasing the medical record is inconsistent with any prior expressed preference of the deceased patient or personal representatives of the deceased patient's estate.

(c) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.

HISTORY: Acts 2019, 86th Leg., ch. 1088 (H.B. 1901), § 1, effective September 1, 2019.

Sec. 611.0045. Right to Mental Health Record.

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).

(e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the patient's commitment.

(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.

(i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.12, effective August 30, 1993; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.806, effective September 1, 2001.

Sec. 611.005. Legal Remedies for Improper Disclosure or Failure to Disclose.

(a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c) The aggrieved person also has a civil cause of action for damages.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 903 (S.B. 207), § 1.13, effective August 30, 1993.

Sec. 611.006. Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding.

(a) A professional may disclose confidential information in:

(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;

(6) a judicial proceeding affecting the parent-child relationship;

(7) any criminal proceeding, as otherwise provided by law;

(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;

(9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;

(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:

(A) Chapter 462;

(B) Chapter 574; or

(C) Chapter 593; or

(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

Sec. 611.007. Revocation of Consent.

(a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

Sec. 611.008. Request by Patient.

(a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

(1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 856 (S.B. 667), § 9, effective September 1, 1995.

CHAPTER 612

Interstate Compact On Mental Health

Section	
612.001.	Execution of Interstate Compact.
612.002.	Compact Administrator.
612.003.	Application of Sunset Act [Repealed].
612.004.	General Powers and Duties of Administrator.
612.005.	Supplementary Agreements.
612.006.	Financial Arrangements.
612.007.	Requirements Affecting Transfers of Certain Patients.

Sec. 612.001. Execution of Interstate Compact.

This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree that:

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be

facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c) 'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

"(d) 'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e) 'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f) 'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g) 'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h) 'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

"(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

"ARTICLE IV

"(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

"ARTICLE V

"Whenever a dangerous or potentially dangerous pa-

tient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

"ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

"ARTICLE VII

"(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

"ARTICLE VIII

"(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.002. Compact Administrator.

(a) Under the compact, the governor shall appoint the executive commissioner of the Health and Human Services Commission as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1487, effective April 2, 2015.

Sec. 612.003. Application of Sunset Act [Repealed].

Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17 (H.B. 435), § 7.01(22), effective November 12, 1991.

Sec. 612.004. General Powers and Duties of Administrator.

(a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.005. Supplementary Agreements.

(a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the executive commissioner and the head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or

(2) that will perform the service.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1488, effective April 2, 2015.

Sec. 612.006. Financial Arrangements.

The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

Sec. 612.007. Requirements Affecting Transfers of Certain Patients.

(a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991.

CHAPTER 614

Texas Correctional Office On Offenders With Medical or Mental Impairments

Section	
614.001.	Definitions.
614.002.	Composition of Committee; Duties.
614.003.	Texas Correctional Office on Offenders with Medical or Mental Impairments; Director.
614.0031.	Training Program.
614.0032.	Special Duties Related to Medically Recommended Supervision; Determinations Regarding Mental Illness or Intellectual Disability.

Section
614.004. Terms.
614.005. Officers; Meetings.
614.006. Applicability of Certain Government Code Provisions.
614.007. Powers and Duties.
614.008. Community-Based Diversion Program for Offenders with Medical or Mental Impairments.
614.009. Biennial Report.
614.010. Personnel [Repealed].
614.0101. Public Access.
614.0102. Complaints.
614.011. Additional Pilot Program [Repealed].
614.012. Additional Duties [Repealed].
614.013. Continuity of Care for Offenders with Mental Impairments.
614.014. Continuity of Care for Elderly Offenders.
614.015. Continuity of Care for Offenders with Physical Disabilities, Terminal Illnesses, or Significant Illnesses.
614.016. Continuity of Care for Certain Offenders by Law Enforcement and Jails.
614.017. Exchange of Information.
614.018. Continuity of Care for Juveniles with Mental Impairments.
614.019. Programs for Juveniles.
614.020. Youth Assertive Community Treatment Program.
614.0205. Appropriation Contingency.
614.021. Services for Wrongfully Imprisoned Persons.

Sec. 614.001. Definitions.

In this chapter:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or an intellectual disability provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3) "Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(3-a) "Continuity of care and services" refers to the process of:

(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of an offender with medical or mental impairments;

(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and

(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.

(4) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or a combination of physical and mental impairments;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

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

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) receptive and expressive language;

(v) mobility;

(vi) capacity for independent living; or

(vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Mental illness" has the meaning assigned by Section 571.003.

(6) "Mental impairment" means a mental illness, an intellectual disability, or a developmental disability.

(7) "Intellectual disability" has the meaning assigned by Section 591.003.

(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) is a person with:

(i) a mental impairment; or

(ii) a physical disability, terminal illness, or significant illness; or

(B) is elderly.

(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10) "Person with an intellectual disability " means a juvenile or adult with an intellectual disability that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private school or state supported living center for persons with an intellectual disability.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.52, effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 2, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 1, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1489, effective April 2, 2015.

Sec. 614.002. Composition of Committee; Duties.

(a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 27 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, intellectual disabilities, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(c) (1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;

(B) the Texas Criminal Defense Lawyers Association;

(C) the Texas Association of Counties;

(D) the Texas Medical Association;

(E) the Texas Society of Psychiatric Physicians;

(F) the Texas Psychological Association;

(G) the Sheriffs' Association of Texas;

(H) the court of criminal appeals;

(I) the County Judges and Commissioners Association of Texas; and

(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

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

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;

(3) the parole division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the Texas Juvenile Justice Department;

(6) the Texas Workforce Commission;

(7) the Correctional Managed Health Care Committee;

(8) Mental Health America of Texas;

(9) the Board of Pardons and Paroles;

(10) the Texas Commission on Law Enforcement;

(11) the Texas Council of Community Centers;

(12) the Commission on Jail Standards;

(13) the Texas Council for Developmental Disabilities;

(14) the Arc of Texas;

(15) the National Alliance on Mental Illness of Texas;

(16) the Texas Veterans Commission; and

(17) the Health and Human Services Commission

.

(f) In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-large member:

(1) does not have at the time of taking office the qualifications required by Subsection (b);

(2) does not maintain during service on the committee the qualifications required by Subsection (b);

(3) is ineligible for membership under Subsection (d);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or

(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

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

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 2.020, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.50, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 79 (H.B. 1610), § 5, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.01, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 3, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 27.01, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 9.005, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1112 (H.B. 2384), § 1, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.112, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1176 (H.B. 3278), § 8, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.39, effective May 18, 2013; Acts 2015, 84th Leg.,

ch. 1 (S.B. 219), § 3.1490, effective April 2, 2015; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 96, effective September 1, 2025.

Sec. 614.003. Texas Correctional Office on Offenders with Medical or Mental Impairments; Director.

The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.02, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 4, effective September 1, 2003.

Sec. 614.0031. Training Program.

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

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

(1) the legislation that created the committee and the office;

(2) the programs operated by the committee and the office;

(3) the role and functions of the committee and the office;

(4) the rules of the committee and the office;

(5) the current budget for the committee and the office;

(6) the results of the most recent formal audit of the committee and the office;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

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

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.02, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 5, effective September 1, 2003.

Sec. 614.0032. Special Duties Related to Medically Recommended Supervision; Determinations Regarding Mental Illness or Intellectual Disability.

(a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and

(2) periodically identify state jail felony defendants suitable for release under Article 42A.561, Code of Criminal Procedure, and perform other duties imposed on the office by that article.

(b) The office shall approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.

(c) The office shall approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 6, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 35, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 3, effective June 18, 2005; am. Acts 2007, 80th Leg., ch. 617 (H.B. 431), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 8.003, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 44, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 12.019, effective September 1, 2009; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.70, effective January 1, 2017; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 34, 35(3), effective September 1, 2017; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), §§ 24, 25, effective September 1, 2019.

Sec. 614.004. Terms.

The at-large members of the committee serve for staggered six-year terms with the terms of approximately one-third of the at-large members expiring on February 1 of each odd-numbered year.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 7, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1170 (S.B. 287), § 27.02, effective September 1, 2003.

Sec. 614.005. Officers; Meetings.

(a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.

(b) The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.03, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 8, effective September 1, 2003.

Sec. 614.006. Applicability of Certain Government Code Provisions.

(a) The provisions of Chapter 2110, Government Code, other than Section 2110.002(a), apply to the committee.

(b) A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 9, effective September 1, 2003.

Sec. 614.007. Powers and Duties.

The office shall:

(1) determine the status of offenders with medical or mental impairments in the state criminal justice system;

(2) identify needed services for offenders with medical or mental impairments;

(3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with medical or mental impairments;

(5) evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;

(7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the office to perform its duties;

(9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;

(10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and

(11) assess the need for demonstration projects and provide management for approved projects.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.04, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 10, effective September 1, 2003.

Sec. 614.008. Community-Based Diversion Program for Offenders with Medical or Mental Impairments.

(a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly or persons with physical disabilities, terminal illnesses, or significant illnesses and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c) The agencies represented on the committee shall perform duties and offer services as required by the office to further the purposes of the program and the office.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 6.53(a), effective August 30, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 11, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1491, effective April 2, 2015.

Sec. 614.009. Biennial Report.

Not later than December 1 of each even-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

(1) an evaluation of any demonstration project undertaken by the office;

(2) an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with special needs;

(3) information on the provision of services under Section 614.021 to wrongfully imprisoned persons;

(4) recommendations of the office made in accordance with Section 614.007(5);

(5) an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, 614.016, and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and

(6) any other recommendations that the office considers appropriate.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 2, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 12, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.009, effective June 19, 2009; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 97, effective September 1, 2025.

Sec. 614.010. Personnel [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(1), effective September 1, 2003.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999.

Sec. 614.0101. Public Access.

The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 13, effective September 1, 2003.

Sec. 614.0102. Complaints.

(a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the office;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.05, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 14, effective September 1, 2003.

Sec. 614.011. Additional Pilot Program [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(2), effective September 1, 2003.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 1.04, effective December 1, 1991.

Sec. 614.012. Additional Duties [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 22(3), effective September 1, 2003.

HISTORY: Enacted by Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 1.05, effective December 1, 1991.

Sec. 614.013. Continuity of Care for Offenders with Mental Impairments.

(a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or intellectual and developmental disability authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;

(2) developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Department of State Health Services and the Department of Aging and Disability Services, local mental health or intellectual and developmental disability authorities, the Commission on Jail Standards, and local jails;

(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and

(4) establishing a process to report implementation activities to the office.

(b-1) Subject to available resources, and to the extent feasible, the methods established under Subsection (b) must ensure that each offender with a mental impairment is identified and qualified for the continuity of care system and serve adults with severe and persistent mental illness who are experiencing significant functional impairment due to a mental health disorder that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) psychotic disorder;

(5) anxiety disorder;

(6) delusional disorder; or

(7) any other diagnosed mental health disorder that is severe or persistent in nature.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or intellectual and developmental disability authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or intellectual and developmental disability authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or intellectual and developmental disability authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 7, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 165 (S.B. 644), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 15, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839),

§ 2, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1492, effective April 2, 2015; Acts 2015, 84th Leg., ch. 753 (H.B. 1908), § 1, effective September 1, 2015; Acts 2025, 89th Leg., ch. 1022 (S.B. 2405), § 98, effective September 1, 2025.

Sec. 614.014. Continuity of Care for Elderly Offenders.

(a) The Texas Department of Criminal Justice, the Texas Workforce Commission, and the executive commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying elderly offenders in the criminal justice system;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission; and

(3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 16, effective September 1, 2003; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1493, effective April 2, 2015; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 99, effective September 1, 2025.

Sec. 614.015. Continuity of Care for Offenders with Physical Disabilities, Terminal Illnesses, or Significant Illnesses.

(a) The Texas Department of Criminal Justice, the Texas Workforce Commission, and the executive commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission to institute a continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission; and

(3) identifying the services needed by offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses; and

(2) actively seek federal grants or funds to operate and expand the program.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 835 (H.B. 2859), § 26, effective September 1, 1995; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 3, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1494, effective April 2, 2015; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 100, effective September 1, 2025.

Sec. 614.016. Continuity of Care for Certain Offenders by Law Enforcement and Jails.

(a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly;

(2) developing procedures for the exchange of information relating to offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 488 (S.B. 252), § 1, effective September 1, 1993; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 17, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 4, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686), § 2.40, effective May 18, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1495, effective April 2, 2015.

Sec. 614.017. Exchange of Information.

(a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Justice Department;

(E) the Texas Workforce Commission;

(F) the Texas Education Agency;

(G) the Commission on Jail Standards;

(H) the Texas School for the Blind and Visually Impaired;

(I) community supervision and corrections departments and local juvenile probation departments;

(J) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(K) local jails regulated by the Commission on Jail Standards;

(L) a municipal or county health department;

(M) a hospital district;

(N) a judge of this state with jurisdiction over juvenile or criminal cases;

(O) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(P) the Health and Human Services Commission;

(Q) the Department of Information Resources;

(R) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(S) the Department of Family and Protective Services.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.107, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 8, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1067 (H.B. 3256), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 3.06, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 247 (S.B. 661), § 1, effective May 22, 2001; am. Acts 2003, 78th Leg., ch. 6 (S.B. 519), §§ 1, 2, 6, effective April 10, 2003; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 18, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 706 (S.B. 396), § 1, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 1306 (S.B. 839), § 5, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), §§ 4.007, 4.008, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 2.003, effective September 1, 2011; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 101, effective September 1, 2025.

Sec. 614.018. Continuity of Care for Juveniles with Mental Impairments.

(a) The Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Health and Human Services Commission, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Health and Human Services Commission, the Texas

Education Agency, local juvenile probation departments, local mental health or intellectual and developmental disability authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.006, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 2.004, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1496, effective April 2, 2015; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 102, effective September 1, 2025.

Sec. 614.019. Programs for Juveniles.

(a) The office, in cooperation with the Department of State Health Services, the Department of Family and Protective Services, the Texas Juvenile Justice Department, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Juvenile Justice Department and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or an intellectual disability who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the department and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or intellectual disability services provided by a local mental health or intellectual and developmental disability authority.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 328 (H.B. 1901), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 19, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 3, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.015, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1497, effective April 2, 2015.

Sec. 614.020. Youth Assertive Community Treatment Program.

(a) The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

(1) are under 18 years of age;

(2) have severe and persistent mental illness;

(3) have a history of:

(A) multiple hospitalizations;

(B) poor performance in school;

(C) placement in emergency shelters or residential treatment facilities; or

(D) chemical dependency or abuse; and

(4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community treatment programs established by the Department of State Health Services. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

(1) a registered nurse to provide full-time direct services to the program participants; and

(2) a psychiatrist available to the program for 10 or more hours each week.

(d) In administering the program, the program's professional team shall:

(1) provide psychiatric, substance abuse, and employment services to program participants;

(2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;

(3) be available to program participants during evening and weekend hours;

(4) meet the needs of special populations;

(5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and

(6) cover the geographic areas served by the program.

(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1499 (S.B. 1470), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 20, effective September 1, 2003 (renumbered from Sec. 614.019); am. Acts 2003, 78th Leg., ch. 1275 (H.B. 3506), § 2(95), effective September 1, 2003 (renumbered from Sec. 614.019); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1498, effective April 2, 2015.

Sec. 614.0205. Appropriation Contingency.

The office is required to provide a service or program under Section 614.019(a) or 614.020 only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, provide a service or program under Section 614.019(a) or 614.020 using other appropriations available for that purpose.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 785 (H.B. 2119), § 1, effective June 17, 2011.

Sec. 614.021. Services for Wrongfully Imprisoned Persons.

(a) In this section, "wrongfully imprisoned person" has

the meaning assigned by Section 501.101, Government Code.

(b) The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

(1) accessing medical and dental services, including assistance in completing documents required for application to federal entitlement programs;

(2) obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and

(3) obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c) The office shall submit an annual report to the legislature on the provision of services under this section to wrongfully imprisoned persons.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 180 (H.B. 1736), § 11, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 27.002(10), effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1499, effective April 2, 2015; Acts 2025, 89th Leg., ch. 1022 (S.B. 2405), § 105, effective September 1, 2025.

CHAPTER 615

Miscellaneous Provisions

Section

615.001. County Responsibility.
615.002. Access to Records by Protection and Advocacy System.

Sec. 615.001. County Responsibility.

Each commissioners court shall provide for the support of a person with mental illness or an intellectual disability who is:

(1) a resident of the county;

(2) unable to provide self-support; and

(3) cannot be admitted to a state mental health or intellectual disability facility.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1500, effective April 2, 2015.

Sec. 615.002. Access to Records by Protection and Advocacy System.

(a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Sec. 10801 et seq.) and the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is entitled to access to records relating to persons with mental illness or developmental disabilities to the extent authorized by federal law.

(b) If the person consents to notification, the protection and advocacy system shall notify the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a person with mental illness or a developmental disability who is a patient or client in a facility or program operated by, licensed by, certified by, or in a contractual relationship with that department.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 1, effective September 1, 1991; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 3.1500, effective April 2, 2015.

CODE OF CRIMINAL PROCEDURE

TITLE 1

CODE OF CRIMINAL PROCEDURE

Introductory
Arrest, Commitment and Bail
Search Warrants
After Commitment or Bail and Before the Trial
Trial and Its Incidents
Proceedings After Verdict
Justice and Corporation Courts
Miscellaneous Proceedings

Introductory

CHAPTER 2

General Duties of Officers

Article
2.09. Who Are Magistrates. [Repealed]
2.12. Who Are Peace Officers. [Repealed]
2.26. Digital Signature and Electronic Documents.

Art. 2.09. Who Are Magistrates. [Repealed]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 100, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 204 (S.B. 781), § 1, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 25 (S.B. 577), § 2, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 79 (S.B. 38), § 1, effective May 15, 1989; am. Acts 1989, 71st Leg., ch. 916 (S.B. 515), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 1068 (H.B. 4722), § 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.01, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 224 (H.B. 2113), § 2, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 413 (S.B. 667), § 1, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 468 (H.B. 567), § 1, effective June 9, 1993; am. Acts 1993, 73rd Leg., ch. 577 (H.B. 965), § 2, effective August 30, 1993; am. Acts 1999, 76th Leg., ch. 586 (S.B. 611), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 2, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 979 (S.B. 1794), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 9, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 109 (S.B. 552), § 2, effective May 20, 2005; am. Acts 2005, 79th Leg., ch. 767 (H.B. 3485), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1331 (H.B. 3541), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1141 (H.B. 4107), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 646 (H.B. 1750), § 2, effective June 19, 2009; am. Acts 2009, 81st Leg., ch. 964 (H.B. 3554), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 863 (H.B. 3844), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 995 (H.B. 2132), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.06, effective January 1, 2012; Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 5.01, effective September 1, 2019; 2023, 88th Leg., H.B. 3474, § 4.001, effective September 1, 2023; repealed by 2023, 88th Leg., H.B. 4504, § 3.001(1), effective January 1, 2025.

Art. 2.12. Who Are Peace Officers. [Repealed]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 5, effective August 28, 1967; am. Acts 1971, 62nd Leg., ch. 246 (H.B. 468), § 3, effective May 17, 1971; am. Acts 1973, 63rd Leg., ch. 7 (H.B. 82), § 2, effective August 27, 1973; am. Acts 1973, 63rd Leg., ch. 459 (S.B. 769), § 1, effective August 27, 1973; am. Acts 1975, 64th Leg., ch. 204 (H.B. 341), § 1, effective September 1, 1975; am. Acts 1977, 65th Leg., ch. 227 (S.B. 719), § 2, effective May 24, 1977; am. Acts 1977, 65th Leg., ch. 396 (S.B. 146), § 1, effective August 29, 1977; am. Acts 1983, 68th Leg., ch. 114 (S.B. 346), § 1, effective May 17, 1983; am. Acts 1983, 68th Leg., ch. 699 (S.B. 1352), § 11, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 867 (H.B. 1304), § 2, effective June 19, 1983; am. Acts 1983, 68th Leg., ch. 974 (H.B. 1999), § 11, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 384 (H.B. 1248), § 2, effective August 26, 1985; am. Acts 1985, 69th Leg., ch. 907 (H.B. 1592), § 6, effective September 1, 1985; am. Acts 1986, 69th Leg., 2nd C.S., ch. 19 (S.B. 15), § 4, effective December 4, 1986; am. Acts 1987, 70th Leg., ch. 262 (S.B. 1161), § 20, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 350 (H.B. 791), § 1, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 277 (H.B. 2780), § 4, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 794 (H.B. 427), § 1, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1104 (S.B. 1190), § 4, effective June 16, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.02, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 228 (H.B. 693), § 1, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 287 (S.B. 1222), § 24, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 386 (H.B. 2263), § 70, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 446 (S.B. 411), § 1, effective June 11, 1991; am. Acts 1991, 72nd Leg., ch. 544 (S.B. 1816), § 1, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 545 (H.B. 2140), § 2, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 597 (S.B. 992), § 57, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 853 (S.B. 1412), § 2, effective September 1, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 6 (H.B. 54), § 6, effective November 5, 1991; am. Acts 1991, 72nd Leg., 1st C.S., ch. 14 (H.B. 169), § 3.01, effective November 12, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 4.07, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 116 (H.B. 635), § 1, effective August 30, 1993; am. Acts 1993, 73rd Leg., ch. 339 (S.B. 563), § 2, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 695 (S.B. 841), § 2, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 912 (S.B. 1110), § 25, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 10, effective May 30, 1995; am. Acts 1995, 74th Leg., ch. 621 (H.B. 1487), § 2, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 729 (H.B. 1275), § 1, effective August 28, 1995; am. Acts 1997, 75th Leg., ch. 1423 (H.B. 2841), § 4.01, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 90 (H.B. 957), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 322 (H.B. 1112), § 2, effective May 29, 1999; am. Acts 1999, 76th Leg., ch. 882 (H.B. 2023), § 2, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 974 (H.B. 2617), § 37, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 272 (S.B. 1167), § 7, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 442 (S.B. 1123), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 669 (H.B. 2810), § 8, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 3.001), effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 235, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 474 (H.B. 875), § 1, effective June 20, 2003; am. Acts 2003, 78th Leg., ch. 930 (S.B. 1022), § 12, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.001, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 1, effective June 8, 2007; am. Acts 2007, 80th Leg., ch. 838 (H.B. 914), § 1, effective June 15, 2007; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1172 (H.B. 434), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 1164 (H.B. 3201), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.001, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 402 (S.B. 601), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 584 (H.B. 3815), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 5, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 8 (S.B. 543), § 2, effective May 2, 2013; am. Acts 2013, 83rd Leg., ch. 93 (S.B. 686),

§ 2.01, effective May 18, 2013; Acts 2015, 84th Leg., ch. 333 (H.B. 11), § 1, effective September 1, 2015; Acts 2019, 86th Leg., ch. 34 (S.B. 319), § 2, effective May 14, 2019; Acts 2021, 87th Leg., ch. 404 (S.B. 1550), § 1, effective September 1, 2021; Acts 2023, 88th Leg., ch. 624 (H.B. 4372), § 2, effective September 1, 2023; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 1, effective September 1, 2023; Acts 2023, 88th Leg., ch. 870 (H.B. 3981), § 1, effective September 1, 2023; Acts 2023, 88th Leg., ch. 984 (S.B. 2612), § 1, effective September 1, 2023; repealed by 2023, 88th Leg., H.B. 4504, § 3.001(1), effective January 1, 2025.

Art. 2.26. Digital Signature and Electronic Documents.

(a) In this section, "digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(b) An electronically transmitted document issued or received by a court or a clerk of the court in a criminal matter is considered signed if a digital signature is transmitted with the document.

(b-1) An electronically transmitted document is a written document for all purposes and exempt from any additional writing requirement under this code or any other law of this state.

(c) This section does not preclude any symbol from being valid as a signature under other applicable law, including Section 1.201(b)(37), Business & Commerce Code.

(d) The use of a digital signature under this section is subject to criminal laws pertaining to fraud and computer crimes, including Chapters 32 and 33, Penal Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 701 (H.B. 806), § 1, effective August 30, 1999; am. Acts 2005, 79th Leg., ch. 312 (S.B. 611), §§ 1, 2, effective June 17, 2005; Acts 2021, 87th Leg., ch. 915 (H.B. 3607), § 4.001, effective September 1, 2021.

Arrest, Commitment and Bail

Chapter

14. Arrest Without Warrant
15. Arrest Under Warrant
16. The Commitment or Discharge of the Accused
17. Bail

CHAPTER 14

Arrest Without Warrant

Article

14.01. Offense Within View.
14.03. Authority of Peace Officers.
14.035. Authority to Release in Lieu of Arrest Certain Persons with Intellectual or Developmental Disability.
14.051. Arrest by Peace Officer from Other Jurisdiction.
14.06. Must Take Offender Before Magistrate.

Art. 14.01. Offense Within View.

(a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 8, effective August 28, 1967.

Art. 14.03. Authority of Peace Officers.

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code, if the offense is not committed in the presence of the peace officer;

(4) persons who the peace officer has probable cause to believe have committed an offense involving family violence;

(5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the peace officer;

(6) a person who makes a statement to the peace officer that would be admissible against the person under Article 38.21 and establishes probable cause to believe that the person has committed a felony; or

(7) a person who the peace officer has probable cause to believe has committed a felony offense while civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(b) A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code, if the offense is committed in the presence of the peace officer.

(c) If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an offense involving family violence, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of the violation or of family violence.

(d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

(e) The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.

(f) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

(g) (1) A peace officer described by Article 2A.001(1), (2), or (5), who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, other than a violation of Subtitle C, Title 7, Transportation Code.

(2) A peace officer described by Article 2A.001(3), who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.

(3) A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of:

(A) the person committing the offense and take the person before a magistrate in compliance with Article 14.06; and

(B) any property seized during or after the arrest as if the property had been seized by a peace officer of that law enforcement agency.

(h) (1) A peace officer who is acting in the lawful discharge of the officer's official duties may disarm a person at any time the officer reasonably believes it is necessary for the protection of the person, officer, or another individual. The peace officer shall return the handgun to the person before discharging the person from the scene if the officer determines that the person is not a threat to the officer, person, or another individual and if the person has not committed a violation that results in the arrest of the person.

(2) A peace officer who is acting in the lawful discharge of the officer's official duties may temporarily disarm a person when the person enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker or other secure area where the peace officer can secure the person's handgun. The peace officer shall secure the handgun in the locker or other secure area and shall return the handgun to the person immediately after the person leaves the nonpublic, secure portion of the law enforcement facility.

(3) For purposes of this subsection, "law enforcement facility" and "nonpublic, secure portion of a law enforcement facility" have the meanings assigned by Section 411.207, Government Code.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 9, effective August 28, 1967; am. Acts 1981, 67th Leg., ch. 442 (H.B. 1743), § 1, effective August 31, 1981; am. Acts 1985, 69th Leg., ch. 583 (S.B. 869), § 2, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 68 (S.B. 82), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 740 (H.B. 1231), § 1, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 542 (H.B. 1563), § 9, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.02, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.17, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 829 (H.B. 2614), § 1, effective August 28, 1995; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 3.02, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 210 (H.B. 1121), § 2, effective May 24, 1999; am. Acts 2003, 78th Leg., ch. 460 (H.B. 778), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 836 (S.B. 433), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 897 (S.B. 840), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 989 (S.B. 1896), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1164 (S.B. 176), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 7.002(d), effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.002, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 788 (S.B. 91), §§ 4, 5, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 847 (S.B. 907), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1015 (H.B. 915), § 1, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1133 (S.B. 147), § 5, effective September 1, 2015; Acts 2021, 87th Leg., ch. 809 (H.B. 1927), § 3, effective September 1, 2021; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.013, effective January 1, 2025; 2025, 89th Leg., ch. 1145 (S.B. 1610), § 9, effective September 1, 2025.

Art. 14.035. Authority to Release in Lieu of Arrest Certain Persons with Intellectual or Developmental Disability.

(a) This article applies only to a person with an intellectual or developmental disability who resides at one of the following types of facilities operated under the home and community-based services waiver program in accordance with Section 1915(c) of the Social Security Act (42 U.S.C. Section 1396n):

(1) a group home; or

(2) an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) as defined by 40 T.A.C. Section 9.153.

(b) In lieu of arresting a person described by Subsection (a), a peace officer may release the person at the person's residence if the officer:

(1) believes confinement of the person in a correctional facility as defined by Section 1.07, Penal Code, is unnecessary to protect the person and the other persons who reside at the residence; and

(2) made reasonable efforts to consult with the staff at the person's residence and with the person regarding that decision.

(c) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of a person released under Subsection (b).

HISTORY: Acts 2019, 86th Leg., ch. 460 (H.B. 3540), § 1, effective September 1, 2019.

Art. 14.051. Arrest by Peace Officer from Other Jurisdiction.

(a) A peace officer commissioned and authorized by another state to make arrests for felonies who is in fresh pursuit of a person for the purpose of arresting that person for a felony may continue the pursuit into this state and arrest the person.

(b) In this article, "fresh pursuit" means a pursuit without unreasonable delay by a peace officer of a person the officer reasonably suspects has committed a felony.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 997 (H.B. 832), § 2, effective August 28, 1989.

Art. 14.06. Must Take Offender Before Magistrate.

(a) Except as otherwise provided by this article, in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, to provide more expeditiously to the person arrested the warnings described by Article 15.17, before a magistrate in any other county of this state. The magistrate shall immediately perform the duties described in Article 15.17 in any manner permitted by that article.

(a-1) On presentation of a person arrested for committing an offense described by Article 17.292(a), the person making the arrest or the person having custody, as applicable, shall provide to the magistrate the information regarding the arrested person that is necessary for the issuance of a magistrate's order for emergency protection as provided by Article 17.292(d-3).

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains:

(1) written notice of the time and place the person must appear before a magistrate;

(2) the name and address of the person charged;

(3) the offense charged;

(4) information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount; and

(5) the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

(c) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate of this state as described by Subsection (a), the name and address of the person charged, and the offense charged.

(d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(1-a) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(5-a) Section 37.10, Penal Code, if the offense is for tampering with a temporary tag issued under Chapter 502 or 503, Transportation Code;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 10, effective August 28, 1967; am. Acts 1987, 70th Leg., ch. 455 (H.B. 249), § 1, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 84 (S.B. 883), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.05, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 81, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 3, effective January 1, 2002; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 320 (H.B. 2391), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1379 (S.B. 1236), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 170 (S.B. 331), § 7, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1251 (H.B. 1396), § 9, effective September 1, 2015; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 1, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 1, effective September 1, 2017; Acts 2023, 88th Leg., ch. 125 (H.B. 914), § 1, effective September 1, 2023; Acts 2025, 89th Leg., ch. 861 (S.B. 1896), § 10, ch. 1145 (S.B. 1610), § 1, effective September 1, 2025.

CHAPTER 15

Arrest Under Warrant

Article
15.17. Duties of Arresting Officer and Magistrate.
15.171. Duty of Officer to Notify Probate Court.
15.18. Arrest for Out-of-County Offense.

Art. 15.17. Duties of Arresting Officer and Magistrate.

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of a videoconference. If the arrested person is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, and residing at a civil commitment facility as defined by Section 1.07, Penal Code, the magistrate may also choose to perform the

duties of this article at the civil commitment facility. The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If applicable, the magistrate shall inform the person that the person may file the affidavit described by Article 17.028(f). If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense and whether the bail decision is subject to Article 17.027, admit the person arrested to bail if allowed by law. A record of the communication between the arrested person and the magistrate shall be made. The record shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

(a-1) If a magistrate is provided written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has a mental illness or is a person with an intellectual disability, the magistrate shall conduct the proceedings described by Article 16.22 or 17.032, as appropriate.

(a-2) On presentation of a person arrested for committing an offense described by Article 17.292(a), the person making the arrest or the person having custody, as applicable, shall provide to the magistrate the information regarding the arrested person that is necessary for the issuance of a magistrate's order for emergency protection as provided by Article 17.292(d-3).

(b) After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the applicable justice court or municipal court. The order must state in writing the time, date, and place of the arraignment, and the magistrate must sign the order. The accused shall receive a copy of the order on release. If an accused fails to appear as required by the order, the judge of the court in which the accused is required to appear shall issue a warrant for the arrest of the accused. If the accused is arrested and brought before the judge, the judge may admit the accused to bail, and in admitting the accused to bail, the judge should set as the amount of bail an amount double that generally set for the offense for which the accused was arrested. This subsection does not apply to an accused who:

(1) has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only; or

(2) is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code, at the time of the offense.

(c) When a deaf accused is taken before a magistrate under this article or Article 14.06 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

(d) If a magistrate determines that a person brought before the magistrate after an arrest authorized by Article 14.051 of this code was arrested unlawfully, the magistrate shall release the person from custody. If the magistrate determines that the arrest was lawful, the person arrested is considered a fugitive from justice for the purposes of Article 51.13 of this code, and the disposition of the person is controlled by that article.

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a) or Article 15.18(a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (a) or (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). The counsel for the defendant may obtain a copy of the record on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(g) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

(h) Not later than 24 hours after the time a magistrate determines that no probable cause exists to believe that a person committed the offense for which the person was arrested, the magistrate shall enter in the record written findings to support that finding.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 12, effective August 28, 1967; am. Acts 1979, 66th Leg., ch. 186 (H.B. 1521), § 3, effective May 15, 1979; am. Acts 1987, 70th Leg., ch. 455 (H.B. 249), § 2, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 467 (H.B. 1929), § 1, effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 977 (H.B. 646), §§ 1, 3, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 19.01(2), effective August 26, 1991; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 4, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1281 (S.B. 1807), § 1, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 320 (H.B. 2391), § 2, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 735 (S.B. 415), § 1, effective September 1, 2009; Acts 2015, 84th Leg., ch. 858 (S.B. 1517), § 2, effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 1, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1064 (H.B. 3165), § 1, effective September 1, 2017; Acts 2021, 87th Leg., 2nd C.S., ch. 11 (S.B. 6), § 3, effective January 1, 2022; Acts 2025, 89th Leg., ch. 861 (S.B. 1896), § 3, ch. 1069 (H.B. 75), § 1, ch. 1145 (S.B. 1610), § 11, effective September 1, 2025.

Art. 15.171. Duty of Officer to Notify Probate Court.

(a) In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's arrest.

HISTORY: Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 2, effective September 1, 2017.

Art. 15.18. Arrest for Out-of-County Offense.

(a) A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate shall:

(1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or

(2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

(a-1) If the arrested person is taken before a magistrate of a county other than the county that issued the warrant, the magistrate shall inform the person arrested of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant.

(b) Before the 11th business day after the date a magistrate accepts a written plea of guilty or nolo contendere in a case under Subsection (a)(2), the magistrate shall, if without jurisdiction, transmit to the court having jurisdiction of the offense:

(1) the written plea;

(2) any orders entered in the case; and

(3) any fine or costs collected in the case.

(c) The arrested person may be taken before a magistrate by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

(d) This article does not apply to an arrest made pursuant to a capias pro fine issued under Chapter 43 or Article 45A.259.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 2001, 77th Leg., ch. 145 (S.B. 219), § 2, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 1, effective September 1, 2007; Acts 2015, 84th Leg., ch. 858 (S.B. 1517), § 3, effective September 1, 2015; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.014, effective January 1, 2025.

CHAPTER 16

The Commitment or Discharge of the Accused

Article
16.22. Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability.
16.23. Diversion of Persons Suffering Mental Health Crisis or Substance Abuse Issue.
16.24. Reporting of Conditions of Pretrial Intervention Program.

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 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. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the magistrate, except as provided by Subdivision (2), shall order 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 qualified mental health or intellectual and developmental disability expert to:

(A) interview the defendant if the defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody and otherwise collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003, Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment or service; and

(B) provide to the magistrate a written report of an interview described by Paragraph (A) and the other information collected under that paragraph on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(c), Health and Safety Code.

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

(A) is no longer in custody;

(B) 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) was only arrested or charged with an offense punishable as a Class C misdemeanor.

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

(4) If the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail, or in another place determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority, for a reasonable period not to exceed 72 hours. If applicable, the county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental disability authority for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

(a-1) If a magistrate orders a local mental health authority, a local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to conduct an interview or collect information under Subsection (a)(1), the commissioners court for the county in which the magistrate is located shall reimburse the local mental health authority, local intellectual and developmental disability authority, or qualified mental health or intellectual and developmental disability expert for the cost of performing those duties in the amount provided by the fee schedule adopted under Subsection (a-2) or in the amount determined by the judge under Subsection (a-3), as applicable.

(a-2) The commissioners court for a county may adopt a fee schedule to pay for the costs to conduct an interview and collect information under Subsection (a)(1). In developing the fee schedule, the commissioners court shall consider the generally accepted reasonable cost in that county of performing the duties described by Subsection (a)(1). A fee schedule described by this subsection must be adopted in a public hearing and must be periodically reviewed by the commissioners court.

(a-3) If the cost of performing the duties described by Subsection (a)(1) exceeds the amount provided by the applicable fee schedule or if the commissioners court for the applicable county has not adopted a fee schedule, the authority or expert who performed the duties may request that the judge who has jurisdiction over the underlying offense determine the reasonable amount for which the authority or expert is entitled to be reimbursed under Subsection (a-1). The amount determined under this subsection may not be less than the amount provided by the fee schedule, if applicable. The judge shall determine the amount not later than the 45th day after the date the request is made. The judge is not required to hold a hearing before making a determination under this subsection.

(a-4) An interview under Subsection (a)(1) may be conducted in person in the jail, by telephone, or through a telemedicine medical service or telehealth service.

(b) Except as otherwise permitted by the magistrate for good cause shown, a written report of an interview described by Subsection (a)(1)(A) and the other information collected under that paragraph shall be provided to the magistrate:

(1) for a defendant held in custody, not later than 96 hours after the time an order was issued under Subsection (a); or

(2) for a defendant released from custody, not later than the 30th day after the date an order was issued under Subsection (a).

(b-1) The magistrate shall provide copies of the written report to:

(1) the defense counsel;

(2) the attorney representing the state;

(3) the trial court;

(4) the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail; and

(5) as applicable:

(A) any personal bond office established under Article 17.42 for the county in which the defendant is being confined; or

(B) the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

(b-2) The written report must include a description of the procedures used in the interview and collection of other information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability;

(2) subject to Article 46B.002, whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) any appropriate or recommended treatment or service.

(c) After the trial court receives the applicable expert's written report relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B;

(3) consider the written report during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision;

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; or

(5) if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574, Health and Safety Code.

(c-1) If an order is entered under Subsection (c)(5), an attorney representing the state shall file the application for court-ordered outpatient services under Chapter 574, Health and Safety Code.

(c-2) On the motion of an attorney representing the state, if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, the court may dismiss the charges pending against the defendant and discharge the defendant.

(c-3) On the motion of an attorney representing the state, if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment, the court shall proceed under this chapter or with the trial of the offense.

(d) This article does not prevent the applicable court from, before, during, or after the interview and collection of other information regarding the defendant as described by this article:

(1) releasing a defendant who has a mental illness or is a person with an intellectual disability from custody on personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

(2) subject to Article 46B.002, ordering an examination regarding the defendant's competency to stand trial.

(e) The Texas Judicial Council shall adopt rules to require the reporting of the number of written reports provided to a court under Subsection (a)(1)(B). The rules must require submission of the reports to the Office of Court Administration of the Texas Judicial System on a monthly basis.

(f) A written report submitted to a magistrate under Subsection (a)(1)(B) is confidential and not subject to disclosure under Chapter 552, Government Code, but may be used or disclosed as provided by this article.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.05, effective September 1, 1994; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 2, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1228 (S.B. 1557), § 1, effective September 1, 2009; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 2, effective September 1, 2017; Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.01, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.003, effective September 1, 2019; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 2, effective September 1, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), §§ 1, 2, effective September 1, 2019; Acts 2021, 87th Leg., ch. 915 (H.B. 3607), § 4.003, effective September 1, 2021; Acts 2021, 87th Leg., ch. 936 (S.B. 49), §§ 1, 2, effective September 1, 2021; Acts 2023, 88th Leg., ch. 982 (S.B. 2479), § 1, effective September 1, 2023.

Art. 16.23. Diversion of Persons Suffering Mental Health Crisis or Substance Abuse Issue.

(a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code.

HISTORY: Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.02, effective September 1, 2017; Acts 2023, 88th Leg., ch. 813 (H.B. 1163), § 6, effective September 1, 2023.

Art. 16.24. Reporting of Conditions of Pretrial Intervention Program.

As soon as practicable but not later than the 10th business day after the date a defendant enters a pretrial intervention program, the attorney representing the state, or the attorney's designee who is responsible for monitoring the defendant's compliance with the conditions of the program, shall enter information relating to the conditions of the program into the appropriate database of the statewide law enforcement information system maintained by the Department of Public Safety or modify or remove information, as appropriate.

HISTORY: Enacted by Acts 2025, 89th Leg., ch. 339 (S.B. 9), § 1, effective September 1, 2025.

CHAPTER 17

Bail

Article

17.03. Personal Bond.
17.031. Release on Personal Bond.
17.032. Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disability.
17.033. Release on Bond of Certain Persons Arrested Without a Warrant.
17.0331. Impact Study [Expired].
17.04. Requisites of a Personal Bond.
17.08. Requisites of a Bail Bond.
17.42. Personal Bond Office.

Art. 17.03. Personal Bond.

(a) Except as otherwise provided by this chapter, a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 30.02 (Burglary); or

(B) Section 71.02 (Engaging in Organized Criminal Activity);

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(b-1) A magistrate may not release on personal bond a defendant who, at the time of the commission of the charged offense, is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

(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:

(A) an offense involving violence; or

(B) an offense under:

(i) Section 19.02(b)(4), Penal Code (murder as a result of manufacture or delivery of a controlled substance in Penalty Group 1-B);

(ii) Section 22.07, Penal Code (terroristic threat), if the offense is punishable as a Class A misdemeanor or any higher category of offense;

(iii) Section 25.07, Penal Code (violation of certain court orders or conditions of bond in a family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case); or

(iv) Section 46.04(a), Penal Code (unlawful possession of firearm); or

(2) while released on bail, parole, 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); or

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

(b-3) In this article:

(1) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Offense involving violence" means an offense under the following provisions of the Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.03 (kidnapping);

(D) Section 20.04 (aggravated kidnapping);

(E) Section 20A.02 (trafficking of persons);

(F) Section 20A.03 (continuous trafficking of persons);

(G) Section 21.02 (continuous sexual abuse of young child or disabled individual);

(H) Section 21.11 (indecency with a child);

(I) Section 22.01(a)(1) (assault), if the offense is:

(i) punishable as a felony of the second degree under Subsection (b-2) of that section; or

(ii) punishable as a felony and involved family violence as defined by Section 71.004, Family Code;

(J) Section 22.011 (sexual assault);

(K) Section 22.02 (aggravated assault);

(L) Section 22.021 (aggravated sexual assault);

(M) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(N) Section 25.072 (repeated violation of certain court orders or conditions of bond in family violence,

child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case);

(O) Section 25.11 (continuous violence against the family);

(P) Section 29.03 (aggravated robbery);

(Q) Section 38.14 (taking or attempting to take weapon from peace officer, federal special investigator, employee or official of correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer);

(R) Section 43.04 (aggravated promotion of prostitution), if the defendant is not alleged to have engaged in conduct constituting an offense under Section 43.02(a);

(S) Section 43.05 (compelling prostitution); or

(T) Section 43.25 (sexual performance by a child).

(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

(d) The state may not use the results of any test conducted under this chapter in any criminal proceeding arising out of the offense for which the defendant is charged.

(e) Costs of testing may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

(f) [Repealed.]

(g) The court may order that a personal bond fee assessed under Section 17.42 be:

(1) paid before the defendant is released;

(2) paid as a condition of bond;

(3) paid as court costs;

(4) reduced as otherwise provided for by statute; or

(5) waived.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1989, 71st Leg., ch. 374 (S.B. 376), § 1, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 14 (S.B. 404), §§ 284(45), (57), effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.19, effective September 1, 1995; am. Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 3.08, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 122 (H.B. 3000), § 3, effective September 1, 2011; Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 4, effective September 1, 2017; Acts 2021, 87th Leg., 2nd C.S., ch. 11 (S.B. 6), §§ 6(a), 20, effective December 2, 2021; Acts 2023, 88th Leg., ch. 982 (S.B. 2479), § 2, effective September 1, 2023; 2025, 89th Leg., S.B. 9, § 7, effective September 1, 2025.

Art. 17.031. Release on Personal Bond.

(a) Any magistrate in this state may release a defendant eligible for release on personal bond under Article 17.03 of this code on his personal bond where the complaint and warrant for arrest does not originate in the county wherein the accused is arrested if the magistrate would have had jurisdiction over the matter had the complaint arisen within the county wherein the magistrate presides. The personal bond may not be revoked by the judge of the court issuing the warrant for arrest except for good cause shown.

(b) If there is a personal bond office in the county from which the warrant for arrest was issued, the court releasing a defendant on his personal bond will forward a copy of the personal bond to the personal bond office in that county.

HISTORY: Enacted by Acts 1971, 62nd Leg., ch. 787 (H.B. 1202), § 1, effective June 8, 1971; am. Acts 1989, 71st Leg., ch. 374 (S.B. 376), § 2, effective September 1, 1989.

Art. 17.032. Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disability.

(a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.03 (kidnapping);

(4) Section 20.04 (aggravated kidnapping);

(5) Section 21.11 (indecency with a child);

(6) Section 22.01(a)(1) (assault), if the offense involved family violence as defined by Section 71.004, Family Code;

(7) Section 22.011 (sexual assault);

(8) Section 22.02 (aggravated assault);

(9) Section 22.021 (aggravated sexual assault);

(10) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(11) Section 29.03 (aggravated robbery);

(12) Section 21.02 (continuous sexual abuse of young child or disabled individual); or

(13) Section 20A.03 (continuous trafficking of persons).

(b) Notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, a magistrate shall release a defendant on personal bond unless good cause is shown otherwise if:

(1) the defendant is not charged with and has not been previously convicted of a violent offense;

(2) the defendant is examined 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 qualified mental health or intellectual and developmental disability expert under Article 16.22;

(3) the applicable expert, in a written report submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual and developmental disability services for the defendant, as applicable;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual and developmental disability services for the defendant are

available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual and developmental disability services provider; and

(5) the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

(c) The magistrate, unless good cause is shown for not requiring treatment or services, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment or intellectual and developmental disability services as recommended 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 qualified mental health or intellectual and developmental disability expert if the defendant's:

(1) mental illness or intellectual disability is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services.

(d) In addition to a condition of release imposed under Subsection (c), the magistrate may require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

(e) In this article, a person is considered to have been convicted of an offense if:

(1) a sentence is imposed;

(2) the person is placed on community supervision or receives deferred adjudication; or

(3) the court defers final disposition of the case.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 3.06, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.20, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 312 (H.B. 1747), § 2, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 3.09, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1228 (S.B. 1557), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 122 (H.B. 3000), § 4, effective September 1, 2011; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 3, effective September 1, 2017; Acts 2017, 85th Leg., ch. 950 (S.B. 1849), §§ 3.01, 3.02, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 3, effective September 1, 2019; Acts 2021, 87th Leg., ch. 221 (H.B. 375), § 2.09, effective September 1, 2021.

Art. 17.033. Release on Bond of Certain Persons Arrested Without a Warrant.

(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(a-1) [Expired pursuant to Acts 2011, 82nd Leg., ch. 1350 (H.B. 1173), § 1, effective September 1, 2013.]

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(d) The time limits imposed by Subsections (a) and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a) and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

(e) [Expired pursuant to Acts 2011, 82nd Leg., ch. 1350 (H.B. 1173), § 1, effective September 1, 2013.]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 5(a), effective January 1, 2002; am. Acts 2003, 78th Leg., ch. 298 (H.B. 2795), § 1 effective June 18, 2003; am. Acts 2011, 82nd Leg., ch. 1350 (H.B. 1173), § 1, effective September 1, 2011; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 5.001, effective September 1, 2017.

Art. 17.0331. Impact Study [Expired].

Expired pursuant to Acts 2011, 82nd Leg., ch. 1350 (H.B. 1173), § 2, effective September 1, 2013.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1350 (H.B. 1173), § 2, effective September 1, 2011.

Art. 17.04. Requisites of a Personal Bond.

(a) A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain:

(1) the defendant's name, address, and place of employment;

(2) identification information, including the defendant's:

(A) date and place of birth;

(B) height, weight, and color of hair and eyes;

(C) driver's license number and state of issuance, if any; and

(D) nearest relative's name and address, if any; and

(3) except as provided by Subsection (b), the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

(b) A personal bond is not required to contain the oath described by Subsection (a)(3) if:

(1) the magistrate makes a determination under Article 16.22 that the defendant has a mental illness or is a person with an intellectual disability, including by using the results of a previous determination under that article;

(2) the defendant is released on personal bond under Article 17.032; or

(3) the defendant is found incompetent to stand trial in accordance with Chapter 46B.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1987, 70th Leg., ch. 623 (H.B. 1827), § 1, effective September 1, 1987; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 3, effective September 1, 2021.

Art. 17.08. Requisites of a Bail Bond.

A bail bond must contain the following requisites:

1. That it be made payable to "The State of Texas";

2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;

4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate, but in no event shall the sureties be bound after such time as the defendant receives an order of deferred adjudication or is acquitted, sentenced, placed on community supervision, or dismissed from the charge;

6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), effective January 1, 1966; am. Acts 1999, 76th Leg., ch. 1506 (S.B. 403), § 1, effective September 1, 1999.

Art. 17.42. Personal Bond Office.

Sec. 1. Any county, or any judicial district with jurisdiction in more than one county, with the approval of the commissioners court of each county in the district, may establish a personal bond office to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending.

Sec. 2. (a) The commissioners court of a county that establishes the office or the district and county judges of a judicial district that establishes the office may employ a director of the office.

(b) The director may employ the staff authorized by the commissioners court of the county or the commissioners court of each county in the judicial district.

Sec. 3. If a judicial district establishes an office, each county in the district shall pay its pro rata share of the costs of administering the office according to its population.

Sec. 4. (a) Except as otherwise provided by this subsection, if a court releases an accused on personal bond on the recommendation of a personal bond office, the court shall assess a personal bond reimbursement fee of $20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown. A court that requires a defendant to give a personal bond under Article 45A.107 may not assess a personal bond fee under this subsection.

(b) Reimbursement fees collected under this article may be used solely to defray expenses of the personal bond office, including defraying the expenses of extradition.

(c) Reimbursement fees collected under this article shall be deposited in the county treasury, or if the office serves more than one county, the fees shall be apportioned to each county in the district according to each county's pro rata share of the costs of the office.

Sec. 5. (a) A personal bond pretrial release office established under this article shall:

(1) prepare a record containing information about any accused person identified by case number only who, after review by the office, is released by a court on personal bond before sentencing in a pending case;

(2) update the record on a monthly basis;

(3) file a copy of the record with the district or county clerk, as applicable based on court jurisdiction over the categories of offenses addressed in the records, in any county served by the office; and

(4) submit a copy of the record to the attorney representing the state and the accused person's attor-

ney and, as applicable based on whether the accused person violated a condition of release on bond in the preceding month, an update to that record.

(b) In preparing a record under Subsection (a), the office shall include in the record a statement of:

(1) the offense with which the person is charged;

(2) the dates of any court appearances scheduled in the matter that were previously unattended by the person;

(3) whether a warrant has been issued for the person's arrest for failure to appear in accordance with the terms of the person's release;

(4) whether the person has failed to comply with conditions of release on personal bond, including failing to comply by tampering with an electronic monitoring device; and

(5) the presiding judge or magistrate who authorized the personal bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

Sec. 6. (a) Not later than April 1 of each year, a personal bond office established under this article shall submit to the commissioners court or district and county judges that established the office an annual report containing information about the operations of the office during the preceding year.

(b) In preparing an annual report under Subsection (a), the office shall include in the report a statement of:

(1) the office's operating budget;

(2) the number of positions maintained for office staff;

(3) the number of accused persons who, after review by the office, were released by a court on personal bond before sentencing in a pending case; and

(4) the number of persons described by Subdivision (3):

(A) who failed to attend a scheduled court appearance;

(B) for whom a warrant was issued for the arrest of those persons for failure to appear in accordance with the terms of their release; or

(C) who, while released on personal bond, were arrested for any other offense in the same county in which the persons were released on bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 5.01(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1080, § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 318 (S.B. 15), § 44, effective September 1, 1995; am. Acts 2011, 82nd Leg., ch. 420 (S.B. 882), § 1, effective June 17, 2011; Acts 2015, 84th Leg., ch. 1174 (S.B. 965), § 1, effective September 1, 2015; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 2, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1064 (H.B. 3165), §§ 3, 4, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 2, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.02, effective January 1, 2020; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.016, effective January 1, 2025; 2025, 89th Leg., Ch. 288 (S.B. 1020), § 1, effective September 1, 2025.

CHAPTER 18

Search Warrants

Article 18.191. Disposition of Firearm Seized from Certain Persons with Mental Illness.

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, 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, 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 Section 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, 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, 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, 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, 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, Health and Safety Code, may not be destroyed or forfeited to the state.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 776 (S.B. 1189), § 2, effective September 1, 2013.

After Commitment or Bail and Before the Trial

CHAPTER 26

Arraignment

Article	
26.04.	Procedures for Appointing Counsel.
26.044.	Public Defender's Office.
26.047.	Managed Assigned Counsel Program.
26.05.	Compensation of Counsel Appointed to Defend.
26.051.	Indigent Inmate Defense.
26.052.	Appointment of Counsel in Death Penalty Case; Reimbursement of Investigative Expenses.
26.13.	Plea of Guilty.

Art. 26.04. Procedures for Appointing Counsel.

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 15.18, 26.05, and 26.052 and must provide for the priority appointment of a public defender's office as described by Subsection (f). A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines for purposes of a criminal proceeding that a defendant charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in the proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets the objective qualifications specified by the judges under Subsection (e);

(3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and

(4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense, the attorneys' qualifications, and whether representation will be provided in trial court proceedings, appellate proceedings, or both.

(f) In a county with a public defender's office, the court or the courts' designee shall give priority in appointing that office to represent the defendant in the criminal proceeding, including a proceeding in a capital murder case. However, the court is not required to appoint the public defender's office if:

(1) the court makes a finding of good cause for appointing other counsel, provided that in a capital murder case, the court makes a finding of good cause on the record for appointing that counsel;

(2) the appointment would be contrary to the office's written plan under Article 26.044;

(3) the office is prohibited from accepting the appointment under Article 26.044(j); or

(4) a managed assigned counsel program also exists in the county and an attorney will be appointed under that program.

(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) Subject to Subsection (f), in a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) Subject to Subsection (f), a court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record;

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(*l*) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) A defendant who requests a determination of indigency and appointment of counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form: "On this ____ day of _____, 20 ____, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the

defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1987, 70th Leg., ch. 979 (S.B. 1108), § 2, effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 6, effective January 1, 2002; am. Acts 2011, 82nd Leg., ch. 671 (S.B. 1681), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 7, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 912 (H.B. 1318), § 1(a), effective September 1, 2014; Acts 2015, 84th Leg., ch. 595 (S.B. 316), § 1, effective September 1, 2015; Acts 2015, 84th Leg., ch. 858 (S.B. 1517), § 4, effective September 1, 2015; Acts 2019, 86th Leg., ch. 591 (S.B. 583), § 1, effective September 1, 2019.

Art. 26.044. Public Defender's Office.

(a) In this chapter:

(1) "Governmental entity" includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78, Government Code.

(3) "Oversight board" means an oversight board established in accordance with Article 26.045.

(4) "Public defender's office" means an entity that:

(A) is either:

(i) a governmental entity; or

(ii) a nonprofit corporation operating under a written agreement with a governmental entity, other than an individual judge or court; and

(B) uses public funds to provide legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 79.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases or cases under Title 3, Family Code, in the county, may create a department of the county or by contract may designate a nonprofit corporation to serve as a public defender's office. The commissioners courts of two or more counties may enter into a written agreement to jointly create or designate and jointly fund a regional public defender's office. In creating or designating a public defender's office under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if creating or designating a regional public defender's office:

(1) the duties of the public defender's office;

(2) the types of cases to which the public defender's office may be appointed under Article 26.04(f) and the courts in which an attorney employed by the public defender's office may be required to appear;

(3) if the public defender's office is a nonprofit corporation, the term during which the contract designating the public defender's office is effective and how that contract may be renewed on expiration of the term; and

(4) if an oversight board is established under Article 26.045 for the public defender's office, the powers and duties that have been delegated to the oversight board.

(b-1) The applicable commissioners court or commissioners courts shall require a written plan from a governmental entity serving as a public defender's office.

(c) Before contracting with a nonprofit corporation to serve as a public defender's office under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender's office.

(c-1) A written plan under Subsection (b-1) or a proposal under Subsection (c) must include:

(1) a budget for the public defender's office, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the public defender's office;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender's office;

(6) policies regarding the use of licensed investigators and expert witnesses by the public defender's office; and

(7) a policy to ensure that the chief public defender and other attorneys employed by the public defender's office do not provide representation to a defendant if doing so would create a conflict of interest that has not been waived by the client.

(d) After considering each proposal for the public defender's office submitted by a nonprofit corporation under Subsection (c), the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the public defender's office will provide adequate quality representation for indigent defendants in the county or counties.

(e) The total cost of the proposal under Subsection (c) may not be the sole consideration in selecting a proposal.

(f) A public defender's office must be directed by a chief public defender who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of criminal law.

(g) A public defender's office is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender's office in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender's office serves more than one county.

(h) A public defender's office may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender's office as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) Except as authorized by this article, the chief public defender and other attorneys employed by a public defender's office may not:

(1) engage in the private practice of criminal law; or

(2) accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender's office may not accept an appointment under Article 26.04(f) if:

(1) a conflict of interest exists that has not been waived by the client;

(2) the public defender's office has insufficient resources to provide adequate representation for the defendant;

(3) the public defender's office is incapable of providing representation for the defendant in accordance with the rules of professional conduct;

(4) the acceptance of the appointment would violate the maximum allowable caseloads established at the public defender's office; or

(5) the public defender's office shows other good cause for not accepting the appointment.

(j-1) On refusing an appointment under Subsection (j), a chief public defender shall file with the court a written statement that identifies any reason for refusing the appointment. The court shall determine whether the chief public defender has demonstrated adequate good cause for refusing the appointment and shall include the statement with the papers in the case.

(j-2) A chief public defender may not be terminated, removed, or sanctioned for refusing in good faith to accept an appointment under Subsection (j).

(k) The judge may remove from a case a person who violates a provision of Subsection (i).

(*l*) A public defender's office may investigate the financial condition of any person the public defender's office is appointed to represent. The public defender's office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) If it is necessary that an attorney who is not employed by a public defender's office be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

(n) An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus filed under Article 11.071 only if:

(1) an attorney employed by the office of capital writs is not appointed in the case; and

(2) the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 17, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 4.03(a), effective September 1, 1987; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 7, effective January 1, 2002; am. Acts 2005, 79th Leg., ch. 965 (H.B. 1701), § 6, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 781 (S.B. 1091), §§ 7, 8, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), §§ 8, 9, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 866 (H.B. 577), § 1, June 14, 2013; am. Acts 2013, 83rd Leg., ch. 912 (H.B. 1318), § 2, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 6, effective September 1, 2015.

Art. 26.047. Managed Assigned Counsel Program.

(a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code.

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

(3) the maximum allowable caseload for each attorney appointed by the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

(1) is a member of the State Bar of Texas;

(2) has practiced law for at least three years; and

(3) has substantial experience in the practice of criminal law.

(e) The governmental entity, nonprofit corporation, or bar association operating the program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list described by Subsection (f). Each member of the committee:

(1) must meet the requirements described by Subsection (d);

(2) may not be employed as a prosecutor; and

(3) may not be included on or apply for inclusion on the public appointment list described by Subsection (f).

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Texas Indigent Defense Commission; and

(3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 11, effective September 1, 2011.

Art. 26.05. Compensation of Counsel Appointed to Defend.

(a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital and forensic writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program or the director's designee, and until the judge or the director or director's designee, as applicable, approves the payment. If the judge or the director or director's designee disapproves the requested amount of payment, the judge or the director or director's designee shall make written findings stating the amount of payment that the judge or the director or director's designee approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as reimbursement fees.

(g) If the judge determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, the judge shall order the defendant to pay during the pendency of the charges or, if convicted, as a reimbursement fee the amount that the judge finds the defendant is able to pay. The defendant may not be ordered to pay an amount that exceeds:

(1) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(2) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office.

(g-1) (1) This subsection applies only to a defendant who at the time of sentencing to confinement or placement on community supervision, including deferred adjudication community supervision, did not have the financial resources to pay the maximum amount described by Subsection (g)(1) or (2), as applicable, for legal services provided to the defendant.

(2) At any time during a defendant's sentence of confinement or period of community supervision, the judge, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, may order a defendant to whom this subsection applies to pay any unpaid portion of the amount described by Subsection (g)(1) or (2), as applicable, if the judge determines that the defendant has the financial resources to pay the additional portion.

(3) The judge may amend an order entered under Subdivision (2) if, subsequent to the judge's determination under that subdivision, the judge determines that the defendant is indigent or demonstrates an inability to pay the amount ordered.

(4) In making a determination under this subsection, the judge may only consider the information a court or courts' designee is authorized to consider in making an indigency determination under Article 26.04(m).

(5) Notwithstanding any other law, the judge may not revoke or extend the defendant's period of community supervision solely to collect the amount the defendant has been ordered to pay under this subsection.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(i) [Repealed by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 15(1), effective September 1, 2011.]

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1969, 61st Leg., ch. 347 (H.B. 541), § 1, effective May 27, 1969; am. Acts 1971, 62nd Leg., ch. 520 (H.B. 1792), § 1, effective August 30, 1971; am. Acts 1973, 63rd Leg., ch. 426 (H.B. 200), art. 3, § 3, effective June 14, 1973; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 106, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 979 (S.B. 1108), § 3, effective September 1, 1987; am. Acts 1999, 76th Leg., ch. 837 (H.B. 1752), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 8, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.734, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 781 (S.B. 1091), § 9, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), §§ 12, 15(1), effective September 1, 2011; Acts 2015, 84th Leg., ch. 106 (H.B. 3633), § 1, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 7, effective September 1, 2015; Acts 2017, 85th Leg., ch. 554 (S.B. 527), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.07, effective January 1, 2020; 2025, 89th Leg., ch. 515 (H.B. 1445), § 1, effective September 1, 2025.

Art. 26.051. Indigent Inmate Defense.

(a) In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Correctional institutions division" means the correctional institutions division of the Texas Department of Criminal Justice.

(b), (c) [Repealed by Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), § 7, effective September 1, 2007.]

(d) A court shall:

(1) notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code; and

(2) request that the board provide legal representation for the inmate.

(e) The board shall provide legal representation for inmates described by Subsection (d) of this section. The board may employ attorneys, support staff, and any other personnel required to provide legal representation for those inmates. All personnel employed under this article are directly responsible to the board in the performance of their duties. The board shall pay all fees and costs associated with providing legal representation for those inmates.

(f) [Repealed by Acts 1993, 73rd Leg., ch. 988 (S.B. 532), § 7.02, effective September 1, 1993.]

(g) The court shall appoint an attorney other than an attorney provided by the board if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) of this article:

(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;

(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board; or

(3) any conflict of interest exists under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas that precludes representation by an attorney appointed by the board.

(h) When the court appoints an attorney other than an attorney provided by the board:

(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.05, and 26.052, as applicable; and

(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable.

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). A court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.

HISTORY: Am. Acts 1990, 71st Leg., 6th C.S., ch. 15 (H.B. 80), § 2, effective June 14, 1990; am. Acts 1991, 72nd Leg., ch. 719 (H.B. 2426), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 988 (S.B. 532), §§ 7.01, 7.02, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 1014 (H.B. 1267), §§ 2, 3, 7, effective September 1, 2007.

Art. 26.052. Appointment of Counsel in Death Penalty Case; Reimbursement of Investigative Expenses.

(a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than four members, including:

(1) the administrative judge of the judicial region;

(2) at least one district judge;

(3) a representative from the local bar association; and

(4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d) (1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that a trial attorney appointed as lead counsel to a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;

(F) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The standards must require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

(D) have at least five years of criminal law experience;

(E) have authored a significant number of appellate briefs, including appellate briefs for homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Article 42A.054(a);

(F) have trial or appellate experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) the use of mitigating evidence at the penalty phase of a death penalty trial; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

(4) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(5) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to criminal defense in death penalty cases or in appealing death penalty cases, as applicable. The committee shall

remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty.

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

(1) the type of investigation to be conducted;

(2) specific facts that suggest the investigation will result in admissible evidence; and

(3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

(1) state the reasons for the denial in writing;

(2) attach the denial to the confidential request; and

(3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

(1) the defendant and the attorney request the appointment on the record; and

(2) the court finds good cause to make the appointment.

(*l*) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds. Advance payment of expenses anticipated or reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

(n) At the request of an attorney, the local selection committee shall make a determination under Subsection (d)(2)(C) or (3)(C), as applicable, regarding an attorney's current ability to provide effective representation following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 319 (S.B. 440), § 2, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 837 (H.B. 1752), § 2, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 906 (S.B. 7), § 9, effective January 1, 2002; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.735, effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 787 (S.B. 60), § 14, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 965 (H.B. 1701), § 7, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 32 (H.B. 2058), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1343 (S.B. 1308), § 1, effective September 1, 2011; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.06, effective January 1, 2017.

Art. 26.13. Plea of Guilty.

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a plea bargain agreement between the state and the defendant and, if an agreement exists, the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Should the court reject the agreement, the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the trial court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter; and

(6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f).

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware

of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) Except as provided by Subsection (d-1), the court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonitions and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(d-1) The court shall make the admonition required by Subsection (a)(4) both orally and in writing. Unless the court has received the statement as described by Subsection (d), the court must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonition required by Subsection (a)(4) and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make a record of that fact.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has:

(A) given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56A.001; and

(B) conferred with the victim, guardian of a victim, or close relative of a deceased victim regarding the disposition of the case.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) The court must substantially comply with Subsection (a)(5). The failure of the court to comply with Subsection (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(h-1) The court must substantially comply with Subsection (a)(6). The failure of the court to comply with Subsection (a)(6) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(i) Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

HISTORY: Am. Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 2(A), effective January 1, 1974; am. Acts 1975, 64th Leg., ch. 341 (S.B. 122), § 3, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 280 (S.B. 937), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 524 (S.B. 854), § 1, effective September 1, 1979; am. Acts 1979, 66th Leg., ch. 561 (H.B. 1566), § 1, effective September 1, 1979; am. Acts 1985, 69th Leg., ch. 671 (S.B. 1348), § 1, effective June 14, 1985; am. Acts 1985, 69th Leg., ch. 685 (H.B. 13), § 8(a), effective August 26, 1985; am. Acts 1987, 70th Leg., ch. 443 (H.B. 95), § 1, effective August 31, 1987; am. Acts 1991, 72nd Leg., ch. 202 (S.B. 1407), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 670 (H.B. 156), § 4, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 425 (S.B. 1125), § 1, effective August 30, 1999; am. Acts 1999, 76th Leg., ch. 1415 (H.B. 2145), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(8), effective September 1, 2001; am. Acts 2005, 79th Leg., ch. 1008 (H.B. 867), § 1.03, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 125 (S.B. 1470), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1379 (S.B. 1236), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1073 (S.B. 1010), § 1, effective September 1, 2011; Acts 2017, 85th Leg., ch. 1017 (H.B. 1507), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 185 (H.B. 1996), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.09, effective January 1, 2021; 2025, 89th Leg., ch. 179 (S.B. 761), § 1, effective September 1, 2025.

Trial and Its Incidents

Chapter
32A. Speedy Trial
35. Formation of the Jury
38. Evidence in Criminal Actions

CHAPTER 32A

Speedy Trial

Article
32A.01. Trial Priorities.
32A.02. Time Limitations [Repealed].

Art. 32A.01. Trial Priorities.

(a) Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions not described by Subsection (b) or (c).

(b) Unless extraordinary circumstances require otherwise, the trial of a criminal action in which the alleged victim is younger than 14 years of age shall be given preference over other matters before the court, whether civil or criminal.

(c) Except as provided by Subsection (b), the trial of a criminal action against a defendant who has been determined to be restored to competency under Article 46B.084 shall be given preference over other matters before the court, whether civil or criminal.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 787 (S.B. 1043), § 1, effective July 1, 1978; Acts 2015, 84th Leg., ch. 1251 (H.B. 1396), § 3, effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 4, effective September 1, 2017.

Art. 32A.02. Time Limitations [Repealed].

Repealed by Acts 2005, 79th Leg., ch. 1019 (H.B. 969), § 2, effective June 18, 2005.

HISTORY: Enacted by Acts 1977, 65th Leg., ch. 787 (S.B. 1043), § 1, effective July 1, 1978; am. Acts 1979, 66th Leg., ch. 3 (S.B. 106), § 1, effective September 1, 1979; am. Acts 1987, 70th Leg., ch. 383 (H.B. 23), § 2, effective September 1, 1987.

CHAPTER 35

Formation of the Jury

Article
35.16. Reasons for Challenge for Cause.

Art. 35.16. Reasons for Challenge for Cause.

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders the juror incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That the juror is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to register to vote shall not be a disqualification;

2. That the juror has been convicted of misdemeanor theft or a felony;

3. That the juror is under indictment or other legal accusation for misdemeanor theft or a felony;

4. That the juror is insane;

5. That the juror has such defect in the organs of feeling or hearing, or such bodily or mental defect or disease as to render the juror unfit for jury service, or that the juror is legally blind and the court in its discretion is not satisfied that the juror is fit for jury service in that particular case;

6. That the juror is a witness in the case;

7. That the juror served on the grand jury which found the indictment;

8. That the juror served on a petit jury in a former trial of the same case;

9. That the juror has a bias or prejudice in favor of or against the defendant;

10. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court. If the juror answers in the negative, the juror shall be further examined as to how the juror's conclusion was formed, and the extent to which it will affect the juror's action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that the juror feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that the juror is impartial and will render such verdict, may, in its discretion, admit the juror as competent to serve in such case. If the court, in its discretion, is not satisfied that the juror is impartial, the juror shall be discharged;

11. That the juror cannot read or write.

No juror shall be impaneled when it appears that the juror is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A challenge for cause may be made by the State for any of the following reasons:

1. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime, in a capital case, where the State is seeking the death penalty;

2. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the defendant; and

3. That he has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.

(c) A challenge for cause may be made by the defense for any of the following reasons:

1. That he is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the person injured by the commission of the offense, or to any prosecutor in the case; and

2. That he has a bias or prejudice against any of the law applicable to the case upon which the defense is entitled to rely, either as a defense to some phase of the offense for which the defendant is being prosecuted or as a mitigation thereof or of the punishment therefor.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1969, 61st Leg., ch. 412 (S.B. 424), § 3, effective September 1, 1969; am. Acts 1975, 64th Leg., ch. 202 (H.B. 159), § 2, effective September 1, 1975; am. Acts 1981, 67th Leg., ch. 827 (H.B. 1288), § 8, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 134 (H.B. 176), § 2, effective September 1, 1983; am. Acts 1991, 72nd Leg., ch. 561, § 10, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76, § 5.95(27), effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 801 (S.B. 451), § 3, effective September 1, 2005.

CHAPTER 38

Evidence in Criminal Actions

Article
38.07. Testimony in Corroboration of Victim of Sexual Offense.
38.072. Hearsay Statement of Certain Abuse Victims.
38.30. Interpreter.
38.31. Interpreters for Deaf Persons.

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense.

(a) A conviction under Chapter 21, Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.

(b) The requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was a person:

(1) 17 years of age or younger;

(2) 65 years of age or older; or

(3) 18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 203 (H.B. 284), § 6, effective September 1, 1975; am. Acts 1983, 68th Leg., ch. 382 (S.B. 838), § 1, effective September 1, 1983; am. Acts 1983, 68th Leg., ch. 977 (H.B. 2008), § 7, effective September 1, 1983; am. Acts 1993, 73rd Leg., ch. 200 (H.B. 261), § 1, effective May 19, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 12.01, effective September 1, 1993; am. Acts 2001, 77th Leg., ch. 1018 (H.B. 1209), § 1, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 2.05, effective September 1, 2011.

Art. 38.072. Hearsay Statement of Certain Abuse Victims.

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 18 years of age or a person with a disability:

(1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);

(2) Section 25.02 (Prohibited Sexual Conduct);

(3) Section 43.25 (Sexual Performance by a Child);

(4) Section 43.05(a)(2) or (3) (Compelling Prostitution);

(5) Section 20A.02(a)(5), (6), (7), or (8) (Trafficking of Persons);

(6) Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(5), (6), (7), or (8); or

(7) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), (5), or (6) of this section.

Sec. 2. (a) This article applies only to statements that:

(1) describe:

(A) the alleged offense; or

(B) if the statement is offered during the punishment phase of the proceeding, a crime, wrong, or act other than the alleged offense that is:

(i) described by Section 1;

(ii) allegedly committed by the defendant against the child or person with a disability who is the victim of the offense or against another person who is a child younger than 18 years of age or a person with a disability; and

(iii) otherwise admissible as evidence under Article 38.37, Rule 404 or 405, Texas Rules of Evidence, or another law or rule of evidence of this state;

(2) were made by the child or person with a disability against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense or extraneous crime, wrong, or act.

(a-1) The trial court shall admit more than one statement under this article at a proceeding if each statement:

(1) meets the requirements of Subsection (a); and

(2) describes different conduct by the defendant.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, "person with a disability" has the same meaning as "disabled individual" as defined by Section 22.04, Penal Code.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 590 (H.B. 579), § 1, effective September 1, 1985; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.25, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 1, effective June 11, 2009; am. Acts 2009, 81st Leg., ch. 710 (H.B. 2846), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 2.07, effective September 1, 2011; Acts 2023, 88th Leg., ch. 93 (S.B. 1527), § 3.01, effective September 1, 2023; Acts 2025, 89th Leg., ch. 250 (H.B. 1778), §§ 4.02, 4.03, 4.04, effective September 1, 2025.

Art. 38.30. Interpreter.

(a) In any criminal proceeding, when a motion for appointment of an interpreter is filed by any party or on motion of the court and if the court determines that a person charged or a witness does not understand and speak the English language, an interpreter must be appointed as provided by Section 57.002, Government Code, andSubject to Section 57.002, Government Code, any sworn to interpret for the person charged or the witness. person may be subpoenaed, attached, or recognized in any criminal action or proceeding to appear before the proper judge or court to act as interpreter under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between the person charged or witness and the appointed interpreter during the proceedings.

(a-1) A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if an interpreter is not available to

appear in person at the proceeding or if the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang. In this subsection, "qualified telephone interpreter" means a telephone service that employs:

(1) licensed court interpreters as defined by Section 157.001, Government Code; or

(2) federally certified court interpreters.

(b) Except as provided by Subsection (c) of this article, interpreters appointed under the terms of this article will receive from the general fund of the county for their services a sum not to exceed $100 a day as follows: interpreters shall be paid not less than $15 nor more than $100 a day at the discretion of the judge presiding, and when travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case the interpreter is appointed to serve shall be paid at the same rate applicable to state employees.

(c) A county commissioners court may set a payment schedule and expend funds for the services of interpreters in excess of the daily amount of not less than $15 or more than $100 established by Subsection (b) of this article.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1979, 66th Leg., ch. 209 (S.B. 548), § 1, effective August 27, 1979; am. Acts 2005, 79th Leg., ch. 956 (H.B. 1601), § 1, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.01, effective September 1, 2014; Acts 2015, 84th Leg., ch. 1182 (S.B. 1139), § 8.01, effective September 1, 2015; 2025, 89th Leg., S.B. 1537, § 1, effective May 30, 2025.

Art. 38.31. Interpreters for Deaf Persons.

(a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include that recording in the appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive and Rehabilitative Services.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 105 (H.B. 36), § 2, effective August 28, 1967; am. Acts 1979, 66th Leg., ch. 186 (H.B. 1521), § 1, effective May 15, 1979; am. Acts 1987, 70th Leg., ch. 434 (S.B. 1346), § 1, effective June 17, 1987; am. Acts 1995, 74th Leg., ch. 835 (H.B. 2859), § 14, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 614 (H.B. 2200), § 11, effective September 1, 2006; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 3.006, effective September 1, 2013.

Proceedings After Verdict

Chapter
42. Judgment and Sentence
42A. Community Supervision
43. Execution of Judgment

CHAPTER 42

Judgment and Sentence

Article
42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal.
42.09. Commencement of Sentence; Status During Appeal; Pen Packet.
42.19. Interstate Corrections Compact.

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal.

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56A.001, to appear in person to present to the court and to the defendant a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. The victim, relative, or guardian may not direct questions to the defendant while making the statement. The court reporter may not transcribe the statement. The statement must be made:

(1) after punishment has been assessed and the court has determined whether or not to grant community supervision in the case;

(2) after the court has announced the terms and conditions of the sentence; and

(3) after sentence is pronounced.

(c) The court may not impose a limit on the number of victims, close relatives, or guardians who may appear and present statements under Subsection (b) unless the court finds that additional statements would unreasonably delay the proceeding.

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant is convicted shall give the defendant credit on the defendant's sentence for the time that the defendant has spent:

(1) in jail for the case, including confinement served as described by Article 46B.009 and excluding confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court;

(2) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility; or

(3) confined in a mental health facility or residential care facility as described by Article 46B.009.

(b) In all revocations of a suspension of the imposition of a sentence the judge shall enter the restitution due and owing on the date of the revocation.

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a jail as provided in Section 7, Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the Texas Department of Criminal Justice shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the Texas Department of Criminal Justice has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

Sec. 5. Except as otherwise provided by Article 42A.106(b), the court after pronouncing the sentence shall inform the defendant of the defendant's right to petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, unless the defendant is ineligible to pursue that right because of the requirements that apply to obtaining the order in the defendant's circumstances, such as:

(1) the nature of the offense for which the defendant is convicted; or

(2) the defendant's criminal history.

Sec. 6. [Repealed by Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989.]

Secs. 7, 7A, and 8. [Deleted by Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993.]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 28, effective August 28, 1967; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 1, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 382 (H.B. 1322), § 1, effective August 29, 1977; am. Acts 1977, 65th Leg., ch. 827 (H.B. 1271), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 141 (S.B. 125), § 1, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 113, effective September 1, 1981; am. Acts 1981, 67th Leg., ch. 616 (H.B. 1695), § 1, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 586 (S.B. 779), § 4, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 809 (H.B. 855), § 1, effective August 29, 1983; am. Acts 1985, 69th Leg., ch. 232 (S.B. 1175), § 13, effective September 1, 1985; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.06, effective June 15, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.24, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 848 (S.B. 638), § 1, effective June 14, 1989; am. Acts 1989, 71st Leg., ch. 1040 (H.B. 1779), §§ 1, 2, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.05, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 278 (H.B. 520), § 1, effective June 5, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 8.02, effective December 1, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), §§ 14.01—14.04, 15.03, effective October 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 556 (S.B. 39), § 1, effective September 1, 1995; am. Acts 2003, 78th Leg., ch. 406 (H.B. 178), § 2, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 1205 (H.B. 1678), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.018, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 1, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 1, effective September 1, 2011; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.12, effective January 1, 2017; Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 15, effective September 1, 2015; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 23.002, effective September 1, 2017; Acts 2019, 86th Leg., ch. 437 (S.B. 1268), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.13, effective January 1, 2021.

Art. 42.09. Commencement of Sentence; Status During Appeal; Pen Packet.

Sec. 1. Except as provided in Sections 2 and 3, a defendant shall be delivered to a jail or to the Texas Department of Criminal Justice when his sentence is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's

sentence begins to run from the date endorsed on the commitment. The Texas Department of Criminal Justice shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant convicted of a felony is sentenced to death or to life in the Texas Department of Criminal Justice or is ineligible for release on bail pending appeal under Article 44.04(b) and gives notice of appeal, the defendant shall be transferred to the department on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony, is eligible for release on bail pending appeal under Article 44.04(b), and gives notice of appeal, he shall be transferred to the Texas Department of Criminal Justice on a commitment pending a mandate from the Court of Appeals or the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the department under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the Texas Department of Criminal Justice pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the Texas Department of Criminal Justice pending the appeal of their convictions under this article shall be under the control and authority of the department for all purposes as if no appeal were pending.

Sec. 7. If a defendant is sentenced to a term of imprisonment in the Texas Department of Criminal Justice but is not transferred to the department under Section 3 or 4, the court, before the date on which it would lose jurisdiction under Article 42A.202(a), shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Article 42.03 as of the date of the statement.

Sec. 8. (a) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall deliver to an officer designated by the department:

(1) a copy of the judgment entered pursuant to Article 42.01, completed on a standardized felony judgment form described by Section 4 of that article;

(2) a copy of any order revoking community supervision and imposing sentence pursuant to Article 42A.755, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, Article 42.01; and

(B) a copy of the client supervision plan prepared for the defendant by the community supervision and corrections department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Subchapter D, Chapter 56A;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(7) a copy of the indictment or information for each offense;

(8) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) accompany the defendant;

(9) if prepared, a copy of a presentence or postsentence report prepared under Subchapter F, Chapter 42A;

(10) a copy of any detainer, issued by an agency of the federal government, that is in the possession of the county and that has been placed on the defendant;

(11) if prepared, a copy of the defendant's Texas Uniform Health Status Update Form;

(12) a written description of a hold or warrant, issued by any other jurisdiction, that the county is aware of and that has been placed on or issued for the defendant;

(13) a copy of any mental health records, mental health screening reports, or similar information regarding the mental health of the defendant; and

(14) the veteran status of the defendant as determined by an investigation conducted in accordance with Section 511.009(a)(17)(A), Government Code.

(b) The Texas Department of Criminal Justice shall not take a defendant into custody under this article until the designated officer receives the documents required by Subsections (a) and (c) of this section and determines that the documents do not contain any errors or deficiencies requiring corrective action by the county. Not later than the fifth business day after the date of receipt of the documents, the designated officer shall:

(1) certify the documents under the seal of the department if the designated officer determines the documents do not require any corrective action; or

(2) notify the county that the designated officer has determined that the documents require corrective action.

(b-1) A document certified under Subsection (b) is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Evidence.

(c) A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall also deliver to the designated officer any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, including a written report provided to a court under Article 16.22(a)(1)(B) or an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may deliver to the designated officer any additional informa-

tion upon which the judge or jury bases the punishment decision.

(d) The correctional institutions division of the Texas Department of Criminal Justice shall make documents received under Subsections (a) and (c) available to the parole division on the request of the parole division and shall, on release of a defendant on parole or to mandatory supervision, immediately provide the parole division with copies of documents received under Subsection (a). The parole division shall provide to the parole officer appointed to supervise the defendant a comprehensive summary of the information contained in the documents referenced in this section not later than the 14th day after the date of the defendant's release. The summary shall include a current photograph of the defendant and a complete set of the defendant's fingerprints. Upon written request from the county sheriff, the photograph and fingerprints shall be filed with the sheriff of the county to which the parolee is assigned if that county is not the county from which the parolee was sentenced.

(e) A county is not required to deliver separate documents containing information relating to citations to provisions of the Penal Code or other law and to changes of venue, as otherwise required by Subsections (a)(3) and (a)(5) of this article, if the standardized felony judgment form described by Section 4, Article 42.01, of this code is modified to require that information.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to the Texas Department of Criminal Justice.

(g) If the presiding judge of the administrative judicial region in which the county is located determines that the county sheriff is unable to perform the duties required by Subsection (f) of this section, the presiding judge may impose those duties on:

(1) the district clerk; or

(2) the prosecutor of each district court in the county.

(h) If a parole panel releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the Texas Department of Criminal Justice shall request the sheriff who would otherwise be required to transfer the person to the department to forward to the department the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the department. The department shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken from the person in the manner provided by Article 38.33 of this code and, if not, the department shall obtain a thumbprint taken in the manner provided by that article and shall forward the thumbprint to the department for inclusion with the information sent by the sheriff.

(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the Texas Department of Criminal Justice by electronic means. For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

(j) If after a county transfers a defendant or inmate to the Texas Department of Criminal Justice the charges on which the defendant or inmate was convicted and for which the defendant or inmate was transferred are dismissed, the county shall immediately notify an officer designated by the department of the dismissal.

Sec. 9. A county that transfers a defendant to the Texas Department of Criminal Justice under this article may deliver to an officer designated by the department a certified copy of a final order of a state or federal court that dismisses as frivolous or malicious a lawsuit brought by the inmate while the inmate was confined in the county jail awaiting transfer to the department following conviction of a felony or revocation of community supervision, parole, or mandatory supervision. The county may deliver the copy to the department at the time of the transfer of the inmate or at any time after the transfer of the inmate.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1973, 63rd Leg., ch. 91 (H.B. 403), § 2, effective August 27, 1973; am. Acts 1977, 65th Leg., ch. 806 (H.B. 39), § 1, effective August 29, 1977; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 117, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 40 (S.B. 218), § 1, effective April 26, 1983; am. Acts 1983, 68th Leg., ch. 810 (H.B. 859), § 1, effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 344 (S.B. 845), § 3, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 1049 (S.B. 245), § 53, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 33 (S.B. 192), § 2, effective April 26, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.12, effective September 1, 1989; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 11.05, effective August 29, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.03, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 3.001, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 723 (H.B. 253), § 1, effective September 1, 1995; am. Acts 1999, 76th Leg., ch. 655 (H.B. 261), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 1.42, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 29, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 214 (H.B. 261), § 1, effective May 22, 2001; am. Acts 2001, 77th Leg., ch. 453 (H.B. 1658), § 1, effective June 8, 2001; am. Acts 2003, 78th Leg., ch. 14 (H.B. 1236), § 1, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.005, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 4, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), §§ 25.023, 25.024, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 980 (H.B. 3671), § 1, effective September 1, 2009; Acts 2015, 84th Leg., ch. 282 (H.B. 904), § 1, effective September 1, 2015; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), §§ 2.15, 2.16, effective January 1, 2017; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.15, effective January 1, 2021; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 1, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 4, effective September 1, 2019; Acts 2023, 88th Leg., ch. 1122 (H.B. 2620), § 3, effective June 18, 2023; 2025, 89th Leg., ch. 299 (S.B. 2938), § 1, effective September 1, 2025.

Art. 42.19. Interstate Corrections Compact.

ARTICLE I.

PURPOSE AND POLICY

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment,

and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II.

DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III.

CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV.

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, such official may direct that the confinement be within an institution within the territory of such other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state. However, the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state who are in institutions pursuant to this compact including a conduct record of each inmate and shall certify such record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearing as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made.

The record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this paragraph (f), the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to this compact shall have any rights and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V.

ACT NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officer of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution escaped from is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI.

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto. Any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision. However, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII.

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of such states upon similar action by such state.

ARTICLE VIII.

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in the statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawal state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX.

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair an agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates, nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X.

CONSTRUCTION AND SEVERABILITY

(a) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) Powers. The director of the Texas Department of Criminal Justice is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 24 (S.B. 126), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a 9), effective September 1, 1987 (renumbered from art. 42.18); am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.031, effective September 1, 2009.

CHAPTER 42A

Community Supervision

Subchapter
B. Placement on Community Supervision
C. Deferred Adjudication Community Supervision
D. Jurisdiction Over Case; Geographical Jurisdiction
E. Partial Execution of Sentence; Continuing Jurisdiction
F. Presentence and Postsentence Reports and Evaluations
H. Mandatory Conditions Generally
K. Conditions Applicable to Certain Other Offenses and Offenders
L. State Jail Felony Community Supervision

Subchapter B

Placement on Community Supervision

Article
42A.051. Authority to Grant Community Supervision, Impose or Modify Conditions, or Discharge Defendant.
42A.052. Modification of Conditions by Supervision Officer or Magistrate.

Art. 42A.051. Authority to Grant Community Supervision, Impose or Modify Conditions, or Discharge Defendant.

(a) Unless the judge has transferred jurisdiction of the case to another court under Article 42A.151, only the court in which the defendant was tried may:

(1) grant community supervision;

(2) impose conditions; or

(3) discharge the defendant.

(b) The judge of the court having jurisdiction of the case may, at any time during the period of community supervision, modify the conditions of community supervision. Except as provided by Article 42A.052(a), only the judge may modify the conditions.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.052. Modification of Conditions by Supervision Officer or Magistrate.

(a) A judge who places a defendant on community supervision may authorize the supervision officer supervising the defendant or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of community supervision for the limited purposes of:

(1) transferring the defendant to different programs within the community supervision continuum of programs and sanctions; or

(2) prioritizing the conditions ordered by the court according to the defendant's progress under supervision.

(b) A supervision officer or magistrate who modifies the conditions of community supervision shall:

(1) deliver a copy of the modified conditions to the defendant;

(2) file a copy of the modified conditions with the sentencing court; and

(3) note the date of delivery of the copy in the defendant's file.

(c) If the defendant agrees to the modification in writing, the officer or magistrate shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the defendant does not agree to the modification in writing, the supervision officer or magistrate shall refer the case to the judge for modification in the manner provided by Article 42A.752.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017; Acts 2021, 87th Leg., ch. 790 (H.B. 385), § 1, effective September 1, 2021.

Subchapter C

Deferred Adjudication Community Supervision

Article
42A.104. Conditions of Deferred Adjudication Community Supervision; Imposition of Fine.
42A.106. Record Not Confidential; Right to Petition for Order of Nondisclosure.

Art. 42A.104. Conditions of Deferred Adjudication Community Supervision; Imposition of Fine.

(a) The judge may impose a fine applicable to the offense and require any reasonable condition of deferred adjudication community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including:

(1) confinement; and

(2) mental health treatment under Article 42A.506.

(b) The provisions of Subchapter L specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on deferred adjudication community supervision after pleading guilty or nolo contendere to a state jail felony.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.106. Record Not Confidential; Right to Petition for Order of Nondisclosure.

(a) Except as provided by Section 552.142, Government Code, a record in the custody of the court clerk regarding a case in which a defendant is granted deferred adjudication community supervision is not confidential.

(b) Before placing a defendant on deferred adjudication community supervision, the court shall inform the defendant of the defendant's right to receive or petition the court for an order of nondisclosure of criminal history

record information under Subchapter E-1, Chapter 411, Government Code, as applicable, unless the defendant is ineligible for an order because of:

(1) the nature of the offense for which the defendant is placed on deferred adjudication community supervision; or

(2) the defendant's criminal history.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 23.012(b), effective September 1, 2017.

Subchapter D

Jurisdiction Over Case; Geographical Jurisdiction

Article
42A.151. Transfer of Jurisdiction.

Art. 42A.151. Transfer of Jurisdiction.

(a) After a defendant has been placed on community supervision, jurisdiction of the case may be transferred to a court of the same rank in this state that:

(1) has geographical jurisdiction where the defendant:

(A) resides; or

(B) violates a condition of community supervision; and

(2) consents to the transfer.

(b) On transfer, the clerk of the court of original jurisdiction shall forward to the court accepting jurisdiction a transcript of any portion of the record as the transferring judge shall direct. The court accepting jurisdiction subsequently shall proceed as if the defendant's trial and conviction had occurred in that court.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter E

Partial Execution of Sentence; Continuing Jurisdiction

Article
42A.202. Continuing Jurisdiction in Felony Cases.

Art. 42A.202. Continuing Jurisdiction in Felony Cases.

(a) For the purposes of this article, the jurisdiction of a court imposing a sentence requiring imprisonment in the Texas Department of Criminal Justice for an offense other than a state jail felony continues for 180 days from the date the execution of the sentence actually begins.

(b) Before the expiration of the 180-day period described by Subsection (a), the judge of the court that imposed the sentence described by that subsection may, on the judge's own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision under the terms and conditions of this chapter if:

(1) in the opinion of the judge, the defendant would not benefit from further imprisonment;

(2) the defendant is otherwise eligible for community supervision under this chapter; and

(3) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony.

(c) When the defendant files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the defendant shall immediately deliver or cause to be delivered a copy of the motion to the office of the attorney representing the state.

(d) When the defendant or the attorney representing the state files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, and when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while imprisoned from the Texas Department of Criminal Justice or, if the defendant is confined in county jail, from the sheriff. On receipt of the request, the Texas Department of Criminal Justice or the sheriff shall forward a copy of the record to the judge as soon as possible.

(e) The judge may deny the motion without holding a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter F

Presentence and Postsentence Reports and Evaluations

Article
42A.253. Contents of Presentence Report.
42A.256. Release of Information to Supervision Officer; Confidentiality of Report.
42A.259. Postsentence Report.

Art. 42A.253. Contents of Presentence Report.

(a) A presentence report must be in writing and include:

(1) the circumstances of the offense with which the defendant is charged;

(2) the amount of restitution necessary to adequately compensate a victim of the offense;

(3) the criminal and social history of the defendant;

(4) a proposed supervision plan describing programs and sanctions that the community supervision and corrections department will provide the defendant if the judge suspends the imposition of the sentence or grants deferred adjudication community supervision;

(5) if the defendant is charged with a state jail felony, recommendations for conditions of community supervision that the community supervision and corrections department considers advisable or appropriate based on the circumstances of the offense and other factors addressed in the report;

(6) the results of a psychological evaluation of the defendant that determines, at a minimum, the defendant's IQ and adaptive behavior score if the defendant:

(A) is convicted of a felony offense; and

(B) appears to the judge, through the judge's own observation or on the suggestion of a party, to have a mental impairment;

(7) information regarding whether the defendant is a current or former member of the state military forces or whether the defendant currently serves or has previously served in the armed forces of the United States in an active-duty status and, if available, a copy of the defendant's military discharge papers and military records;

(8) if the defendant has served in the armed forces of the United States in an active-duty status, a determination as to whether the defendant was deployed to a combat zone and whether the defendant may suffer from post-traumatic stress disorder or a traumatic brain injury; and

(9) any other information relating to the defendant or the offense as requested by the judge.

(b) A presentence report is not required to contain a sentencing recommendation.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.256. Release of Information to Supervision Officer; Confidentiality of Report.

(a) The judge by order may direct that any information and records that are not privileged and that are relevant to a presentence or postsentence report be released to a supervision officer conducting a presentence investigation under this subchapter or preparing a postsentence report under Article 42A.259. The judge may also issue a subpoena to obtain that information.

(b) A presentence or postsentence report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only as:

(1) provided by:

(A) Subsection (c);

(B) Article 42A.255;

(C) Article 42A.257;

(D) Article 42A.259; or

(E) Section 614.017, Health and Safety Code; or

(2) directed by the judge for the effective supervision of the defendant.

(c) If the defendant is a sex offender, a supervision officer may release information in a presentence or postsentence report concerning the social and criminal history of the defendant to a person who:

(1) is licensed or certified in this state to provide mental health or medical services, including a:

(A) physician;

(B) psychiatrist;

(C) psychologist;

(D) licensed professional counselor;

(E) licensed marriage and family therapist; or

(F) certified social worker; and

(2) provides mental health or medical services for the rehabilitation of the defendant.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.259. Postsentence Report.

(a) If a presentence report in a felony case is not required under Article 42A.252(c), the judge may direct a supervision officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed supervision plan and any information that is reflected in the judgment.

(b) If a postsentence report is ordered, the supervision officer shall send the report to the clerk of the court not later than the 30th day after the date on which sentence is pronounced or deferred adjudication community supervision is granted. The clerk shall deliver the postsentence report with the papers in the case to a designated officer of the Texas Department of Criminal Justice, to the extent required by Section 8(a), Article 42.09.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter H

Mandatory Conditions Generally

Article
42A.351. Educational Skill Level.

Art. 42A.351. Educational Skill Level.

(a) If the judge or jury places a defendant on community supervision, the judge shall require the defendant to demonstrate to the court whether the defendant has an educational skill level that is equal to or greater than the average educational skill level of students who have completed the sixth grade in public schools in this state.

(b) If the judge determines that the defendant has not attained the educational skill level described by Subsection (a), the judge shall require as a condition of community supervision that the defendant attain that level of educational skill, unless the judge also determines that the defendant lacks the intellectual capacity or the learning ability to ever achieve that level of educational skill.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter K

Conditions Applicable to Certain Other Offenses and Offenders

Article
42A.506. Community Supervision for Defendant with Mental Impairment.

Art. 42A.506. Community Supervision for Defendant with Mental Impairment.

If the judge places a defendant on community supervision and the defendant is determined to be a person with mental illness or a person with an intellectual disability, as provided by Article 16.22 or Chapter 46B or in a psychological evaluation conducted under Article 42A.253(a)(6), the judge may require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health or intellectual disability treatment if:

(1) the defendant's:

(A) mental impairment is chronic in nature; or

(B) ability to function independently will continue to deteriorate if the defendant does not receive mental health or intellectual disability services; and

(2) the judge determines, in consultation with a local mental health or intellectual disability services provider, that mental health or intellectual disability services, as appropriate, are available for the defendant through:

(A) the Department of State Health Services or the Department of Aging and Disability Services under Section 534.053, Health and Safety Code; or

(B) another mental health or intellectual disability services provider.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Subchapter L

State Jail Felony Community Supervision

Article
42A.556. Sanctions Imposed on Modification of Community Supervision.
42A.558. Revocation; Options Regarding Execution of Sentence.
42A.560. Medical Release.
42A.561. Medical Release.

Art. 42A.556. Sanctions Imposed on Modification of Community Supervision.

If in a state jail felony case a defendant violates a condition of community supervision imposed under this chapter and after a hearing under Article 42A.751(d) the judge modifies the defendant's community supervision, the judge may impose any sanction permitted by Article 42A.752, except that if the judge requires a defendant to serve a term of confinement in a state jail felony facility as a modification of the defendant's community supervision, the minimum term of confinement is 90 days and the maximum term of confinement is 180 days.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.558. Revocation; Options Regarding Execution of Sentence.

(a) If in a state jail felony case a defendant violates a condition of community supervision imposed under this chapter and after a hearing under Article 42A.751(d) the judge revokes the defendant's community supervision, the judge shall dispose of the case in the manner provided by Article 42A.755.

(b) The court retains jurisdiction over the defendant for the period during which the defendant is confined in a state jail felony facility. At any time after the 75th day after the date the defendant is received into the custody of a state jail felony facility, the judge on the judge's own motion, on the motion of the attorney representing the state, or on the motion of the defendant may suspend further execution of the sentence and place the defendant on community supervision under the conditions of this subchapter.

(b-1) On request of the judge, the Texas Department of Criminal Justice shall, not later than the 60th day after the date the defendant is received into the custody of a state jail felony facility, notify the judge of the date on which the defendant will have served 75 days in the facility. The notice must be provided by e-mail or other electronic communication.

(b-2) For purposes of Subsection (b-1), the judge may submit a single request to the Texas Department of Criminal Justice with respect to all applicable defendants sentenced in the judge's court.

(c) When the defendant or the attorney representing the state files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the clerk of the court, if requested to do so by the judge, shall request a copy of the defendant's record while confined from the facility director of the state jail felony facility in which the defendant is confined or, if the defendant is confined in county jail, from the sheriff. On receipt of the request, the facility director or the sheriff shall forward a copy of the record to the judge as soon as possible.

(d) When the defendant files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the defendant shall immediately deliver or cause to be delivered a copy of the motion to the office of the attorney representing the state. The judge may deny the motion without holding a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017; Acts 2023, 88th Leg., ch. 821 (H.B. 1710), § 1, effective September 1, 2024.

Art. 42A.560. Medical Release.

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medically suitable placement if the judge determines that the defendant does not constitute a threat to public safety and the Texas Correctional Office on Offenders with Medical or Mental Impairments:

(1) in coordination with the Correctional Managed Health Care Committee, prepares a case summary and medical report that identifies the defendant as:

(A) being a person who is elderly or terminally ill or a person with a physical disability;

(B) being a person with mental illness or an intellectual disability; or

(C) having a condition requiring long-term care; and

(2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision and continuity of care plan that:

(A) ensures appropriate supervision of the defendant by the community supervision and corrections department; and

(B) requires the defendant to remain under the care of a physician at and reside in a medically suitable placement.

(b) The Texas Correctional Office on Offenders with Medical or Mental Impairments shall submit to a judge who releases a defendant to an appropriate medical care facility under Subsection (a) a quarterly status report concerning the defendant's medical and treatment status.

(c) If a defendant released to a medically suitable placement under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

Art. 42A.561. Medical Release.

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medical care facility or medical treatment program if the Texas Correctional Office on Offenders with Medical or Mental Impairments:

(1) identifies the defendant as:

(A) being a person who is elderly or terminally ill or a person with a physical disability;

(B) being a person with mental illness or an intellectual disability; or

(C) having a condition requiring long-term care; and

(2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision plan that:

(A) ensures appropriate supervision of the defendant; and

(B) requires the defendant to remain under the care of a physician at the facility or in the program.

(b) If a defendant released to a medical care facility or medical treatment program under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

HISTORY: Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 1.01, effective January 1, 2017.

CHAPTER 43

Execution of Judgment

Article
43.09. Fine Discharged.
43.091. Waiver of Payment of Fines and Costs for Certain Defendants and for Children.
43.10. Manual Labor.
43.13. Discharge of Defendant.

Art. 43.09. Fine Discharged.

(a) When a defendant is convicted of a misdemeanor and the defendant's punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if the defendant is unable to pay the fine and costs adjudged against the defendant, the defendant may for such time as will satisfy the judgment be put to work in the county jail industries program, in the workhouse, or on the county farm, or public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, as provided in Article 43.10; or if there is no such county jail industries program, workhouse, farm, or improvements and maintenance projects, the defendant shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against the defendant; rating such confinement at $150 for each day and rating such labor at $150 for each day; provided, however, that the defendant may pay the pecuniary fine assessed against the defendant at any time while the defendant is serving at work in the county jail industries program, in the workhouse, or on the county farm, or on the public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, or while the defendant is serving the defendant's jail sentence, and in such instances the defendant is entitled to the credit earned under this subsection during the time that the defendant has served and the defendant shall only be required to pay the balance of the pecuniary fine assessed against the defendant. A defendant who performs labor under this article during a day in which the defendant is confined is entitled to both the credit for confinement and the credit for labor provided by this article.

(b) In its discretion, the court may order that for each day's confinement served by a defendant under this article, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this article for each day's confinement served by the defendant as punishment for the offense.

(c) In its discretion, the court may order that a defendant serving concurrent, but not consecutive, sentences for two or more misdemeanors may, for each day served, receive credit toward the satisfaction of costs and fines imposed for each separate offense.

(d) Notwithstanding any other provision of this article, in its discretion, the court or the sheriff of the county may grant an additional two days credit for each day served to any inmate participating in an approved work program under this article or a rehabilitation, restitution, or education program.

(e) A court in a county that operates an electronic monitoring program or contracts with a private vendor to operate an electronic monitoring program under Section 351.904, Local Government Code, or that is served by a community supervision and corrections department that operates an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by participating in the program. A defendant who participates in an electronic monitoring program under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

(f) A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

(g) In the court's order requiring a defendant to perform community service under Subsection (f), the court must specify:

(1) the number of hours of community service the defendant is required to perform;

(2) whether the community supervision and corrections department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program; and

(3) the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service.

(h) The court may order the defendant to perform community service under Subsection (f):

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides services to the general public that enhance social welfare and the general well-being of the community, as determined by the court; or

(C) an educational institution.

(h-1) An entity that accepts a defendant under Subsection (f) to perform community service must agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the district probation department or court-related services office.

(i) The court may require bail of a defendant to ensure the defendant's faithful performance of community service under Subsection (f) of this article and may attach conditions to the bail as it determines are proper.

(j) A court may not order a defendant to perform more than 16 hours per week of community service under Subsection (f) unless the court determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's dependents.

(k) A defendant is considered to have discharged $150 of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

(*l*) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate or community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to confinement or other court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(m) [Repealed by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 22, effective September 1, 2007.]

(n) This article does not apply to a court governed by Chapter 45A.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 143 (S.B. 430), § 1, effective May 14, 1981; am. Acts 1987, 70th Leg., ch. 347 (H.B. 631), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 753 (H.B. 1312), § 1, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.13, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 1040 (H.B. 1779), §§ 3, 4, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 4.06, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 900 (H.B. 154), § 1, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 578 (H.B. 1056), § 2, effective June 11, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.04, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 3, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), §§ 14, 22, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 854 (S.B. 2340), § 2, effective June 19, 2009; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 7, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 6, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.010, effective September 1, 2019; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.027, effective January 1, 2025; Acts 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 9.05(a), effective December 4, 2025.

Art. 43.091. Waiver of Payment of Fines and Costs for Certain Defendants and for Children.

(a) A court may waive payment of all or part of a fine imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or was, at the time the offense was committed, a child as defined by Article 45A.453(a); and

(2) each alternative method of discharging the fine under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

(b) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity; and

(7) any other factor the court determines relevant.

(c) A court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45A.453(a).

(d) This subsection applies only to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs are wholly or partly waived under this article. At any time during the defendant's period of community supervision, the court, on the court's own motion or by motion of the attorney representing the state, may reconsider the

waiver of the fine or costs. After providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court may order the defendant to pay all or part of the waived amount of the fine or costs only if the court determines that the defendant has sufficient resources or income to pay that amount.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1111 (H.B. 2410), § 2, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 15, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 2, effective September 1, 2013; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 8, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 7, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 3.07, effective January 1, 2020; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.028, effective January 1, 2025.

Art. 43.10. Manual Labor.

Where the punishment assessed in a conviction for a misdemeanor is confinement in jail for more than one day or is only a pecuniary fine and the defendant is unable to pay the fine and costs adjudged against the defendant, or where the defendant is sentenced to jail for a felony or is confined in jail after conviction of a felony, the defendant shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of defendants under this article;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works and maintenance projects, including public works and maintenance projects for a political subdivision located in whole or in part in the county. They may be put to labor upon maintenance projects for a cemetery that the commissioners court uses public funds, county employees, or county equipment to maintain under Section 713.028, Health and Safety Code. They may also be put to labor providing maintenance and related services to a nonprofit organization that qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, and is organized as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), provided that, at the sheriff's request, the commissioners court determines that the nonprofit organization provides a public service to the county or to a political subdivision located in whole or in part in the county;

5. A defendant who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. The defendant's inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a defendant is entitled to have one day deducted from each sentence the defendant is serving.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1981, 67th Leg., ch. 708 (H.B. 647), § 1, effective August 31, 1981; am. Acts 1989, 71st Leg., ch. 753 (H.B. 1312), § 2, effective September 1, 1989; am. Acts 1989, 71st Leg., ch. 785 (H.B. 2335), § 4.14, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 900 (H.B. 154), § 2, effective August 26, 1991; am. Acts 1991, 72nd Leg., 2nd C.S., ch. 10 (H.B. 93), § 14.09, effective October 1, 1991; am. Acts 1993, 73rd Leg., ch. 578 (H.B. 1056), § 3, effective June 11, 1993; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.04, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 3.19, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 3.015, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 853 (S.B. 951), § 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1187 (H.B. 129), § 1, effective June 18, 2005; am. Acts 2009, 81st Leg., ch. 854 (S.B. 2340), § 3, effective June 19, 2009.

Art. 43.13. Discharge of Defendant.

(a) A defendant who has remained in jail the length of time required by the judgment and sentence shall be discharged. The sheriff shall return the copy of the judgment and sentence, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

(b) A defendant convicted of a misdemeanor and sentenced to a term of confinement discharges the defendant's sentence at any time beginning at 6 a.m. and ending at 5 p.m. on the day of discharge.

(c) Except as provided by Subsections (d) and (e), the sheriff or other county jail administrator shall release a defendant at any time beginning at 6 a.m. and ending at 5 p.m. on the day the defendant discharges the defendant's sentence.

(d) The sheriff or other county jail administrator may:

(1) credit a defendant with not more than 18 hours of time served; and

(2) release the defendant at any time beginning at 6 a.m. and ending at 5 p.m. on the day preceding the day on which the defendant discharges the defendant's sentence.

(e) A sheriff or other county jail administrator may release a defendant from county jail after 5 p.m. and before 6 a.m. if the defendant:

(1) agrees to or requests a release after 5 p.m. and before 6 a.m.;

(2) is subject to an arrest warrant issued by another county and is being released for purposes of executing that arrest warrant;

(3) is being transferred to the custody of another state, a unit of the federal government, or a facility operated by or under contract with the Texas Department of Criminal Justice; or

(4) is being admitted to an inpatient mental health facility or a state supported living center for court-ordered mental health or intellectual disability services.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1997, 75th Leg., ch. 714 (H.B. 126), § 1, effective September 1, 1997; Acts 2019, 86th Leg., ch. 401 (S.B. 1700), § 1, effective September 1, 2019.

Justice and Corporation Courts

Chapter
45. Justice and Municipal Courts [See Editor's Notes for chapter repeal information]
45A. Justice and Municipal Courts

CHAPTER 45

Justice and Municipal Courts [See Editor's Notes for chapter repeal information]

Subchapter
B. Procedures for Justice and Municipal Courts [See Editor's Notes for subchapter repeal information]
E. Youth Diversion

Editor's Notes Without reference to the repeal of Chapter 45 by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025, amendments and enactments were made by Acts 2023, 88th Leg., ch. 525 (HB 3186), §§ 3-8, effective January 1, 2024, applicable to offenses committed on or after January 1, 2025.

Subchapter B

Procedures for Justice and Municipal Courts [See Editor's Notes for subchapter repeal information]

Article
45.0215. Plea by Minor and Appearance of Parent. [Repealed]
45.041. Judgment. [Repealed]
45.049. Community Service in Satisfaction of Fine or Costs. [Repealed]
45.0491. Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Repealed]
45.0492. Community Service in Satisfaction of Fine or Costs for Certain Juvenile Defendants. [Repealed]
45.051. Suspension of Sentence and Deferral of Final Disposition. [Repealed]
45.058. Children Taken into Custody. [Repealed]

Editor's Notes Without reference to the repeal of Chapter 45 by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025, amendments and enactments were made by Acts 2023, 88th Leg., ch. 525 (HB 3186), §§ 3-8, effective January 1, 2024, applicable to offenses committed on or after January 1, 2025.

Art. 45.0215. Plea by Minor and Appearance of Parent. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 193 (H.B. 1545), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 19, effective September 1, 1999 (renumbered from art. 45.331); am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 33, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1322 (S.B. 407), § 12, effective September 1, 2011; Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), § 3, eff. January 1, 2024.; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Art. 45.041. Judgment. [Repealed]

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1971, 62nd Leg., ch. 987 (H.B. 887), § 5, effective June 15, 1971; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 39, effective September 1, 1999 (renumbered from art. 45.50); am. Acts 2007, 80th Leg., ch. 1393 (H.B. 485), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 464 (H.B. 27), § 3, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 3, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 5, effective September 1, 2013; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 10, effective September 1, 2017; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 11, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 3.13(3), effective January 1, 2020; Acts 2021, 87th Leg., ch. 634 (H.B. 569), § 3, effective September 1, 2021; Acts 2021, 87th Leg., ch. 788 (H.B. 80), § 1, effective September 1, 2021; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Art. 45.049. Community Service in Satisfaction of Fine or Costs. [Repealed]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 298 (H.B. 930), § 1, effective May 27, 1993; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 49, effective September 1, 1999 (renumbered from art. 45.521); am. Acts 2003, 78th Leg., ch. 209 (H.B. 2424), § 66(a), effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1113 (H.B. 3692), § 5, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 17, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 27.001(2), effective September 1, 2009; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 15, effective September 1, 2017; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 16, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.011, effective September 1, 2019; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Art. 45.0491. Waiver of Payment of Fines and Costs for Certain Defendants and for Children. [Repealed]

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1263 (H.B. 3060), § 18, effective September 1, 2007; am. Acts 2013, 83rd Leg., ch. 1320 (S.B. 395), § 4, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 6, effective September 1, 2013; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 17, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 16, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 3.12, effective January 1, 2020; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Art. 45.0492. Community Service in Satisfaction of Fine or Costs for Certain Juvenile Defendants. [Repealed]

HISTORY: Acts 2011, 82nd Leg., ch. 227 (H.B. 350), § 1, effective September 1, 2011; Acts 2017, 85th Leg., ch. 977 (H.B. 351), §§ 18, 19, 31, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), §§ 17, 18, 27, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 4.012(a), effective September 1, 2019; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Art. 45.051. Suspension of Sentence and Deferral of Final Disposition. [Repealed]

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 318 (S.B. 914), § 1, effective September 1, 1981; am. Acts 1987, 70th Leg., ch. 226 (S.B. 1422), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 399 (S.B. 980), § 1, effective June 14, 1989; am. Acts 1991, 72nd Leg., ch. 775 (H.B. 1342), § 19, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 835 (S.B. 757), § 4, effective

September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 5.07, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 532 (S.B. 185), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1387 (H.B. 1603), § 1, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1545 (S.B. 1230), § 50, effective September 1, 1999 (renumbered from art. 45.54); am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 3.002, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 991 (S.B. 1904), § 12, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1182 (S.B. 631), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., 3rd C.S., ch. 8 (H.B. 2), §§ 4.01, 4.03, effective January 11, 2004; am. Acts 2005, 79th Leg., ch. 90 (S.B. 1005), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 281 (H.B. 2702), § 3.01, effective June 14, 2005; am. Acts 2005, 79th Leg., ch. 357 (S.B. 1257), § 6, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 508 (S.B. 545), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 714 (H.B. 2267), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 921 (H.B. 3167), § 3.001, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1121 (H.B. 1544), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 227 (H.B. 350), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 777 (H.B. 1964), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 914 (S.B. 1330), § 1, effective January 1, 2012; Acts 2015, 84th Leg., ch. 1004 (H.B. 642), § 4, effective September 1, 2015; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 21, effective September 1, 2017; Acts 2017, 85th Leg., ch. 1127 (S.B. 1913), § 20, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), §§ 2.19, 2.20, effective January 1, 2020; Acts 2021, 87th Leg., ch. 663 (H.B. 1560), § 5.58, effective September 1, 2021; Acts 2021, 87th Leg., ch. 948 (S.B. 1480), § 11, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1021 (H.B. 5183), § 4, effective June 18, 2023; repealed by Acts 2023, 88th Leg., Ch. 765 (H.B. 4504), § 3.001(6), eff. January 1, 2025.

Art. 45.058. Children Taken into Custody. [Repealed]

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1514 (S.B. 1432), § 9, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 311 (H.B. 558), § 2, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 1409 (S.B. 1114), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1132 (S.B. 108), § 3, effective September 1, 2015; repealed by Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 3.001(6), effective January 1, 2025.

Subchapter E

Youth Diversion

Article

45.301. Definitions.
45.302. Applicability.
45.303. Transfer to Juvenile Court Not Affected.
45.304. Diversion Eligibility.
45.305. Diversion Strategies.
45.306. Youth Diversion Plan.
45.307. Youth Diversion Coordinator.
45.308. Diversion Agreement.
45.309. Intermediate Diversion.
45.310. Diversion by Justice or Judge.
45.311. Referral to Court.
45.312. Local Youth Diversion Administrative Fee.
45.313. Diversion Records.

Art. 45.301. Definitions.

In this subchapter:

(1) "Charge" means a formal or informal allegation of an offense, including a citation, written promise to appear, complaint, or pending complaint.

(2) "Child" has the meaning assigned by Article 45.058(h).

(3) "Court" means a justice court, municipal court, or other court subject to this chapter.

(4) "Diversion" means an intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions. The term includes diversion under Article 45.309 or 45.310.

(5) "Offense" means a misdemeanor punishable by fine only, other than a traffic offense.

(6) "Parent" has the meaning assigned by Article 45.057(a).

(7) "Service provider" means a governmental agency, political subdivision, open-enrollment charter school, nonprofit organization, or other entity that provides services to children or families.

(8) "Youth diversion plan" means a plan adopted under Article 45.306.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.302. Applicability.

This subchapter applies only to a child who is alleged to have engaged in conduct that constitutes a misdemeanor punishable by fine only, other than a traffic offense.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.303. Transfer to Juvenile Court Not Affected.

Nothing in this subchapter precludes:

(1) a case involving a child from being referred, adjudicated, or disposed of as conduct indicating a need for supervision under Title 3, Family Code; or

(2) a waiver of criminal jurisdiction and transfer of a child's case as provided by Section 51.08, Family Code.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.304. Diversion Eligibility.

(a) Except as otherwise provided by this subchapter, a child shall be diverted from formal criminal prosecution as provided by this subchapter.

(b) A child is eligible to enter into a diversion agreement under this subchapter only once every 365 days.

(c) A child is not eligible for diversion if the child has previously had an unsuccessful diversion under this subchapter.

(d) A child is not eligible for diversion if a diversion is objected to by the attorney representing the state.

(e) A court may not divert a child from criminal prosecution as provided by this subchapter without the written consent of the child and the child's parent.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.305. Diversion Strategies.

(a) Diversion strategies include:

(1) requiring a child to participate in a program, including:

(A) a court-approved teen court program operated by a service provider;

(B) a school-related program;

(C) an educational program, including an alcohol awareness program, a tobacco awareness program, or a drug education program;

(D) a rehabilitation program; or

(E) a self-improvement program, including a program relating to self-esteem, leadership, self-responsibility, empathy, parenting, parental responsibility, manners, violence avoidance, anger management, life skills, wellness, or dispute resolution;

(2) referring a child to a service provider for services, including:

(A) at-risk youth services under Subchapter D, Chapter 264, Family Code;

(B) juvenile case manager services under Article 45.056;

(C) work and job skills training, including job interviewing and work preparation;

(D) academic monitoring or tutoring, including preparation for a high school equivalency examination administered under Section 7.111, Education Code;

(E) community-based services;

(F) mental health screening and clinical assessment;

(G) counseling, including private or in-school counseling; or

(H) mentoring services;

(3) requiring a child to:

(A) participate in mediation or other dispute resolution processes;

(B) submit to alcohol or drug testing; or

(C) substantially comply with a course of treatment prescribed by a physician or other licensed medical or mental health professional; and

(4) requiring a child, by court order, to:

(A) pay restitution not to exceed $100 for an offense against property under Title 7, Penal Code;

(B) perform not more than 20 hours of community service; or

(C) perform any other reasonable action determined by the court.

(b) A diversion strategy may be imposed under:

(1) an intermediate diversion under Article 45.309;

(2) a diversion by a justice or judge under Article 45.310; or

(3) a system of graduated sanctions for certain school offenses under Section 37.144, Education Code.

(c) A diversion strategy under this subchapter may not require a child who is a home-schooled student, as defined by Section 29.916, Education Code, to:

(1) attend an elementary or secondary school; or

(2) use an educational curriculum other than the curriculum selected by the parent.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.306. Youth Diversion Plan.

(a) A youth diversion plan is a written plan that describes the types of strategies that will be used to implement youth diversion. A youth diversion plan does not limit the types of diversion strategies that may be imposed under a diversion agreement under Article 45.308.

(b) Each justice and municipal court shall adopt a youth diversion plan.

(c) A youth diversion plan may be devised for a county or municipality or an individual court within a county or municipality.

(d) In accordance with Chapter 791, Government Code, a local government may enter into an agreement with one or more local governments to create a regional youth diversion plan and collaborate in the implementation of this subchapter.

(e) A youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

(f) A youth diversion plan may contain guidelines for disposition or diversion of a child's case by law enforcement. The guidelines are not mandatory.

(g) A current youth diversion plan must be maintained on file for public inspection in each justice and municipal court, including courts that collaborate with one or more counties or municipalities.

(h) A court or local government may adopt rules necessary to coordinate services under a youth diversion plan or to implement this subchapter.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.307. Youth Diversion Coordinator.

(a) A court may designate a youth diversion coordinator to assist the court in:

(1) determining whether a child is eligible for diversion;

(2) employing a diversion strategy authorized by this subchapter;

(3) presenting and maintaining diversion agreements;

(4) monitoring diversions;

(5) maintaining records regarding whether one or more diversions were successful or unsuccessful; and

(6) coordinating referrals to court.

(b) The responsibilities of the youth diversion coordinator may be performed by:

(1) a court administrator or court clerk, or a person who regularly performs the duties of court administrator or court clerk;

(2) an individual or entity that provides juvenile case manager services under Article 45.056;

(3) a court-related services office;

(4) a community supervision and corrections department, including a juvenile probation department;

(5) a county or municipal employee, including a peace officer;

(6) a community volunteer;

(7) an institution of higher education, including a public, private, or independent institution of higher education; or

(8) a qualified nonprofit organization as determined by the court.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.308. Diversion Agreement.

(a) A diversion agreement must identify the parties to the agreement and the responsibilities of the child and the

child's parent to ensure their meaningful participation in a diversion under Article 45.309 or 45.310.

(b) Stated objectives in a diversion agreement must be measurable, realistic, and reasonable and consider the circumstances of the child, the best interests of the child, and the long-term safety of the community.

(c) A diversion agreement must include:

(1) the terms of the agreement, including one or more diversions required to be completed by the child, written in a clear and concise manner and identifying any offense or charge being diverted;

(2) possible outcomes or consequences of a successful diversion and an unsuccessful diversion;

(3) an explanation that participation in a diversion is not an admission of guilt and a guilty plea is not required to participate in a diversion;

(4) an explanation of the process that will be used for reviewing and monitoring compliance with the terms of the agreement;

(5) the period of the diversion;

(6) a verification that:

(A) the child and the child's parent were notified of the child's rights, including the right to refuse diversion; and

(B) the child knowingly and voluntarily consents to participate in the diversion; and

(7) written acknowledgment and acceptance of the agreement by the child and the child's parent.

(d) The terms of an agreement may vary depending on the circumstances of the child, including the child's age and ability, the charge being diverted, or the diversion strategy used.

(e) A charge may not be filed against a child or, if filed, shall be dismissed by the court if the child:

(1) does not contest the charge;

(2) is eligible for diversion under Article 45.304; and

(3) accepts the terms of the agreement.

(f) Entering into a diversion agreement under this article extends the court's jurisdiction for the term of the agreement.

(g) On entering into a diversion agreement, a copy of the agreement shall be provided to the child and the child's parent, the clerk of the court, a youth diversion coordinator, and any person specified by the youth diversion plan.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.309. Intermediate Diversion.

(a) If provided by a youth diversion plan, a youth diversion coordinator or juvenile case manager shall advise the child and the child's parent before a case is filed that the case may be diverted under this article for a reasonable period not to exceed 180 days if:

(1) the child is eligible for diversion under Article 45.304;

(2) diversion is in the best interests of the child and promotes the long-term safety of the community;

(3) the child and the child's parent consent to diversion with the knowledge that diversion is optional; and

(4) the child and the child's parent are informed that they may terminate the diversion at any time and, if terminated, the case will be referred to court.

(b) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies under Article 45.305.

(c) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(d) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court under Article 45.311.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.310. Diversion by Justice or Judge.

(a) If a charge involving a child who is eligible for diversion is filed with a court, a justice or judge shall divert the case under this article as follows:

(1) if the child does not contest the charge, a justice or judge shall divert the case under this article without the child having to enter a plea; or

(2) if the child contests the charge, a justice or judge shall divert the case under this article at the conclusion of trial on a finding of guilt without entering a judgment of conviction as provided by Article 45.041.

(b) A diversion under this article may not exceed 180 days.

(c) The terms of a diversion agreement under this article must be in writing and may include any of the diversion strategies described by Article 45.305.

(d) The case of a child who successfully complies with the terms of a diversion agreement under this article shall be closed and reported as successful to the court.

(e) A child who does not comply with the terms of a diversion agreement under this article shall be referred to court for a hearing under Article 45.311.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.311. Referral to Court.

(a) A court shall conduct a non-adversarial hearing for a child who does not successfully complete the terms of a diversion under Article 45.309 or 45.310 and is referred to the court.

(b) The hearing is an opportunity for a justice or judge to confer with the child and the child's parent to determine whether a diversion should be declared unsuccessful by the court. The court may also hear from any person who may be of assistance to the child or the court in determining what is in the best interests of the child and the long-term safety of the community.

(c) After the hearing, a court may enter an order:

(1) amending or setting aside terms in the diversion agreement;

(2) extending the diversion for a period not to exceed one year from the initial start date of the diversion;

(3) issuing a continuance for the hearing for a period not to exceed 60 days to allow an opportunity for compliance with the terms of the diversion;

(4) subject to Subsection (d), requiring the child's parent to perform any act or refrain from performing any act as the court determines will increase the likelihood the child will successfully complete the diversion

and comply with any other order of the court that is reasonable and necessary for the welfare of the child;

(5) finding the diversion successful on the basis of substantial compliance; or

(6) finding the diversion unsuccessful and:

(A) transferring the child to juvenile court for alleged conduct indicating a need for supervision under Section 51.08, Family Code; or

(B) referring the charge to the prosecutor for consideration of re-filing.

(d) An order under Subsection (c)(4) may not have the substantive effect of interfering with a parent's fundamental right to determine how to raise the parent's child, unless the court finds that the interference is necessary to prevent significant impairment of the child's physical, mental, or emotional health.

(e) An order under Subsection (c)(4) is enforceable against the parent by contempt.

(f) The statute of limitations in Article 12.02(b) is tolled during the diversion period for purposes of Subsection (c)(6)(B).

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.312. Local Youth Diversion Administrative Fee.

(a) The clerk of a justice or municipal court may collect from a child's parent a $50 administrative fee to defray the costs of the diversion of the child's case under this subchapter.

(b) The fee under this article may not be collected unless specified as a term of the diversion agreement accepted by the child's parent. If the fee is not paid after giving the child's parent an opportunity to be heard, the court shall order the parent, if financially able, to pay the fee to the clerk of the court.

(c) A court shall waive the fee if the child's parent is indigent or does not have sufficient resources or income to pay the fee.

(d) A court may adopt rules for the waiver of a fee for financial hardship under this article.

(e) An order under Subsection (b) is enforceable against the parent by contempt.

(f) The clerk of the court shall keep a record of the fees collected under this article and shall forward the funds to the county treasurer, municipal treasurer, or person fulfilling the role of a county treasurer or municipal treasurer, as appropriate.

(g) The fee collected under this article shall be deposited in a special account that can be used only to offset the cost of the operations of youth diversion programs under this subchapter.

(h) Except for the fee authorized under Subsection (a), a fee may not be assessed for a child diverted under this subchapter.

(i) The diversion of a child may not be contingent on payment of a fee under this article.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

Art. 45.313. Diversion Records.

(a) A justice or municipal court shall maintain statistics for each diversion strategy authorized by this subchapter.

(b) Other than statistical records, all records generated under this subchapter are confidential under Article 45.0217.

(c) All records of a diversion pertaining to a child under this subchapter shall be expunged without the requirement of a motion or request, on the child's 18th birthday.

HISTORY: Acts 2023, 88th Leg., ch. 525 (H.B. 3186), § 2, effective January 1, 2024.

CHAPTER 45A

Justice and Municipal Courts

Subchapter J

Cases Involving Children

Article
45A.451. Juvenile Case Managers.
45A.452. Plea; Appearance by Defendant and Parent.
45A.453. Child Taken Into Custody.
45A.454. Conduct Alleged on School Property.
45A.455. Child Taken Into Custody for Violation of Juvenile Curfew or Order. [Repealed]
45A.456. Continuing Obligation to Appear for Unadjudicated Child, Now Adult; Offense.
45A.457. Finding That Offense Committed.
45A.458. Finding of Electronic Transmission of Certain Visual Material Depicting Minor.
45A.459. Community Service to Satisfy Fines or Costs for Certain Juvenile Defendants.
45A.460. Community Service to Satisfy Fines or Costs for Certain Juvenile Defendants for Offenses on School Grounds.
45A.461. Failure to Pay Fine or Appear.
45A.462. Confidential Records Related to Certain Charges Against or Convictions of Child.
45A.463. Expunction of Certain Records of Child or Minor.
45A.464. Expunction of Records Related to Failure to Attend School.

Art. 45A.451. Juvenile Case Managers.

(a) On approval of the commissioners court, governing body of a municipality, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a juvenile case manager or contract for a juvenile case manager to provide services:

(A) in cases involving:

(i) youth diversion under Subchapter K; or

(ii) children who are before a court consistent with the court's statutory powers; or

(B) to a child who is referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers before a case is filed, with the consent of the child and the child's parents or guardians;

(2) employ or contract for the services of one or more juvenile case managers who:

(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

(i) prevention services to a child considered at risk of entering the juvenile justice system; and

(ii) youth diversion services to a child engaged in misconduct, excluding traffic offenses, if a case has not yet been filed with respect to the misconduct; or

(3) agree in accordance with Chapter 791, Government Code, with any appropriate governmental entity to jointly employ a juvenile case manager, jointly contract for juvenile case manager services, or jointly contribute to the costs of a juvenile case manager or juvenile case manager services described by Subdivisions (1) and (2).

(a-1) Repealed by Acts 2025, 89th Leg., Ch. 204 (H.B. 1620), Sec. 5.022(d), eff. September 1, 2025.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers or contracting for juvenile case manager services from funds appropriated to the governor's office or otherwise available for purposes of youth diversion.

(c) To be eligible for reimbursement under Subsection (b), the entity applying must present to the governor's office a comprehensive plan to reduce juvenile offenses in the entity's jurisdiction and a youth diversion plan under Article 45A.506. The plan must address the role of the juvenile case manager in that effort.

(d) An entity that jointly employs a juvenile case manager, jointly contracts for juvenile case manager services, or jointly contributes to the costs of a juvenile case manager or juvenile case manager services under Subsection (a)(3) employs a juvenile case manager for purposes of Chapter 102.

(e) The court or governing body may pay, from the local youth diversion fund established under Section 134.156, Local Government Code:

(1) the salary and benefits of a juvenile case manager;

(2) the costs of contracting for juvenile case manager services; and

(3) the costs of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager and juvenile case manager services.

(f) A juvenile case manager shall give priority to cases brought under Section 25.093, Education Code, Chapter 65, Family Code, and youth diversion under Subchapter K of this chapter.

(g) The governing body of the employing governmental entity under Subsection (a) shall adopt reasonable rules for juvenile case managers that provide for:

(1) a code of ethics and the enforcement of the code of ethics;

(2) appropriate educational preservice and in-service training standards for juvenile case managers; and

(3) training in:

(A) the role of the juvenile case manager;

(B) case planning and management;

(C) applicable procedural and substantive law;

(D) courtroom proceedings and presentation;

(E) services for at-risk youth under Subchapter D, Chapter 137, Human Resources Code;

(F) local programs and services for children and methods by which children may access those programs and services; and

(G) detecting and preventing abuse, exploitation, and neglect of children.

(h) A court or governmental entity under this article shall implement the rules adopted under Subsection (g).

(i) he commissioners court or governing body of the municipality that administers a local youth diversion fund under Section 134.156, Local Government Code, shall require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (g).

(j) The juvenile case manager shall timely report to the judge who signed the applicable order or judgment and, on request, to the judge assigned to the case or the presiding judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child.

(k) The judge who is assigned to the case shall consult with the juvenile case manager who is supervising the case regarding:

(1) the child's home environment;

(2) the child's developmental, psychological, and educational status;

(3) the child's previous interaction with the justice system; and

(4) any sanctions available to the court that would be in the best interest of the child.

(*l*) Subsections (j) and (k) do not apply to:

(1) a part-time judge; or

(2) a county judge of a county court that has one or more appointed full-time magistrates under Section 54.1172, Government Code. (Code Crim. Proc., Art. 45.056.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; Acts 2025, 89th Leg., ch. 204 (H.B. 1620), §§ 5.022(b), 5.022(c), 5.022(d), effective September 1, 2025.

Art. 45A.452. Plea; Appearance by Defendant and Parent.

(a) Subject to the requirements of Subchapter K, this article applies to a defendant who has not had the disabilities of minority removed and has been:

(1) charged with an offense other than an offense under Section 43.261, Penal Code, if the defendant is younger than 17 years of age; or

(2) charged with an offense under Section 43.261, Penal Code, if the defendant is younger than 18 years of age.

(b) The judge or justice shall:

(1) take the defendant's plea in open court; and

(2) issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

(c) If the court is unable to secure the appearance of the defendant's parent, guardian, or managing conservator by issuing a summons, the court may, without the defendant's parent, guardian, or managing conservator present,

take the defendant's plea and proceed against the defendant.

(d) If the defendant resides in a county other than the county in which the alleged offense occurred, the defendant may, with approval of the judge of the court of original jurisdiction, enter a plea, including a plea under Article 45A.401, before a judge in the county in which the defendant resides.

(e) A justice or municipal court shall endorse on the summons issued to a parent an order to appear personally at a hearing with the defendant. The summons must include a warning that the failure of the parent to appear is a Class C misdemeanor and may result in arrest. (Code Crim. Proc., Art. 45.0215.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; 2025, 89th Leg., ch. 204 (H.B. 1620), § 5.023(a), effective September 1, 2025.

Art. 45A.453. Child Taken Into Custody.

(a) In this article, "child" means a person who is:

(1) at least 10 years of age and younger than 17 years of age; and

(2) charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

(b) A child may be released to the child's parent, guardian, custodian, or other responsible adult as provided by Section 52.02(a)(1), Family Code, if the child is taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14.

(c) A child described by Subsection (b) must be taken only to a place previously designated by the head of the law enforcement agency with custody of the child as an appropriate place of nonsecure custody for children unless the child:

(1) is released under Section 52.02(a)(1), Family Code; or

(2) is taken before a justice or municipal court.

(d) A place of nonsecure custody for children must be an unlocked, multipurpose area, such as:

(1) a lobby, office, or interrogation room, if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area; or

(2) a juvenile processing office designated under Section 52.025, Family Code, if the area is not locked when the area is used as a place of nonsecure custody.

(e) The following procedures shall be followed in a place of nonsecure custody for children:

(1) a child may not be secured physically to a cuffing rail, chair, desk, or other stationary object;

(2) a child may be held in the nonsecure facility only for the period necessary to complete:

(A) identification;

(B) investigation;

(C) processing;

(D) release to a parent, guardian, custodian, or other responsible adult; or

(E) the arranging of transportation to the appropriate juvenile court, juvenile detention facility, secure detention facility, justice court, or municipal court;

(3) residential use of the area is prohibited; and

(4) a law enforcement officer or facility staff person shall provide continuous visual supervision of a child while the child is in nonsecure custody.

(f) Notwithstanding any other provision of this article, a child may not be detained in a place of nonsecure custody for a period of more than six hours.

(g) A child taken into custody for an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14 may be presented or detained in a detention facility designated by the juvenile board under Section 52.02(a)(3), Family Code, only if:

(1) the child's case is transferred to the juvenile court by a justice or municipal court under Section 51.08(b), Family Code; or

(2) the child is referred to the juvenile court by a justice or municipal court for contempt of court under Article 45A.461.

(h) Except as provided by Subsection (i) and Section 37.143(a), Education Code, for a traffic offense or an offense punishable by fine only, a law enforcement officer may issue a citation as provided by Article 14.06 instead of taking a child into custody.

(i) A law enforcement officer may issue a citation as provided by Article 14.06 instead of taking a child into custody for conduct constituting a violation of Section 49.02, Penal Code, only if the officer releases the child to the child's parent, guardian, custodian, or other responsible adult. (Code Crim. Proc., Arts. 45.058(a), (b), (c), (d), (e), (f), (g), (g-1), (h).)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.454. Conduct Alleged on School Property.

(a) In this article, "child" has the meaning assigned by Article 45A.453(a).

(b) If a law enforcement officer issues a citation or files a complaint in the manner provided by Article 45A.101(g) for conduct by a child 12 years of age or older that is alleged to have occurred on school property of or on a vehicle owned or operated by a county or independent school district, the officer shall submit to the court:

(1) the offense report;

(2) a statement by a witness to the alleged conduct; and

(3) a statement by a victim of the alleged conduct, if any.

(c) An attorney representing the state may not proceed in a trial of an offense unless the law enforcement officer has complied with the requirements of Subsection (b).

(d) Notwithstanding Article 45A.453(h) or (i), a law enforcement officer may not issue a citation or file a complaint in the manner provided by Article 45A.101(g) for conduct by a child younger than 12 years of age that is alleged to have occurred on school property of or on a vehicle owned or operated by a county or independent school district. (Code Crim. Proc., Arts. 45.058(h), (i), (j).)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.455. Child Taken Into Custody for Violation of Juvenile Curfew or Order. [Repealed]

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001,

effective January 1, 2025; repealed by 2025, 89th Leg., ch. 204 (H.B. 1620), article 5, § 5.024, effective September 1, 2025.

Art. 45A.456. Continuing Obligation to Appear for Unadjudicated Child, Now Adult; Offense.

(a) Except as provided by Articles 45A.453 and 45A.454, an individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday.

(b) On or after an individual's 17th birthday, if the court has used all available procedures under this chapter to secure the individual's appearance to answer allegations made before the individual's 17th birthday, the court may issue a notice of continuing obligation to appear, by personal service or by mail, to the last known address and residence of the individual. The notice must order the individual to appear at a designated time, place, and date to answer the allegations detailed in the notice.

(c) Failure to appear as ordered by the notice under Subsection (b) is a Class C misdemeanor independent of Section 38.10, Penal Code, and Section 543.009, Transportation Code.

(d) It is an affirmative defense to prosecution under Subsection (c) that the individual was not informed of the individual's obligation under Articles 45A.457(h) and (i) or did not receive notice as required by Subsection (b) of this article.

(e) A notice of continuing obligation to appear issued under this article must contain the following statement provided in boldfaced type or capital letters:

"WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST."

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; 2025, 89th Leg., ch. 204 (H.B. 1620), § 5.025(a), effective September 1, 2025.

Art. 45A.457. Finding That Offense Committed.

(a) In this article:

(1) "Child" has the meaning assigned by Article 45A.453(a).

(2) "Parent" includes a person standing in parental relation, a managing conservator, or a custodian.

(3) "Residence" means any place where the child lives or resides for a period of not less than 30 days.

(b) On a finding by a justice or municipal court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, the court has jurisdiction to enter an order:

(1) referring the child or the child's parent for services under Section 137.152, Human Resources Code;

(2) requiring that the child attend a special program that the court determines to be in the best interest of the child and, if the program involves the expenditure of municipal or county funds, that is approved by the governing body of the municipality or county commissioners court, as applicable, including a program for:

(A) rehabilitation;
(B) counseling;
(C) self-esteem and leadership;
(D) work and job skills training;
(E) job interviewing and work preparation;
(F) self-improvement;
(G) parenting;
(H) manners;
(I) violence avoidance;
(J) tutoring;
(K) sensitivity training;
(L) parental responsibility;
(M) community service;
(N) restitution;
(O) advocacy; or
(P) mentoring; or

(3) requiring that the child's parent perform any act or refrain from performing any act as the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

(A) attend a parenting class or parental responsibility program; and

(B) attend the child's school classes or functions.

(c) The justice or municipal court may order the parent of a child required to attend a program under Subsection (b) to pay an amount not to exceed $100 for the costs of the program.

(d) A justice or municipal court may require a child or parent required to attend a program, class, or function under this article to submit proof of attendance to the court.

(e) A justice or municipal court shall endorse on the summons issued to a parent an order to appear personally at the hearing with the child. The summons must include a warning that the failure of the parent to appear is a Class C misdemeanor and may result in arrest.

(f) An order under this article involving a child is enforceable under Article 45A.461.

(g) A person commits an offense if the person is a parent who fails to attend a hearing under this article after receiving an order under Subsection (e). An offense under this subsection is a Class C misdemeanor.

(h) A child and parent required to appear before the court have an obligation to provide the child's current address and residence to the court in writing. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection is a Class C misdemeanor and may result in arrest. The obligation to provide notice terminates on discharge and satisfaction of the judgment or a final disposition not requiring a finding of guilt.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

(j) The child and parent are entitled to written notice of their obligation under Subsections (h) and (i), which may

be satisfied if a copy of those subsections is delivered to the child and parent by:

(1) the court during their initial appearance before the court;

(2) a peace officer arresting and releasing a child under Article 45A.453(b) at the time of release; or

(3) a peace officer who issues a notice to appear under Section 543.003, Transportation Code, or a citation under Article 14.06(b).

(k) It is an affirmative defense to prosecution under Subsection (h) that the child and parent were not informed of their obligation under this article.

(*l*) Any order under this article is enforceable by the justice or municipal court by contempt.

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; 2025, 89th Leg., ch. 204 (H.B. 1620), § 5.026(a), effective September 1, 2025.

Art. 45A.458. Finding of Electronic Transmission of Certain Visual Material Depicting Minor.

(a) In this article, "parent" means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) If a justice or municipal court finds that a defendant has committed an offense under Section 43.261, Penal Code, the court may enter an order requiring the defendant to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(c) A court that enters an order under Subsection (b) shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to pay. (Code Crim. Proc., Art. 45.061.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.459. Community Service to Satisfy Fines or Costs for Certain Juvenile Defendants.

(a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or cost for a Class C misdemeanor.

(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or cost by performing community service.

(c) An order requiring a defendant to perform community service under this article must specify:

(1) the number of hours of community service the defendant is required to perform, not to exceed 200 hours; and

(2) the date by which the defendant must submit to the court documentation verifying that the defendant completed the community service.

(d) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program; or

(G) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides to the general public services that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(e) An entity that accepts a defendant to perform community service under this article must agree to:

(1) supervise, either on-site or remotely, the defendant in the performance of the defendant's community service; and

(2) report on the defendant's community service to the justice or judge who ordered the service.

(f) A justice or judge may not order a defendant to perform more than 16 hours of community service each week under this article unless the justice or judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's family, as defined by Section 71.003, Family Code.

(g) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant to perform community service under this article is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(h) A local juvenile probation department or a court-related services office may provide the administrative and other services necessary to supervise a defendant required to perform community service under this article.

(i) A defendant is considered to have discharged not less than $150 of fines or costs for each eight hours of community service performed under this article.

(j) A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; Acts 2025, 89th Leg., 2nd C.S., ch. 113 (H.B. 16), § 9.08, effective December 4, 2025.

Art. 45A.460. Community Service to Satisfy Fines or Costs for Certain Juvenile Defendants for Offenses on School Grounds.

(a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or cost for a Class C misdemeanor occurring in a building or on the

grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense.

(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or cost by performing community service.

(c) An order requiring a defendant to perform community service under this article must specify:

(1) the number of hours of community service the defendant is required to perform; and

(2) the date by which the defendant must submit to the court documentation verifying that the defendant completed the community service.

(d) The justice or judge may order the defendant to perform community service under this article:

(1) by attending:

(A) a work and job skills training program;

(B) a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code;

(C) an alcohol or drug abuse program;

(D) a rehabilitation program;

(E) a counseling program, including a self-improvement program;

(F) a mentoring program;

(G) a tutoring program; or

(H) any similar activity; or

(2) for:

(A) a governmental entity;

(B) a nonprofit organization or another organization that provides to the general public services that enhance social welfare and the general well-being of the community, as determined by the justice or judge; or

(C) an educational institution.

(e) An entity that accepts a defendant to perform community service under this article must agree to:

(1) supervise, either on-site or remotely, the defendant in the performance of the defendant's community service; and

(2) report on the defendant's community service to the justice or judge who ordered the service.

(f) A justice or judge may not order a defendant to perform more than 16 hours of community service each week under this article unless the justice or judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's family, as defined by Section 71.003, Family Code.

(g) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accepts a defendant to perform community service under this article is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, grossly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(h) A local juvenile probation department or a court-related services office may provide the administrative and other services necessary to supervise a defendant required to perform community service under this article.

(i) A defendant is considered to have discharged not less than $150 of fines or costs for each eight hours of community service performed under this article.

(j) A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025; Acts 2023, 89th Leg., 2nd C.S., ch. 113 (H.B. 16), § 9.09, effective December 4, 2025.

Art. 45A.461. Failure to Pay Fine or Appear.

(a) In this article, "child" has the meaning assigned by Article 45A.453(a).

(b) A justice or municipal court may not order the confinement of a child for:

(1) the failure to pay all or part of a fine or cost imposed for the conviction of an offense punishable by fine only;

(2) the failure to appear for an offense committed by the child; or

(3) contempt of another order of a justice or municipal court.

(c) If a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court, after providing notice and an opportunity to be heard, may:

(1) refer the child to the appropriate juvenile court for delinquent conduct for contempt of the order; or

(2) retain jurisdiction of the case, hold the child in contempt of court, and order that:

(A) the contemnor pay a fine not to exceed $500; or

(B) the Department of Public Safety suspend the contemnor's driver's license or permit or, if the contemnor does not have a license or permit, deny the issuance of a license or permit to the contemnor until the contemnor fully complies with the order.

(d) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (c)(2) if:

(1) the person was convicted for an offense committed before the person's 17th birthday;

(2) the person failed to obey the order while the person was 17 years of age or older; and

(3) the failure to obey occurred under circumstances that constitute contempt of court.

(e) A justice or municipal court may hold a person in contempt and impose a remedy authorized by Subsection (c)(2) if the person, while younger than 17 years of age, engaged in conduct in contempt of an order issued by the court, but contempt proceedings could not be held before the person's 17th birthday.

(f) A justice or municipal court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof of compliance with the orders of the justice or municipal court.

(g) A justice or municipal court may not refer a person who violates a court order while 17 years of age or older to a juvenile court for delinquency proceedings for contempt of court. (Code Crim. Proc., Art. 45.050.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.462. Confidential Records Related to Certain Charges Against or Convictions of Child.

(a) In this article, "child" has the meaning assigned by Article 45A.453(a).

(b) Except as provided by Article 15.27 and Subsection (c) of this article, all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is charged with, is convicted of, is found not guilty of, had a charge dismissed for, or is granted deferred disposition for a fine-only misdemeanor offense other than a traffic offense are confidential and may not be disclosed to the public.

(c) Information subject to Subsection (b) may be open to inspection only by:

(1) a judge or court staff;

(2) a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(3) the Department of Public Safety;

(4) an attorney for a party to the proceeding;

(5) the child defendant; or

(6) the defendant's parent, guardian, or managing conservator. (Code Crim. Proc., Art. 45.0217.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.463. Expunction of Certain Records of Child or Minor.

(a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.

(b) This article does not apply to an offense otherwise covered by:

(1) Chapter 106, Alcoholic Beverage Code; or

(2) Chapter 161, Health and Safety Code.

(c) On or after the person's 17th birthday, a person may apply to the court in which the person was convicted to have the conviction expunged as provided by this article if:

(1) the person was convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; or

(2) the person was convicted only once of an offense under Section 43.261, Penal Code.

(d) The person must make a written request to have the records expunged.

(e) The request must:

(1) be under oath; and

(2) contain the person's statement that the person was not convicted of any additional offense or found to have engaged in conduct indicating a need for supervision as described by Subsection (g)(1) or (2), as applicable.

(f) The judge shall inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this article.

(g) The court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by those subdivisions while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(6), Family Code, while the person was a child.

(h) After entry of an order under Subsection (g), the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

(i) Records of a person younger than 17 years of age relating to a complaint may be expunged under this article if:

(1) the complaint was dismissed under Subchapter G, Article 45A.401, or other law; or

(2) the person was acquitted of the offense.

(j) The justice or municipal court shall require a person who requests expunction under this article to pay a reimbursement fee in the amount of $30 to defray the cost of notifying state agencies of orders of expunction under this article.

(k) The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55A. (Code Crim. Proc., Art. 45.0216.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Art. 45A.464. Expunction of Records Related to Failure to Attend School.

(a) In this article, "truancy offense" means an offense committed under the former Section 25.094, Education Code.

(b) An individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to an expunction of the conviction or complaint and records relating to the conviction or complaint.

(c) Regardless of whether the individual has filed a petition for expunction, the court in which the individual was convicted or a complaint for a truancy offense was filed shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the individual's record.

(d) After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose. (Code Crim. Proc., Art. 45.0541.)

HISTORY: Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 1.001, effective January 1, 2025.

Miscellaneous Proceedings

Chapter
46. Miscellaneous Provisions Relating to Mental Illness and Intellectual Disability
46B. Incompetency to Stand Trial
46C. Insanity Defense
55. Expunction of Criminal Records [Repealed].
59. Forfeiture of Contraband

CHAPTER 46

Miscellaneous Provisions Relating to Mental Illness and Intellectual Disability

Article
46.01. [Repealed].
46.02. Incompetency to Stand Trial [Repealed].
46.03. Insanity Defense [Repealed in Part; Renumbered in Part].
46.04. Transportation to a Mental Health Facility or Residential Care Facility.
46.05. Competency to Be Executed.

Art. 46.01. [Repealed].

Repealed by Acts 1999, 76th Leg., ch. 561 (S.B. 421), § 8, effective September 1, 1999.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 299 (H.B. 955), § 2, effective August 28, 1967.

Art. 46.02. Incompetency to Stand Trial [Repealed].

Repealed by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 15, effective January 1, 2004.

HISTORY: Enacted by Acts 1965, 59th Leg., ch. 722 (S.B. 107), § 1, effective January 1, 1966; am. Acts 1967, 60th Leg., ch. 299 (H.B. 955), § 1, effective August 28, 1967; am. Acts 1967, 60th Leg., ch. 659 (S.B. 145), § 33, effective August 28, 1967; am. Acts 1969, 61st Leg., ch. 554 (H.B. 1088), § 1, effective June 10, 1969; am. Acts 1969, 61st Leg., ch. 833 (S.B. 569), § 1, effective June 18, 1969; am. Acts 1971, 62nd Leg., ch. 995 (H.B. 1016), §§ 1, 2, effective August 30, 1971; am. Acts 1973, 63rd Leg., ch. 275 (S.B. 893), § 1, effective June 11, 1973; am. Acts 1973, 63rd Leg., ch. 468 (H.B. 727), § 1, effective August 27, 1973; am. Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 1, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 1, effective September 1, 1977; am. Acts 1981, 67th Leg., ch. 291 (S.B. 265), § 148, effective September 1, 1981; am. Acts 1983, 68th Leg., ch. 54 (S.B. 302), §§ 1, 2, effective August 29, 1983; am. Acts 1983, 68th Leg., ch. 772 (H.B. 500), §§ 1—6, effective June 14, 1989; am. Acts 1999, 76th Leg., ch. 561 (S.B. 421), §§ 1—7, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1071), §§ 3, 4, effective September 1, 2001.

Art. 46.03. Insanity Defense [Repealed in Part; Renumbered in Part].

Secs. 1 to 3. [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

Sec. 4. (a) to (c) [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

(d) (1) to (7) [Repealed by Acts 2005, 79th Leg., ch. 831 (H.B. 837), § 1, effective September 1, 2005.]

(8) [Renumbered to Tex. Code Crim. Proc § 46C.003 by Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011.]

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 2, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 2, effective September 1, 1977; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), §§ 2, 3, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 393 (S.B. 754), §§ 7—9, effective June 14, 1989; am. Acts 2001, 77th Leg., ch. 985 (H.B. 434), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 5, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 485 (H.B. 291), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011.

Art. 46.04. Transportation to a Mental Health Facility or Residential Care Facility.

Sec. 1. **Persons Accompanying Transport.**

(a) A patient transported from a jail or detention facility to a mental health facility or a residential care facility shall be transported by a special officer for mental health assignment certified under Section 1701.404, Occupations Code, or by a sheriff or constable.

(b) The court ordering the transport shall require appropriate medical personnel to accompany the person transporting the patient, at the expense of the county from which the patient is transported, if there is reasonable cause to believe the patient will require medical assistance or will require the administration of medication during the transportation.

(c) A female patient must be accompanied by a female attendant.

Sec. 2. **Requirements for Transport. —** The transportation of a patient from a jail or detention facility to a mental health facility or residential care facility must meet the following requirements:

(1) the patient must be transported directly to the facility within a reasonable amount of time and without undue delay;

(2) a vehicle used to transport the patient must be adequately heated in cold weather and adequately ventilated in warm weather;

(3) a special diet or other medical precautions recommended by the patient's physician must be followed;

(4) the person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom; and

(5) the patient may not be transported with a state prisoner.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1512 (S.B. 539), § 6, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.736, effective September 1, 2001.

Art. 46.05. Competency to Be Executed.

(a) A person who is incompetent to be executed may not be executed.

(b) The trial court retains jurisdiction over motions filed by or for a defendant under this article.

(c) A motion filed under this article must identify the proceeding in which the defendant was convicted, give the date of the final judgment, set forth the fact that an execution date has been set if the date has been set, and clearly set forth alleged facts in support of the assertion that the defendant is presently incompetent to be executed. The defendant shall attach affidavits, records, or other evidence supporting the defendant's allegations or shall state why those items are not attached. The defen-

dant shall identify any previous proceedings in which the defendant challenged the defendant's competency in relation to the conviction and sentence in question, including any challenge to the defendant's competency to be executed, competency to stand trial, or sanity at the time of the offense. The motion must be verified by the oath of some person on the defendant's behalf.

(d) On receipt of a motion filed under this article, the trial court shall determine whether the defendant has raised a substantial doubt of the defendant's competency to be executed on the basis of:

(1) the motion, any attached documents, and any responsive pleadings; and

(2) if applicable, the presumption of competency under Subsection (e).

(e) If a defendant is determined to have previously filed a motion under this article, and has previously been determined to be competent to be executed, the previous adjudication creates a presumption of competency and the defendant is not entitled to a hearing on the subsequent motion filed under this article, unless the defendant makes a prima facie showing of a substantial change in circumstances sufficient to raise a significant question as to the defendant's competency to be executed at the time of filing the subsequent motion under this article.

(f) If the trial court determines that the defendant has made a substantial showing of incompetency, the court shall order at least two mental health experts to examine the defendant using the standard described by Subsection (h) to determine whether the defendant is incompetent to be executed.

(g) If the trial court does not determine that the defendant has made a substantial showing of incompetency, the court shall deny the motion and may set an execution date as otherwise provided by law.

(h) A defendant is incompetent to be executed if the defendant does not understand:

(1) that he or she is to be executed and that the execution is imminent; and

(2) the reason he or she is being executed.

(i) Mental health experts who examine a defendant under this article shall provide within a time ordered by the trial court copies of their reports to the attorney representing the state, the attorney representing the defendant, and the court.

(j) By filing a motion under this article, the defendant waives any claim of privilege with respect to, and consents to the release of, all mental health and medical records relevant to whether the defendant is incompetent to be executed.

(k) The trial court shall determine whether, on the basis of reports provided under Subsection (i), the motion, any attached documents, any responsive pleadings, and any evidence introduced in the final competency hearing, the defendant has established by a preponderance of the evidence that the defendant is incompetent to be executed. If the court makes a finding that the defendant is not incompetent to be executed, the court may set an execution date as otherwise provided by law.

(*l*) Following the trial court's determination under Subsection (k) and on motion of a party, the clerk shall send immediately to the court of criminal appeals in accordance with Section 8(d), Article 11.071, the appropriate documents for that court's review and entry of a judgment of whether to adopt the trial court's order, findings, or recommendations issued under Subsection (g) or (k). The court of criminal appeals also shall determine whether any existing execution date should be withdrawn and a stay of execution issued while that court is conducting its review or, if a stay is not issued during the review, after entry of its judgment.

(*l*-1) Notwithstanding Subsection (*l*), the court of criminal appeals may not review any finding of the defendant's competency made by a trial court as a result of a motion filed under this article if the motion is filed on or after the 20th day before the defendant's scheduled execution date.

(m) If a stay of execution is issued by the court of criminal appeals, the trial court periodically shall order that the defendant be reexamined by mental health experts to determine whether the defendant is no longer incompetent to be executed.

(n) If the court of criminal appeals enters a judgment that a defendant is not incompetent to be executed, the court may withdraw any stay of execution issued under Subsection (*l*), and the trial court may set an execution date as otherwise provided by law.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 654 (H.B. 245), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 21.001(13), effective September 1, 2001 (renumbered from art. 46.04); am. Acts 2007, 80th Leg., ch. 677 (H.B. 1545), § 1, effective September 1, 2007.

CHAPTER 46B

Incompetency to Stand Trial

Subchapter

A.	General Provisions
B.	Examination
C.	Incompetency Trial
D.	Procedures After Determination of Incompetency
E.	Civil Commitment: Charges Pending
F.	Civil Commitment: Charges Dismissed
G.	Provisions Applicable to Subchapters E and F

Subchapter A

General Provisions

Article

46B.001.	Definitions.
46B.002.	Applicability.
46B.0021.	Facility Designation.
46B.003.	Incompetency; Presumptions.
46B.004.	Raising Issue of Incompetency to Stand Trial.
46B.005.	Determining Incompetency to Stand Trial.
46B.006.	Appointment of and Representation by Counsel.
46B.007.	Admissibility of Statements and Certain Other Evidence.
46B.008.	Rules of Evidence.
46B.009.	Time Credits.
46B.0095.	Maximum Period of Commitment or Program Participation Determined by Maximum Term for Offense.
46B.010.	Mandatory Dismissal of Misdemeanor Charges.
46B.011.	Appeals.

Article
46B.012. Compliance with Chapter.
46B.013. Use of Electronic Broadcast System in Certain Proceedings Under This Chapter.

Art. 46B.001. Definitions.

In this chapter:

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

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

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

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

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

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

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

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

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

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

(11) "Mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

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

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

(B) behavior as demonstrated by recent disturbed behavior.

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

(14) "Subaverage general intellectual functioning" means a measured intelligence two or more standard deviations below the age-group mean, using a standardized psychometric instrument.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 1, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.006, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 5, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 2, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 5, effective September 1, 2019.

Art. 46B.002. Applicability.

This chapter applies to a defendant charged with a felony or with a misdemeanor punishable by confinement.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.0021. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 3, effective June 14, 2019; enacted by Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 6, effective September 1, 2019.

Art. 46B.003. Incompetency; Presumptions.

(a) A person is incompetent to stand trial if the person does not have:

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.004. Raising Issue of Incompetency to Stand Trial.

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

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

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

(c-1) A suggestion of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 2, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 2, effective September 1, 2011.

Art. 46B.005. Determining Incompetency to Stand Trial.

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

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

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

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

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

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

(d) If the issue of the defendant's incompetency to stand trial is raised after the trial on the merits begins, the court may determine the issue at any time before the sentence is pronounced. If the determination is delayed until after the return of a verdict, the court shall make the determination as soon as reasonably possible after the return. If a verdict of not guilty is returned, the court may not determine the issue of incompetency.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.006. Appointment of and Representation by Counsel.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.007. Admissibility of Statements and Certain Other Evidence.

A statement made by a defendant during an examination or trial on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.008. Rules of Evidence.

Notwithstanding Rule 101, Texas Rules of Evidence, the Texas Rules of Evidence apply to a trial under Subchapter C or other proceeding under this chapter whether the proceeding is before a jury or before the court.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.009. Time Credits.

A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence each of the following periods for which the person may be confined in a mental health facility, residential care facility, or jail:

(1) any period of confinement that occurs pending a determination under Subchapter C as to the defendant's competency to stand trial; and

(2) any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 2, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 3, effective September 1, 2011.

Art. 46B.0095. Maximum Period of Commitment or Program Participation Determined by Maximum Term for Offense.

(a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, ordered to participate in an outpatient competency restoration or treatment program, or subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misde-

meanor and has been ordered only to participate in an outpatient competency restoration or treatment program under Subchapter D or E, the maximum period of restoration is two years.

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

(c) The cumulative period described by Subsection (a):

(1) begins on the date the initial order of commitment or initial order for outpatient competency restoration or treatment program participation is entered under this chapter; and

(2) in addition to any inpatient or outpatient competency restoration periods or program participation periods described by Subsection (a), includes any time that, following the entry of an order described by Subdivision (1), the defendant is confined in a correctional facility, as defined by Section 1.07, Penal Code, or is otherwise in the custody of the sheriff during or while awaiting, as applicable:

(A) the defendant's transfer to:

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

(ii) a jail-based competency restoration program;

(B) the defendant's release on bail to participate in an outpatient competency restoration or treatment program; or

(C) a criminal trial following any temporary restoration of the defendant's competency to stand trial.

(d) The court shall credit to the cumulative period described by Subsection (a) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient competency restoration or treatment program participation is entered under this chapter.

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

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 3, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 4, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 3.010(a), (b), (c), and (d), effective September 1, 2013; Acts 2015, 84th Leg., ch. 627 (S.B. 1326), §§ 1, 3, effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 6, 7, effective September 1, 2017.

Art. 46B.010. Mandatory Dismissal of Misdemeanor Charges.

If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility or to a jail-based competency restoration program, that the defendant participate in an outpatient competency restoration or treatment program, or that the defendant be subjected to any combination of inpatient treatment, outpatient competency restoration or treatment program participation, or jail-based competency restoration under this chapter, and the defendant is not tried before the expiration of the maximum period of restoration described by Article 46B.0095:

(1) on the motion of the attorney representing the state, the court shall dismiss the charge; or

(2) on the motion of the attorney representing the defendant and notice to the attorney representing the state, the court:

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

(B) may dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 2, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 718 (H.B. 748), § 4, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 5, effective September 1, 2011; Acts 2015, 84th Leg., ch. 627 (S.B. 1326), § 2, effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 8, effective September 1, 2017.

Art. 46B.011. Appeals.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 3, effective September 1, 2005.

Art. 46B.012. Compliance with Chapter.

The failure of a person to comply with this chapter does not provide a defendant with a right to dismissal of charges.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.013. Use of Electronic Broadcast System in Certain Proceedings Under This Chapter.

(a) A hearing may be conducted using an electronic broadcast system as permitted by this chapter and in accordance with the other provisions of this code if:

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

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

(B) the attorney representing the state;

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

(3) on request of the defendant or the attorney representing the defendant, the defendant and the attorney representing the defendant are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.

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

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

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 4, effective September 1, 2005.

Subchapter B

Examination

Article
46B.021. Appointment of Experts.
46B.022. Experts: Qualifications.
46B.023. Custody Status.
46B.024. Factors Considered in Examination.
46B.025. Expert's Report.
46B.026. Report Deadline.
46B.027. Compensation of Experts; Reimbursement of Facilities.

Art. 46B.021. Appointment of Experts.

(a) On a suggestion that the defendant may be incompetent to stand trial, the court may appoint one or more disinterested experts to:

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.007, effective April 2, 2015.

Art. 46B.022. Experts: Qualifications.

(a) To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of:

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

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

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in either of the reporting periods in the 24 months preceding the appointment.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 6, effective September 1, 2011.

Art. 46B.023. Custody Status.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.024. Factors Considered in Examination.

During an examination under this subchapter and in any report based on that examination, an expert shall

consider, in addition to other issues determined relevant by the expert, the following:

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

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

(A) is a person with mental illness; or

(B) is a person with an intellectual disability;

(3) whether the identified condition has lasted or is expected to last continuously for at least one year;

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

(5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 7, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.008, effective April 2, 2015.

Art. 46B.025. Expert's Report.

(a) An expert's report to the court must state an opinion on a defendant's competency or incompetency to stand trial or explain why the expert is unable to state such an opinion and must also:

(1) identify and address specific issues referred to the expert for evaluation;

(2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;

(3) in specific terms, describe procedures, techniques, and tests used in the examination, the purpose of each procedure, technique, or test, and the conclusions reached; and

(4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

(a-1) The expert's opinion on the defendant's competency or incompetency may not be based solely on the defendant's refusal to communicate during the examination.

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

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

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 1, effective June 18, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 8, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.009, effective April 2, 2015.

Art. 46B.026. Report Deadline.

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

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

(c) [Repealed by Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 35(1), effective September 1, 2017.]

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 1269 (H.B. 2194), § 2, effective June 18, 2005; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 9, 35(1), effective September 1, 2017.

Art. 46B.027. Compensation of Experts; Reimbursement of Facilities.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.010, effective April 2, 2015.

Subchapter C

Incompetency Trial

Article
46B.051. Trial Before Judge or Jury.
46B.052. Jury Verdict.
46B.053. Procedure After Finding of Competency.
46B.054. Uncontested Incompetency.
46B.055. Procedure After Finding of Incompetency.

Art. 46B.051. Trial Before Judge or Jury.

(a) If a court holds a trial to determine whether the defendant is incompetent to stand trial, on the request of either party or the motion of the court, a jury shall make the determination.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 6, effective September 1, 2005.

Art. 46B.052. Jury Verdict.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.053. Procedure After Finding of Competency.

If the court or jury determines that the defendant is competent to stand trial, the court shall continue the trial on the merits. If a jury determines that the defendant is competent and the trial on the merits is to be held before a jury, the court shall continue the trial with another jury selected for that purpose.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 7, effective September 1, 2005.

Art. 46B.054. Uncontested Incompetency.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 7, effective September 1, 2005.

Art. 46B.055. Procedure After Finding of Incompetency.

If the defendant is found incompetent to stand trial, the court shall proceed under Subchapter D.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Subchapter D

Procedures After Determination of Incompetency

Article
46B.071. Options on Determination of Incompetency.
46B.0711. Release on Bail for Class B Misdemeanor.
46B.072. Release on Bail for Felony or Class A Misdemeanor.
46B.073. Commitment for Restoration to Competency.
46B.0735. Date Competency Restoration Period Begins.
46B.074. Competent Testimony Required.
46B.075. Transfer of Defendant to Facility or Program.
46B.0755. Procedures on Credible Evidence of Immediate Restoration.
46B.076. Court's Order.
46B.077. Individual Treatment Program.
46B.078. Charges Subsequently Dismissed.
46B.079. Notice and Report to Court.
46B.080. Extension of Order.
46B.0805. Competency Restoration Education Services.
46B.081. Return to Court.
46B.082. Transportation of Defendant to Court.
46B.0825. Administration of Medication While in Custody of Sheriff.
46B.083. Supporting Commitment Information Provided by Facility or Program.
46B.0831. Determination Whether Defendant Is Manifestly Dangerous.
46B.084. Proceedings on Return of Defendant to Court.
46B.085. Subsequent Restoration Periods and Extensions of Those Periods Prohibited.
46B.086. Court-Ordered Medications.
46B.090. Jail-Based Restoration of Competency Pilot Program. [Expired]
46B.091. Jail-Based Competency Restoration Program Implemented by County.

Art. 46B.071. Options on Determination of Incompetency.

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

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

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

(B) commit the defendant to:

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

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

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

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

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

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

(1) proceed under Subchapter E or F; or

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 9, effective September 1, 2011; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 10, effective September 1, 2017.

Art. 46B.0711. Release on Bail for Class B Misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 11, effective September 1, 2017.

Art. 46B.072. Release on Bail for Felony or Class A Misdemeanor.

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

(a-1) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a felony or a Class A misdemeanor and found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and an appropriate outpatient competency restoration program is available for the defendant, the court:

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 3, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 10, effective September 1, 2011; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 12, 13, effective September 1, 2017.

Art. 46B.073. Commitment for Restoration to Competency.

(a) This article applies only to a defendant not released

on bail who is subject to an initial restoration period based on Article 46B.071.

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

(1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a misdemeanor; or

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

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

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 9, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 4, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 11, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.011, effective April 2, 2015; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.20, effective January 1, 2017; Acts 2015, 84th Leg., ch. 946 (S.B. 277), § 1.15(b), effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 14, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 4, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 7, effective September 1, 2019.

Art. 46B.0735. Date Competency Restoration Period Begins.

The initial restoration period for a defendant under Article 46B.0711, 46B.072, or 46B.073 begins on the later of:

(1) the date the defendant is:

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

(B) committed to a mental health facility, residential care facility, or jail-based competency restoration program; or

(2) the date competency restoration services actually begin.

HISTORY: Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 4, effective September 1, 2021.

Art. 46B.074. Competent Testimony Required.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 10, effective September 1, 2005; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 15, effective September 1, 2017.

Art. 46B.075. Transfer of Defendant to Facility or Program.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 5, effective September 1, 2007; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 16, effective September 1, 2017.

Art. 46B.0755. Procedures on Credible Evidence of Immediate Restoration.

(a) Notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C but before the defendant is transported under Article 46B.075 to the facility or program, as applicable, the court may appoint disinterested experts to reexamine the defendant in accordance with Subchapter B. The court is not required to appoint the same expert or experts who performed the initial examination of the defendant under that subchapter.

(b) If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.0711, 46B.072, or 46B.073 remains in effect, and the defendant shall be transported to the facility or program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant has been restored to competency, the court shall withdraw its order under Article 46B.0711, 46B.072, or 46B.073 and proceed under Subsection (c) or (d).

(c) The court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

(1) both parties agree that the defendant is competent to stand trial; and

(2) the court concurs.

(d) The court shall hold a hearing to determine whether the defendant has been restored to competency if any party fails to agree or if the court fails to concur that the defendant is competent to stand trial. If a court holds a hearing under this subsection, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. For purposes of the hearing, incompetency is presumed, and the defendant's competency must be proved by a preponderance of the evidence. If after the hearing the defendant is again found to be incompetent to stand trial, the court shall issue a new order under Article 46B.0711, 46B.072, or 46B.073, as appropriate based on the defendant's current condition.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 12, effective September 1, 2011; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 17, effective September 1, 2017.

Art. 46B.076. Court's Order.

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

(1) reports of each expert;

(2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;

(3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;

(4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;

(5) the defendant's criminal history record; and

(6) the addresses of the attorney representing the state and the attorney representing the defendant.

(b) The court shall order that the transcript of all medical testimony received by the jury or court be promptly prepared by the court reporter and forwarded to the applicable facility or program.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 11, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 5, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.012, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 18, effective September 1, 2017.

Art. 46B.077. Individual Treatment Program.

(a) The facility or jail-based competency restoration program to which the defendant is committed or the outpatient competency restoration program to which the defendant is released on bail shall:

(1) develop an individual program of treatment;

(2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and

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

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

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

(1) not later than the 14th day after the date on which the defendant's competency restoration services begin; and

(2) until the defendant is no longer released to the program, at least once during each 30-day period following the date of the report required by Subdivision (1).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 6, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 13, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.013, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 19, effective September 1, 2017.

Art. 46B.078. Charges Subsequently Dismissed.

If the charges pending against a defendant are dismissed, the court that issued the order under Article 46B.0711, 46B.072, or 46B.073 shall send a copy of the order of dismissal to the sheriff of the county in which the court is located and to the head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate. On receipt of the copy of the order, the facility or program shall discharge the defendant into the care of the sheriff or sheriff's deputy for transportation in the manner described by Article 46B.082.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 20, effective September 1, 2017.

Art. 46B.079. Notice and Report to Court.

(a) The head of the facility, the provider of the jail-based competency restoration program, or the provider of the outpatient competency restoration program, as appropriate, not later than the 15th day before the date on which the initial restoration period is to expire according to the terms of the order or under Article 46B.0095 or other applicable provisions of this chapter, shall notify the applicable court that the period is about to expire.

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

(1) the defendant is clinically ready and can be safely transferred to a competency restoration program for

education services but has not yet attained competency to stand trial;

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

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

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

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

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

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

(d) If the head of the facility or program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. An explanation provided under this subsection must include a description of any evidence indicating a reduction in the severity of the defendant's symptoms or impairment.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 12, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 14, effective September 1, 2011; Acts 2015, 84th Leg., ch. 994 (H.B. 211), § 1, effective June 19, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 21, effective September 1, 2017.

Art. 46B.080. Extension of Order.

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

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

(1) the defendant has not attained competency; and

(2) an extension of the initial restoration period will likely enable the facility or program to restore the defendant to competency within the period of the extension.

(c) The court may grant only one 60-day extension under this article in connection with the specific offense with which the defendant is charged.

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 12, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 15, effective September 1, 2011; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 22, effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 5, effective September 1, 2021.

Art. 46B.0805. Competency Restoration Education Services.

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

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

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

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

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

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

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

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

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

HISTORY: Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 23, effective September 1, 2017.

Art. 46B.081. Return to Court.

Subject to Article 46B.082(b), a defendant committed or released on bail under this subchapter shall be returned to the applicable court as soon as practicable after notice to the court is provided under Article 46B.079(a), (b)(2), (b)(3), or (b-1), but not later than the date of expiration of the period for restoration specified by the court under Article 46B.0711, 46B.072, or 46B.073.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 13, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 24, effective September 1, 2017.

Art. 46B.082. Transportation of Defendant to Court.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.014, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 25, effective September 1, 2017.

Art. 46B.0825. Administration of Medication While in Custody of Sheriff.

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

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

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

HISTORY: Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 23, effective September 1, 2017.

Art. 46B.083. Supporting Commitment Information Provided by Facility or Program.

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 14, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 7, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.015, effective April 2, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 26, effective September 1, 2017.

Art. 46B.0831. Determination Whether Defendant Is Manifestly Dangerous.

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

HISTORY: Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 5, effective June 14, 2019.

Art. 46B.084. Proceedings on Return of Defendant to Court.

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

(2) Notwithstanding Subdivision (1), in a county with a population of less than 1.2 million or in a county with a population of four million or more, as soon as practicable following the date of the defendant's return to the court, the court shall provide the notice required by that subdivision to the attorney representing the state and the attorney for the defendant, and the attorney for the defendant shall meet and confer with the defendant as soon as practicable after the date of receipt of that notice.

(a-1) (1) Following the defendant's return to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under

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

(2) Notwithstanding Subdivision (1), in a county with a population of less than 1.2 million or in a county with a population of four million or more, the court shall make the determination described by that subdivision not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by that subdivision and the issue is set for a hearing under Subsection (b).

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

(b-1) If the hearing is before the court, the hearing may be conducted by means of an electronic broadcast system as provided by Article 46B.013. Notwithstanding any other provision of this chapter, the defendant is not required to be returned to the court with respect to any hearing that is conducted under this article in the manner described by this subsection.

(c) [Repealed by Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 21, effective September 1, 2007.]

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

(2) Notwithstanding Subdivision (1), in a county with a population of less than 1.2 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.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 15, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), §§ 8, 21, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 16, effective September 1, 2011; Acts 2015, 84th Leg., ch. 994 (H.B. 211), § 2, effective June 19, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 27, effective September 1, 2017; Acts 2023, 88th Leg., ch. 644 (H.B. 4559), §§ 10, 11, 12, effective September 1, 2023.

Art. 46B.085. Subsequent Restoration Periods and Extensions of Those Periods Prohibited.

(a) The court may order only one initial period of restoration and one extension under this subchapter in connection with the same offense.

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 16, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 9, effective September 1, 2007.

Art. 46B.086. Court-Ordered Medications.

(a) This article applies only to a defendant:

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program;

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

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

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

(3) for whom a correctional facility or jail-based competency restoration program that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient competency restoration program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) who, after a hearing held under Section 574.106 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1) or 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) If a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan, the director of the facility or the program provider, as applicable, shall notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal. The court shall promptly notify the attorney representing the state and the attorney representing the defendant of the defendant's refusal. The attorney repre-

senting the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 or 592.156, Health and Safety Code, except that, for a defendant in an outpatient competency restoration program, the motion may be filed at any time.

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed, may authorize the director of the facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013.

(d) The court may issue an order under this article only if the order is supported by the testimony of two physicians, one of whom is the physician at or with the applicable facility or program who is prescribing the medication as a component of the defendant's continuity of care plan and another who is not otherwise involved in proceedings against the defendant. The court may require either or both physicians to examine the defendant and report on the examination to the court.

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 717 (S.B. 465), § 8, effective June 17, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 9, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 624 (H.B. 1233), § 4, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 17, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 504 (S.B. 34), § 4, effective September 1, 2013; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 28, effective September 1, 2017.

Art. 46B.090. Jail-Based Restoration of Competency Pilot Program. [Expired]

[Expired September 1, 2022]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 797 (S.B. 1475), § 2, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.016, effective April 2, 2015; Acts 2015, 84th Leg., ch. 946 (S.B. 277), §§ 1.15(c), 1.15(d), effective September 1, 2015; Acts 2017, 85th Leg., ch. 748 (S.B. 1326), §§ 29, 35(2), effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 6, § 11(1), effective September 1, 2021.

Art. 46B.091. Jail-Based Competency Restoration Program Implemented by County.

(a) [Repealed.]

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

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

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

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

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

(B) similar to other competency restoration programs;

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

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

(4) provide weekly competency restoration hours commensurate to the hours provided as part of a competency restoration program at an inpatient mental health facility;

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

(6) ensure coordination of general health care;

(7) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(8) supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 of this code or Section 574.106, Health and Safety Code.

(e) The executive commissioner shall adopt rules as necessary for a county to develop and implement a program under this article. The commission shall, as part of the rulemaking process, establish contract monitoring and oversight requirements for a local mental health authority or local behavioral health authority that contracts with a county to provide jail-based competency restoration ser-

vices under this article. The contract monitoring and oversight requirements must be consistent with local mental health authority or local behavioral health authority performance contract monitoring and oversight requirements, as applicable.

(f) The commission may inspect on behalf of the state any aspect of a program implemented under this article.

(g) A psychiatrist or psychologist for the provider who has the qualifications described by Article 46B.022 shall evaluate the defendant's competency and report to the court as required by Article 46B.079.

(h) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of Article 46B.0755(a) or (b).

(i) If at any time during a defendant's commitment to a program implemented under this article the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall:

(A) proceed under Subchapter E or F and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable; or

(B) release the defendant on bail as permitted under Chapter 17.

(j) If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the program, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this subchapter, including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and, as applicable:

(1) for a defendant charged with a felony, not less than 45 days are remaining in the initial restoration period; or

(2) for a defendant charged with a felony or a misdemeanor, an extension has been ordered under Article 46B.080 and not less than 45 days are remaining under the extension order.

(j-1) After receipt of a notice under Subsection (j), the defendant shall be transferred without unnecessary delay to the appropriate mental health facility, residential care facility, or outpatient competency restoration program for the remainder of the period permitted by this subchapter, including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the defendant is not transferred, and if the psychiatrist or psychologist for the provider determines that the defendant has not been restored to competency by the end of the period authorized by this subchapter, the defendant shall be returned to the court for further proceedings. For a defendant charged with a misdemeanor, the court may:

(1) proceed under Subchapter E or F;

(2) release the defendant on bail as permitted under Chapter 17; or

(3) dismiss the charges in accordance with Article 46B.010.

(k) Unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095, apply to a defendant receiving competency restoration services, including competency restoration education services, under a program implemented under this article in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(*l*) This article does not affect the responsibility of a county to ensure the safety of a defendant who is committed to the program and to provide the same adequate care to the defendant as is provided to other inmates of the jail in which the defendant is located.

(m) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if:

(1) the court determines that the defendant is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial; and

(2) the other requirements of this subchapter relating to an order for outpatient competency restoration services are met.

HISTORY: Acts 2017, 85th Leg., ch. 748 (S.B. 1326), § 30, effective September 1, 2017; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 7, § 11(2), effective September 1, 2021.

Subchapter E

Civil Commitment: Charges Pending

Article
46B.101. Applicability.
46B.102. Civil Commitment Hearing: Mental Illness.
46B.103. Civil Commitment Hearing: Intellectual Disability.
46B.104. Civil Commitment Placement: Finding of Violence.
46B.105. Transfer Following Civil Commitment Placement.
46B.1055. Modification of Order Following Inpatient Civil Commitment Placement.
46B.106. Civil Commitment Placement: No Finding of Violence.
46B.107. Release of Defendant After Civil Commitment.
46B.108. Redetermination of Competency.
46B.109. Request by Head of Facility or Outpatient Treatment Provider.
46B.110. Motion by Defendant, Attorney Represent-

Article
ing Defendant, or Attorney Representing State.
46B.111. Appointment of Examiners.
46B.112. Determination of Restoration with Agreement.
46B.113. Determination of Restoration Without Agreement.
46B.114. Transportation of Defendant to Court.
46B.115. Subsequent Redeterminations of Competency.
46B.116. Disposition on Determination of Competency.
46B.117. Disposition on Determination of Incompetency.

Art. 46B.101. Applicability.

This subchapter applies to a defendant against whom a court is required to proceed according to Article 46B.084(e) or according to the court's appropriate determination under Article 46B.071.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 18, effective September 1, 2011.

Art. 46B.102. Civil Commitment Hearing: Mental Illness.

(a) If it appears to the court that the defendant may be a person with mental illness, the court shall hold a hearing to determine whether the defendant should be court-ordered to mental health services under Subtitle C, Title 7, Health and Safety Code.

(b) Proceedings for commitment of the defendant to court-ordered mental health services are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(c) If the court enters an order committing the defendant to a mental health facility, the defendant shall be:

(1) treated in conformity with Subtitle C, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application for court-ordered temporary or extended mental health services may not be required;

(2) the provisions of Subtitle C, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered inpatient mental health services under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 18, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 10, effective September 1, 2007.

Art. 46B.103. Civil Commitment Hearing: Intellectual Disability.

(a) If it appears to the court that the defendant may be a person with an intellectual disability, the court shall hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code, to the extent that Subtitle D applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(c) If the court enters an order committing the defendant to a residential care facility, the defendant shall be:

(1) treated and released in accordance with Subtitle D, Title 7, Health and Safety Code, except as otherwise provided by this chapter; and

(2) released in conformity with Article 46B.107.

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with an intellectual disability may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 19, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 11, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 6.017, 6.018, effective April 2, 2015.

Art. 46B.104. Civil Commitment Placement: Finding of Violence.

A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the facility designated by the commission if:

(1) the defendant is charged with an offense listed in Article 17.032(a); or

(2) the indictment charging the offense alleges an affirmative finding under Article 42A.054(c) or (d).

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 20, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 12, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.019, effective April 2, 2015; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.21, effective January 1, 2017; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 6, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 9, effective September 1, 2019.

Art. 46B.105. Transfer Following Civil Commitment Placement.

(a) Unless a defendant committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board established under Subsection (b), not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

(1) a unit of an inpatient mental health facility other than a maximum security unit;

(2) a residential care facility; or

(3) a program designated by a local mental health authority or a local intellectual and developmental disability authority.

(b) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or an intellectual disability, to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(c) The review board may not make a determination as to the defendant's need for treatment.

(d) A finding that the defendant is not manifestly dangerous is not a medical determination that the defendant no longer meets the criteria for involuntary civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the defendant is manifestly dangerous.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 21, effective September 1, 2005; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.020, effective April 2, 2015; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 7, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 10, effective September 1, 2019.

Art. 46B.1055. Modification of Order Following Inpatient Civil Commitment Placement.

(a) This article applies to a defendant who has been transferred under Article 46B.105 from a maximum security unit to any facility other than a maximum security unit.

(b) The defendant, the head of the facility to which the defendant is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order the defendant to participate in an outpatient treatment program.

(c) If the head of the facility to which the defendant is committed makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall hold a hearing to determine whether the court should modify the order for inpatient treatment or residential care in accordance with Subtitle C, Title 7, Health and Safety Code.

(d) If the defendant or the attorney representing the state makes a request under Subsection (b), not later than the 14th day after the date of the request the court shall grant the request, deny the request, or hold a hearing on the request to determine whether the court should modify the order for inpatient treatment or residential care. A court is not required to hold a hearing under this subsection unless the request and any supporting materials provided to the court provide a basis for believing modification of the order may be appropriate.

(e) On receipt of a request to modify an order under Subsection (b), the court shall require the local mental health authority or local behavioral health authority to submit to the court, before any hearing is held under this article, a statement regarding whether treatment and supervision for the defendant can be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services are available to the defendant.

(f) If the head of the facility to which the defendant is committed believes that the defendant is a person with mental illness who meets the criteria for court-ordered outpatient mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility shall submit to the court before the hearing a certificate of medical examination for mental illness stating that the defendant meets the criteria for court-ordered outpatient mental health services.

(g) If a request under Subsection (b) is made by a defendant before the 91st day after the date the court makes a determination on a previous request under that subsection, the court is not required to act on the request until the earlier of:

(1) the expiration of the current order for inpatient treatment or residential care; or

(2) the 91st day after the date of the court's previous determination.

(h) Proceedings for commitment of the defendant to a court-ordered outpatient treatment program are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings regardless of whether the criminal court is also the county court.

(i) The court shall rule on a request made under Subsection (b) as soon as practicable after a hearing on the request, but not later than the 14th day after the date of the request.

(j) An outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

HISTORY: Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 8, effective September 1, 2021.

Art. 46B.106. Civil Commitment Placement: No Finding of Violence.

(a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to:

(1) a facility designated by the commission; or

(2) an outpatient treatment program.

(b) A facility or outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant are pending.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 22, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 13, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.021, effective April 2, 2015; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 8, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 11, effective September 1, 2019.

Art. 46B.107. Release of Defendant After Civil Commitment.

(a) The release of a defendant committed under this chapter from the commission, an outpatient treatment program, or another facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

(b) If the head of the facility or outpatient treatment provider to which a defendant has been committed under this chapter determines that the defendant should be released from the facility, the head of the facility or outpatient treatment provider shall notify the committing court and the sheriff of the county from which the defendant was committed in writing of the release not later than the 14th day before the date on which the facility or outpatient treatment provider intends to release the defendant.

(c) The head of the facility or outpatient treatment provider shall provide with the notice a written statement that states an opinion as to whether the defendant to be released has attained competency to stand trial.

(d) The court shall, on receiving notice from the head of a facility or outpatient treatment provider of intent to release the defendant under Subsection (b), hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code. The court may, on motion of the attorney representing the state or on its own motion, hold a hearing to determine whether release is appropriate under the applicable criteria in Subtitle C or D, Title 7, Health and Safety Code, regardless of whether the court receives notice that the head of a facility or outpatient treatment provider provides notice of intent to release the defendant under Subsection (b). The court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(e) If the court determines that release is not appropriate, the court shall enter an order directing the head of the facility or the outpatient treatment provider to not release the defendant.

(f) If an order is entered under Subsection (e), any subsequent proceeding to release the defendant is subject to this article.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), §§ 23, 24, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 14, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.022, effective April 2, 2015; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 9, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 12, effective September 1, 2019.

Art. 46B.108. Redetermination of Competency.

(a) If criminal charges against a defendant found incompetent to stand trial have not been dismissed, the trial court at any time may determine whether the defendant has been restored to competency.

(b) An inquiry into restoration of competency under this subchapter may be made at the request of the head of the mental health facility, outpatient treatment provider, or residential care facility to which the defendant has been committed, the defendant, the attorney representing the defendant, or the attorney representing the state, or may be made on the court's own motion.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 25, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 15, effective September 1, 2007.

Art. 46B.109. Request by Head of Facility or Outpatient Treatment Provider.

(a) The head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial may request the court to determine that the defendant has been restored to competency.

(b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their opinion the defendant is competent to stand trial.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 16, effective September 1, 2007.

Art. 46B.110. Motion by Defendant, Attorney Representing Defendant, or Attorney Representing State.

(a) The defendant, the attorney representing the defendant, or the attorney representing the state may move that the court determine that the defendant has been restored to competency.

(b) A motion for a determination of competency may be accompanied by affidavits supporting the moving party's assertion that the defendant is competent.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 26, effective September 1, 2005.

Art. 46B.111. Appointment of Examiners.

On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court may appoint disinterested experts to examine the defendant in accordance with Subchapter B.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.112. Determination of Restoration with Agreement.

On the filing of a request or motion to determine that the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, the court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

(1) both parties agree that the defendant is competent to stand trial; and

(2) the court concurs.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.113. Determination of Restoration Without Agreement.

(a) The court shall hold a hearing on a request by the head of a facility or outpatient treatment provider to which a defendant has been committed as a result of a finding of incompetency to stand trial to determine whether the defendant has been restored to competency.

(b) The court may hold a hearing on a motion to determine whether the defendant has been restored to competency or on the court's decision on its own motion to inquire into restoration of competency, and shall hold a hearing if a motion and any supporting material establish good reason to believe the defendant may have been restored to competency.

(c) If a court holds a hearing under this article, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. If the competency determination will be made by the court rather than a jury, the court may conduct the hearing:

(1) at the facility; or

(2) by means of an electronic broadcast system as provided by Article 46B.013.

(d) If the head of a facility or outpatient treatment provider to which the defendant was committed as a result of a finding of incompetency to stand trial has provided an opinion that the defendant has regained competency, competency is presumed at a hearing under this subchapter and continuing incompetency must be proved by a preponderance of the evidence.

(e) If the head of a facility or outpatient treatment provider has not provided an opinion described by Subsection (d), incompetency is presumed at a hearing under this subchapter and the defendant's competency must be proved by a preponderance of the evidence.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 27, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 17, effective September 1, 2007.

Art. 46B.114. Transportation of Defendant to Court.

If the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of an electronic broadcast system as described by this subchapter, an order setting a hearing to determine whether the defendant has been restored to competency shall direct that, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled, the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for transportation to the court. The sheriff or the sheriff's designee may not take custody of the defendant under this article until 72 hours before the date the hearing is scheduled.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 28, effective September 1, 2005.

Art. 46B.115. Subsequent Redeterminations of Competency.

(a) If the court has made a determination that a defendant has not been restored to competency under this subchapter, a subsequent request or motion for a redetermination of competency filed before the 91st day after the date of that determination must:

(1) explain why the person making the request or motion believes another inquiry into restoration is appropriate; and

(2) provide support for the belief.

(b) The court may hold a hearing on a request or motion under this article only if the court first finds reason to believe the defendant's condition has materially changed since the prior determination that the defendant was not restored to competency.

(c) If the competency determination will be made by the court, the court may conduct the hearing at the facility to which the defendant has been committed under this chapter or may conduct the hearing by means of an electronic broadcast system as provided by Article 46B.013.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 29, effective September 1, 2005.

Art. 46B.116. Disposition on Determination of Competency.

If the defendant is found competent to stand trial, the proceedings on the criminal charge may proceed.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004.

Art. 46B.117. Disposition on Determination of Incompetency.

If a defendant under order of commitment to a facility or outpatient treatment program is found to not have been restored to competency to stand trial, the court shall remand the defendant pursuant to that order of commitment, and, if applicable, order the defendant placed in the custody of the sheriff or the sheriff's designee for transportation back to the facility or outpatient treatment program.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 30, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 18, effective September 1, 2007.

Subchapter F

Civil Commitment: Charges Dismissed

Article
46B.151. Court Determination Related to Civil Commitment.

Art. 46B.151. Court Determination Related to Civil Commitment.

(a) If a court is required by Article 46B.084(f) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with an intellectual disability.

(b) If it appears to the court that there is evidence to support a finding of mental illness or an intellectual disability, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or

(2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the commission pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

(d) If the court does not detain or place the defendant under Subsection (b), the court shall release the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), §§ 32, 33, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 822 (H.B. 2725), § 19, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 6.023, effective April 2, 2015; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 10, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 13, effective September 1, 2019.

Subchapter G

Provisions Applicable to Subchapters E and F

Article
46B.171. Transcripts and Other Records.

Art. 46B.171. Transcripts and Other Records.

(a) The court shall order that:

(1) a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings under Subchapter E or F be prepared as soon as possible by the court reporters; and

(2) copies of documents listed in Article 46B.076 accompany the defendant to the mental health facility, outpatient treatment program, or residential care facility.

(b) On the request of the defendant or the attorney representing the defendant, a mental health facility, an outpatient treatment program, or a residential care facility shall provide to the defendant or the attorney copies of the facility's records regarding the defendant.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 324 (S.B. 679), § 34, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1307 (S.B. 867), § 19, effective September 1, 2007.

CHAPTER 46C

Insanity Defense

Subchapter
A. General Provisions
B. Raising the Insanity Defense
C. Court-Ordered Examination and Report
D. Determination of Issue of Defendant's Sanity
E. Disposition Following Acquittal by Reason of Insanity: No Finding of Dangerous Conduct
F. Disposition Following Acquittal by Reason of Insanity: Finding of Dangerous Conduct

Subchapter A

General Provisions

Article
46C.001. Definitions.
46C.0011. Facility Designation.
46C.002. Maximum Period of Commitment Determined by Maximum Term for Offense.
46C.003. Victim Notification of Release.

Art. 46C.001. Definitions.

In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(4) "Intellectual disability " has the meaning assigned by Section 591.003, Health and Safety Code.

(5) "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 11, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 14, effective September 1, 2019; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.01, effective September 1, 2023.

Art. 46C.0011. Facility Designation.

The commission may designate for the commitment of a defendant under this chapter only a facility operated by the commission or under a contract with the commission for that purpose.

HISTORY: Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 12, effective June 14, 2019; enacted by Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 15, effective September 1, 2019.

Art. 46C.002. Maximum Period of Commitment Determined by Maximum Term for Offense.

(a) A person acquitted by reason of insanity may not be committed to a mental hospital or other inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision under Subchapter F for a cumulative period that exceeds the maximum term provided by law for the offense for which the acquitted person was tried.

(b) On expiration of that maximum term, the acquitted person may be further confined in a mental hospital or other inpatient or residential care facility or ordered to receive outpatient or community-based treatment and supervision only under civil commitment proceedings.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.003. Victim Notification of Release.

If the court issues an order that requires the release of an acquitted person on discharge or on a regimen of outpatient care, the clerk of the court issuing the order, using the information provided on any victim impact statement received by the court under Subchapter D, Chapter 56A or other information made available to the court, shall notify the victim or the victim's guardian or close relative of the release. Notwithstanding Article 56A.156, the clerk of the court may inspect a victim impact statement for the purpose of notification under this article. On request, a victim assistance coordinator may provide the clerk of the court with information or other assistance necessary for the clerk to comply with this article.

HISTORY: Enacted by Acts 1975, 64th Leg., ch. 415 (S.B. 901), § 2, effective June 19, 1975; am. Acts 1977, 65th Leg., ch. 596 (H.B. 951), § 2, effective September 1, 1977; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), §§ 2, 3, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 393 (S.B. 754), §§ 7—9, effective June 14, 1989; am. Acts 2001, 77th Leg., ch. 985 (H.B. 434), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 5, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 485 (H.B. 291), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 787 (H.B. 2124), § 1, effective June 17, 2011 (renumbered from Art. 46.03, Art. 4(d)(8); am. Acts 2013, 83rd Leg., ch. 1276 (H.B. 1435), § 1, effective September 1, 2013; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.18, effective January 1, 2021.

Subchapter B

Raising the Insanity Defense

Article
46C.051. Notice of Intent to Raise Insanity Defense.
46C.052. Effect of Failure to Give Notice.

Art. 46C.051. Notice of Intent to Raise Insanity Defense.

(a) A defendant planning to offer evidence of the insanity defense must file with the court a notice of the defendant's intention to offer that evidence.

(b) The notice must:

(1) contain a certification that a copy of the notice has been served on the attorney representing the state; and

(2) be filed at least 20 days before the date the case is set for trial, except as described by Subsection (c).

(c) If before the 20-day period the court sets a pretrial hearing, the defendant shall give notice at the hearing.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.052. Effect of Failure to Give Notice.

Unless notice is timely filed under Article 46C.051, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Subchapter C

Court-Ordered Examination and Report

Article
46C.101. Appointment of Experts.
46C.102. Experts: Qualifications.
46C.103. Competency to Stand Trial: Concurrent Appointment.
46C.104. Order Compelling Defendant to Submit to Examination.
46C.105. Reports Submitted by Experts.
46C.106. Compensation of Experts.
46C.107. Examination by Expert of Defendant's Choice.

Art. 46C.101. Appointment of Experts.

(a) If notice of intention to raise the insanity defense is filed under Article 46C.051, the court may, on its own motion or motion by the defendant, the defendant's counsel, or the attorney representing the state, appoint one or more disinterested experts to:

(1) examine the defendant with regard to the insanity defense; and

(2) testify as to the issue of insanity at any trial or hearing involving that issue.

(b) The court shall advise an expert appointed under this article of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.102. Experts: Qualifications.

(a) The court may appoint qualified psychiatrists or psychologists as experts under this chapter. To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

(ii) at least eight hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment.

(b) In addition to meeting qualifications required by Subsection (a), to be appointed as an expert a psychiatrist or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in the 24 months preceding the appointment.

(c) A court may appoint as an expert a psychiatrist or psychologist who does not meet the requirements of Subsections (a) and (b) only if exigent circumstances require

the court to base the appointment on professional training or experience of the expert that directly provides the expert with a specialized expertise to examine the defendant that would not ordinarily be possessed by a psychiatrist or psychologist who meets the requirements of Subsections (a) and (b).

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 9, effective September 1, 2021.

Art. 46C.103. Competency to Stand Trial: Concurrent Appointment.

(a) An expert appointed under this subchapter to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to the defendant's competency to stand trial under Chapter 46B, if the expert files with the court separate written reports concerning the defendant's competency to stand trial and the insanity defense.

(b) Notwithstanding Subsection (a), an expert may not examine the defendant for purposes of determining the defendant's sanity and may not file a report regarding the defendant's sanity if in the opinion of the expert the defendant is incompetent to proceed.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.104. Order Compelling Defendant to Submit to Examination.

(a) For the purposes described by this chapter, the court may order any defendant to submit to examination, including a defendant who is free on bail. If the defendant fails or refuses to submit to examination, the court may order the defendant to custody for examination for a reasonable period not to exceed 21 days. Custody ordered by the court under this subsection may include custody at a facility operated by the commission.

(b) If a defendant who has been ordered to a facility operated by the commission for examination remains in the facility for a period that exceeds 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel rules in effect at that time.

(c) The court may not order a defendant to a facility operated by the commission for examination without the consent of the head of that facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 13, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 16, effective September 1, 2019.

Art. 46C.105. Reports Submitted by Experts.

(a) A written report of the examination shall be submitted to the court not later than the 30th day after the date of the order of examination. The court shall provide copies of the report to the defense counsel and the attorney representing the state.

(b) The report must include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense.

(c) The examiner shall submit a separate report stating the examiner's observations and findings concerning:

(1) whether the defendant is presently a person with a mental illness and requires court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code; or

(2) whether the defendant is presently a person with an intellectual disability.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.02, effective September 1, 2023.

Art. 46C.106. Compensation of Experts.

(a) The appointed experts shall be paid by the county in which the indictment was returned or information was filed.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility operated by the commission that accepts a defendant for examination under this subchapter for expenses incurred that are determined by the commission to be reasonably necessary and incidental to the proper examination of the defendant.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 14, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 17, effective September 1, 2019.

Art. 46C.107. Examination by Expert of Defendant's Choice.

If a defendant wishes to be examined by an expert of the defendant's own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Subchapter D

Determination of Issue of Defendant's Sanity

Article	
46C.151.	Determination of Sanity Issue by Jury.
46C.152.	Determination of Sanity Issue by Judge.
46C.153.	General Provisions Relating to Determination of Sanity Issue by Judge or Jury.
46C.154.	Informing Jury Regarding Consequences of Acquittal.
46C.155.	Finding of Not Guilty by Reason of Insanity Considered Acquittal.
46C.156.	Judgment.
46C.157.	Determination Regarding Dangerous Conduct of Acquitted Person.
46C.158.	Continuing Jurisdiction of Dangerous Acquitted Person.
46C.159.	Proceedings Regarding Nondangerous Acquitted Person.
46C.160.	Detention Pending Further Proceedings.

Art. 46C.151. Determination of Sanity Issue by Jury.

(a) In a case tried to a jury, the issue of the defendant's sanity shall be submitted to the jury only if the issue is

supported by competent evidence. The jury shall determine the issue.

(b) If the issue of the defendant's sanity is submitted to the jury, the jury shall determine and specify in the verdict whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.152. Determination of Sanity Issue by Judge.

(a) If a jury trial is waived and if the issue is supported by competent evidence, the judge as trier of fact shall determine the issue of the defendant's sanity.

(b) The parties may, with the consent of the judge, agree to have the judge determine the issue of the defendant's sanity on the basis of introduced or stipulated competent evidence, or both.

(c) If the judge determines the issue of the defendant's sanity, the judge shall enter a finding of guilty, not guilty, or not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.153. General Provisions Relating to Determination of Sanity Issue by Judge or Jury.

(a) The judge or jury shall determine that a defendant is not guilty by reason of insanity if:

(1) the prosecution has established beyond a reasonable doubt that the alleged conduct constituting the offense was committed; and

(2) the defense has established by a preponderance of the evidence that the defendant was insane at the time of the alleged conduct.

(b) The parties may, with the consent of the judge, agree to both:

(1) dismissal of the indictment or information on the ground that the defendant was insane; and

(2) entry of a judgment of dismissal due to the defendant's insanity.

(c) An entry of judgment under Subsection (b)(2) has the same effect as a judgment stating that the defendant has been found not guilty by reason of insanity.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.154. Informing Jury Regarding Consequences of Acquittal.

The court, the attorney representing the state, or the attorney for the defendant may not inform a juror or a prospective juror of the consequences to the defendant if a verdict of not guilty by reason of insanity is returned.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.155. Finding of Not Guilty by Reason of Insanity Considered Acquittal.

(a) Except as provided by Subsection (b), a defendant who is found not guilty by reason of insanity stands acquitted of the offense charged and may not be considered a person charged with an offense.

(b) A defendant who is found not guilty by reason of insanity is not considered to be acquitted for purposes of Chapter 55A.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.031, effective January 1, 2025.

Art. 46C.156. Judgment.

(a) In each case in which the insanity defense is raised, the judgment must reflect whether the defendant was found guilty, not guilty, or not guilty by reason of insanity.

(b) If the defendant was found not guilty by reason of insanity, the judgment must specify the offense of which the defendant was found not guilty.

(c) If the defendant was found not guilty by reason of insanity, the judgment must reflect the finding made under Article 46C.157.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.157. Determination Regarding Dangerous Conduct of Acquitted Person.

If a defendant is found not guilty by reason of insanity, the court immediately shall determine whether the offense of which the person was acquitted involved conduct that:

(1) caused serious bodily injury to another person;

(2) placed another person in imminent danger of serious bodily injury; or

(3) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.158. Continuing Jurisdiction of Dangerous Acquitted Person.

If the court finds that the offense of which the person was acquitted involved conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court retains jurisdiction over the acquitted person until either:

(1) the court discharges the person and terminates its jurisdiction under Article 46C.268; or

(2) the cumulative total period of institutionalization and outpatient or community-based treatment and supervision under the court's jurisdiction equals the maximum term provided by law for the offense of which the person was acquitted by reason of insanity and the court's jurisdiction is automatically terminated under Article 46C.269.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.159. Proceedings Regarding Nondangerous Acquitted Person.

If the court finds that the offense of which the person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a

threat of serious bodily injury to another person through the use of a deadly weapon, the court shall proceed under Subchapter E.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.160. Detention Pending Further Proceedings.

(a) On a determination by the judge or jury that the defendant is not guilty by reason of insanity, pending further proceedings under this chapter, the court may order the defendant detained in jail or any other suitable place for a period not to exceed 14 days.

(b) The court may order a defendant detained in a facility of the commission under this article only with the consent of the head of the facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 15, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 18, effective September 1, 2019.

Subchapter E

Disposition Following Acquittal by Reason of Insanity: No Finding of Dangerous Conduct

Article
46C.201. Disposition: Nondangerous Conduct.
46C.202. Detention or Release.

Art. 46C.201. Disposition: Nondangerous Conduct.

(a) If the court determines that the offense of which the person was acquitted did not involve conduct that caused serious bodily injury to another person, placed another person in imminent danger of serious bodily injury, or consisted of a threat of serious bodily injury to another person through the use of a deadly weapon, the court shall determine whether there is evidence to support a finding that the person is a person with a mental illness or an intellectual disability.

(b) If the court determines that there is evidence to support a finding of mental illness or intellectual disability, the court shall enter an order transferring the person to the appropriate court for civil commitment proceedings to determine whether the person should receive court-ordered mental health services under Subtitle C, Title 7, Health and Safety Code, or be committed to a residential care facility to receive intellectual disability services under Subtitle D, Title 7, Health and Safety Code. The court may also order the person:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution of appropriate civil proceedings by the attorney representing the state or other person designated by the court; or

(2) placed in the care of a responsible person on satisfactory security being given for the acquitted person's proper care and protection.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.03, effective September 1, 2023.

Art. 46C.202. Detention or Release.

(a) Notwithstanding Article 46C.201(b), a person placed in a commission facility pending civil hearing as described by that subsection may be detained only with the consent of the head of the facility and under an Order of Protective Custody issued under Subtitle C or D, Title 7, Health and Safety Code.

(b) If the court does not detain or place the person under Article 46C.201(b), the court shall release the person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 16, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 19, effective September 1, 2019.

Subchapter F

Disposition Following Acquittal by Reason of Insanity: Finding of Dangerous Conduct

Article
46C.251. Commitment for Evaluation and Treatment; Report.
46C.252. Report After Evaluation.
46C.253. Hearing on Disposition.
46C.254. Effect of Stabilization on Treatment Regimen.
46C.255. Trial by Jury.
46C.256. Order of Commitment to Inpatient Treatment or Residential Care.
46C.257. Order to Receive Outpatient or Community-Based Treatment and Supervision.
46C.258. Responsibility of Inpatient or Residential Care Facility.
46C.259. Status of Committed Person.
46C.260. Transfer of Committed Person to Non-Maximum Security Facility.
46C.261. Renewal of Orders for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision.
46C.262. Court-Ordered Outpatient or Community-Based Treatment and Supervision After Inpatient Commitment.
46C.263. Court-Ordered Outpatient or Community-Based Treatment and Supervision.
46C.264. Location of Court-Ordered Outpatient or Community-Based Treatment and Supervision.
46C.265. Supervisory Responsibility for Outpatient or Community-Based Treatment and Supervision.
46C.266. Modification or Revocation of Order for Outpatient or Community-Based Treatment and Supervision.
46C.267. Detention Pending Proceedings to Modify or Revoke Order for Outpatient or Community-Based Treatment and Supervision.
46C.268. Advance Discharge of Acquitted Person and Termination of Jurisdiction.
46C.269. Termination of Court's Jurisdiction.
46C.270. Appeals.

Art. 46C.251. Commitment for Evaluation and Treatment; Report.

(a) The court shall order the acquitted person to be committed for evaluation of the person's present mental condition and for treatment to the facility designated by the commission. The period of commitment under this article may not exceed 30 days.

(b) The court shall order that:

(1) a transcript of all medical testimony received in the criminal proceeding be prepared as soon as possible

by the court reporter and the transcript be forwarded to the facility to which the acquitted person is committed; and

(2) the following information be forwarded to the facility and to the commission:

(A) the complete name, race, and gender of the person;

(B) any known identifying number of the person, including social security number, driver's license number, or state identification number;

(C) the person's date of birth; and

(D) the offense of which the person was found not guilty by reason of insanity and a statement of the facts and circumstances surrounding the alleged offense.

(c) The court shall order that a report be filed with the court under Article 46C.252.

(d) To determine the proper disposition of the acquitted person, the court shall hold a hearing on disposition not later than the 30th day after the date of acquittal.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 17, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 20, effective September 1, 2019.

Art. 46C.252. Report After Evaluation.

(a) The report ordered under Article 46C.251 must be filed with the court as soon as practicable before the hearing on disposition but not later than the fourth day before that hearing.

(b) The report in general terms must describe and explain the procedure, techniques, and tests used in the examination of the person.

(c) The report must address:

(1) whether the acquitted person has a mental illness or an intellectual disability and, if so, whether the mental illness or intellectual disability is severe;

(2) whether as a result of any severe mental illness or intellectual disability the acquitted person is likely to cause serious harm to another;

(3) whether as a result of any impairment the acquitted person is subject to commitment under Subtitle C or D, Title 7, Health and Safety Code;

(4) prospective treatment and supervision options, if any, appropriate for the acquitted person; and

(5) whether any required treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.04, effective September 1, 2023.

Art. 46C.253. Hearing on Disposition.

(a) The hearing on disposition shall be conducted in the same manner as a hearing on an application for involuntary commitment under Subtitle C or D, Title 7, Health and Safety Code, except that the use of a jury is governed by Article 46C.255.

(b) At the hearing, the court shall address:

(1) whether the person acquitted by reason of insanity has a severe mental illness or an intellectual disability;

(2) whether as a result of any mental illness or intellectual disability the person is likely to cause serious harm to another; and

(3) whether appropriate treatment and supervision for any mental illness or intellectual disability rendering the person dangerous to another can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) The court shall order the acquitted person committed for inpatient treatment or residential care under Article 46C.256 if the grounds required for that order are established.

(d) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision under Article 46C.257 if the grounds required for that order are established.

(e) The court shall order the acquitted person transferred to an appropriate court for proceedings under Subtitle C or D, Title 7, Health and Safety Code, if the state fails to establish the grounds required for an order under Article 46C.256 or 46C.257 but the evidence provides a reasonable basis for believing the acquitted person is a proper subject for those proceedings.

(f) The court shall order the acquitted person discharged and immediately released if the evidence fails to establish that disposition under Subsection (c), (d), or (e) is appropriate.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.05, effective September 1, 2023.

Art. 46C.254. Effect of Stabilization on Treatment Regimen.

If an acquitted person is stabilized on a treatment regimen, including medication and other treatment modalities, rendering the person no longer likely to cause serious harm to another, inpatient treatment or residential care may be found necessary to protect the safety of others only if:

(1) the person would become likely to cause serious harm to another if the person fails to follow the treatment regimen on an Order to Receive Outpatient or Community-Based Treatment and Supervision; and

(2) under an Order to Receive Outpatient or Community-Based Treatment and Supervision either:

(A) the person is likely to fail to comply with an available regimen of outpatient or community-based treatment, as determined by the person's insight into the need for medication, the number, severity, and controllability of side effects, the availability of support and treatment programs for the person from community members, and other appropriate considerations; or

(B) a regimen of outpatient or community-based treatment will not be available to the person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.255. Trial by Jury.

(a) The following proceedings under this chapter must be before the court, and the underlying matter determined by the court, unless the acquitted person or the state

requests a jury trial or the court on its own motion sets the matter for jury trial:

(1) a hearing under Article 46C.253;

(2) a proceeding for renewal of an order under Article 46C.261;

(3) a proceeding on a request for modification or revocation of an order under Article 46C.266; and

(4) a proceeding seeking discharge of an acquitted person under Article 46C.268.

(b) The following proceedings may not be held before a jury:

(1) a proceeding to determine outpatient or community-based treatment and supervision under Article 46C.262; or

(2) a proceeding to determine modification or revocation of outpatient or community-based treatment and supervision under Article 46C.267.

(c) If a hearing is held before a jury and the jury determines that the person has a mental illness or an intellectual disability and is likely to cause serious harm to another, the court shall determine whether inpatient treatment or residential care is necessary to protect the safety of others.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.06, effective September 1, 2023.

Art. 46C.256. Order of Commitment to Inpatient Treatment or Residential Care.

(a) The court shall order the acquitted person committed to a mental hospital or other appropriate facility for inpatient treatment or residential care if the state establishes by clear and convincing evidence that:

(1) the person has a severe mental illness or an intellectual disability;

(2) the person, as a result of that mental illness or intellectual disability, is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(3) inpatient treatment or residential care is necessary to protect the safety of others.

(b) In determining whether inpatient treatment or residential care has been proved necessary, the court shall consider whether the evidence shows both that:

(1) an adequate regimen of outpatient or community-based treatment will be available to the person; and

(2) the person will follow that regimen.

(c) The order of commitment to inpatient treatment or residential care expires on the 181st day following the date the order is issued but is subject to renewal as provided by Article 46C.261.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.07, effective September 1, 2023.

Art. 46C.257. Order to Receive Outpatient or Community-Based Treatment and Supervision.

(a) The court shall order the acquitted person to receive outpatient or community-based treatment and supervision if:

(1) the state establishes by clear and convincing evidence that the person:

(A) has a severe mental illness or an intellectual disability; and

(B) as a result of that mental illness or intellectual disability is likely to cause serious bodily injury to another if the person is not provided with treatment and supervision; and

(2) the state fails to establish by clear and convincing evidence that inpatient treatment or residential care is necessary to protect the safety of others.

(b) The order of commitment to outpatient or community-based treatment and supervision expires on the first anniversary of the date the order is issued but is subject to renewal as provided by Article 46C.261.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.08, effective September 1, 2023.

Art. 46C.258. Responsibility of Inpatient or Residential Care Facility.

(a) The head of the facility to which an acquitted person is committed has, during the commitment period, a continuing responsibility to determine:

(1) whether the acquitted person continues to have a severe mental illness or an intellectual disability and is likely to cause serious harm to another because of any severe mental illness or intellectual disability; and

(2) if so, whether treatment and supervision cannot be safely and effectively provided as outpatient or community-based treatment and supervision.

(b) The head of the facility must notify the committing court and seek modification of the order of commitment if the head of the facility determines that an acquitted person no longer has a severe mental illness or an intellectual disability, is no longer likely to cause serious harm to another, or that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

(c) Not later than the 60th day before the date of expiration of the order, the head of the facility shall transmit to the committing court a psychological evaluation of the acquitted person, a certificate of medical examination of the person, and any recommendation for further treatment of the person. The committing court shall make the documents available to the attorneys representing the state and the acquitted person.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.09, effective September 1, 2023.

Art. 46C.259. Status of Committed Person.

If an acquitted person is committed under this subchapter, the person's status as a patient or resident is governed by Subtitle C or D, Title 7, Health and Safety Code, except that:

(1) transfer to a nonsecure unit is governed by Article 46C.260;

(2) modification of the order to direct outpatient or community-based treatment and supervision is governed by Article 46C.262; and

(3) discharge is governed by Article 46C.268.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.260. Transfer of Committed Person to Non-Maximum Security Facility.

(a) A person committed to a facility under this subchapter shall be committed to a facility designated by the commission.

(b) A person committed under this subchapter shall be transferred to the designated facility immediately on the entry of the order of commitment.

(c) Unless a person committed to a maximum security unit by the commission is determined to be manifestly dangerous by a review board under this article, not later than the 60th day following the date of the person's arrival at the maximum security unit the person shall be transferred to a non-maximum security unit of a facility designated by the commission.

(d) The executive commissioner shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illnesses or persons with intellectual disabilities, to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit.

(e) If the head of the facility at which the maximum security unit is located disagrees with the determination, then the matter shall be referred to the executive commissioner. The executive commissioner shall decide whether the person is manifestly dangerous.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 18, effective June 14, 2019; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 21, effective September 1, 2019; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.10, effective September 1, 2023.

Art. 46C.261. Renewal of Orders for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision.

(a) A court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually shall determine whether to renew the order.

(b) Not later than the 30th day before the date an order is scheduled to expire, the institution to which a person is committed, the person responsible for providing outpatient or community-based treatment and supervision, or the attorney representing the state may file a request that the order be renewed. The request must explain in detail the reasons why the person requests renewal under this article. A request to renew an order committing the person to inpatient treatment must also explain in detail why outpatient or community-based treatment and supervision is not appropriate.

(c) The request for renewal must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the person during the 30-day period preceding the date on which the request is filed.

(d) On the filing of a request for renewal under this article, the court shall:

(1) set the matter for a hearing; and

(2) appoint an attorney to represent the person.

(e) The court shall act on the request for renewal before the order expires.

(f) If a hearing is held, the person may be transferred from the facility to which the acquitted person was committed to a jail for purposes of participating in the hearing only if necessary but not earlier than 72 hours before the hearing begins. If the order is renewed, the person shall be transferred back to the facility immediately on renewal of the order.

(g) If no objection is made, the court may admit into evidence the certificate of medical examination for mental illness. Admitted certificates constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificate and the detailed request for renewal.

(h) A court shall renew the order only if the court finds that the party who requested the renewal has established by clear and convincing evidence that continued mandatory supervision and treatment are appropriate. A renewed order authorizes continued inpatient commitment or outpatient or community-based treatment and supervision for not more than one year.

(i) The court, on application for renewal of an order for inpatient or residential care services, may modify the order to provide for outpatient or community-based treatment and supervision if the court finds the acquitted person has established by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.262. Court-Ordered Outpatient or Community-Based Treatment and Supervision After Inpatient Commitment.

(a) An acquitted person, the head of the facility to which the acquitted person is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order outpatient or community-based treatment and supervision.

(b) The court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed. A hearing under this subsection must be held not later than the 14th day after the date of the request.

(c) If a request is made by an acquitted person or the attorney representing the state, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material provide a basis for believing modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or as soon as practicable after any hearing on the request but not later than the 14th day after the date of the request.

(f) The court shall modify the commitment order to direct outpatient or community-based treatment and supervision if at the hearing the acquitted person establishes by a preponderance of the evidence that treatment and supervision can be safely and effectively provided as outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.263. Court-Ordered Outpatient or Community-Based Treatment and Supervision.

(a) The court may order an acquitted person to participate in an outpatient or community-based regimen of treatment and supervision:

(1) as an initial matter under Article 46C.253;

(2) on renewal of an order of commitment under Article 46C.261; or

(3) after a period of inpatient treatment or residential care under Article 46C.262.

(b) An acquitted person may be ordered to participate in an outpatient or community-based regimen of treatment and supervision only if:

(1) the court receives and approves an outpatient or community-based treatment plan that comprehensively provides for the outpatient or community-based treatment and supervision; and

(2) the court finds that the outpatient or community-based treatment and supervision provided for by the plan will be available to and provided to the acquitted person.

(c) The order may require the person to participate in a prescribed regimen of medical, psychiatric, or psychological care or treatment, and the regimen may include treatment with psychoactive medication.

(d) The court may order that supervision of the acquitted person be provided by the appropriate community supervision and corrections department or the facility administrator of a community center that provides mental health or intellectual disability services.

(e) The court may order the acquitted person to participate in a supervision program funded by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(f) An order under this article must identify the person responsible for administering an ordered regimen of outpatient or community-based treatment and supervision.

(g) In determining whether an acquitted person should be ordered to receive outpatient or community-based treatment and supervision rather than inpatient care or residential treatment, the court shall have as its primary concern the protection of society.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.11, effective September 1, 2023.

Art. 46C.264. Location of Court-Ordered Outpatient or Community-Based Treatment and Supervision.

(a) The court may order the outpatient or community-based treatment and supervision to be provided in any appropriate county where the necessary resources are available.

(b) This article does not supersede any requirement under the other provisions of this subchapter to obtain the consent of a treatment and supervision provider to administer the court-ordered outpatient or community-based treatment and supervision.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.265. Supervisory Responsibility for Outpatient or Community-Based Treatment and Supervision.

(a) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall:

(1) monitor the condition of the acquitted person; and

(2) determine whether the acquitted person is complying with the regimen of treatment and supervision.

(b) The person responsible for administering a regimen of outpatient or community-based treatment and supervision shall notify the court ordering that treatment and supervision and the attorney representing the state if the person:

(1) fails to comply with the regimen; and

(2) becomes likely to cause serious harm to another.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.266. Modification or Revocation of Order for Outpatient or Community-Based Treatment and Supervision.

(a) The court, on its own motion or the motion of any interested person and after notice to the acquitted person and a hearing, may modify or revoke court-ordered outpatient or community-based treatment and supervision.

(b) At the hearing, the court without a jury shall determine whether the state has established clear and convincing evidence that:

(1) the acquitted person failed to comply with the regimen in a manner or under circumstances indicating the person will become likely to cause serious harm to another if the person is provided continued outpatient or community-based treatment and supervision; or

(2) the acquitted person has become likely to cause serious harm to another if provided continued outpatient or community-based treatment and supervision.

(c) On a determination under Subsection (b), the court may take any appropriate action, including:

(1) revoking court-ordered outpatient or community-based treatment and supervision and ordering the person committed for inpatient or residential care; or

(2) imposing additional or more stringent terms on continued outpatient or community-based treatment.

(d) An acquitted person who is the subject of a proceeding under this article is entitled to representation by counsel in the proceeding.

(e) The court shall set a date for a hearing under this article that is not later than the seventh day after the applicable motion was filed. The court may grant one or more continuances of the hearing on the motion of a party or of the court and for good cause shown.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.267. Detention Pending Proceedings to Modify or Revoke Order for Outpatient or Community-Based Treatment and Supervision.

(a) The state or the head of the facility or other person responsible for administering a regimen of outpatient or community-based treatment and supervision may file a sworn application with the court for the detention of an acquitted person receiving court-ordered outpatient or community-based treatment and supervision. The application must state that the person meets the criteria of Article 46C.266 and provide a detailed explanation of that statement.

(b) If the court determines that the application establishes probable cause to believe the order for outpatient or community-based treatment and supervision should be revoked, the court shall issue an order to an on-duty peace officer authorizing the acquitted person to be taken into custody and brought before the court.

(c) An acquitted person taken into custody under an order of detention shall be brought before the court without unnecessary delay.

(d) When an acquitted person is brought before the court, the court shall determine whether there is probable cause to believe that the order for outpatient or community-based treatment and supervision should be revoked. On a finding that probable cause for revocation exists, the court shall order the person held in protective custody pending a determination of whether the order should be revoked.

(e) An acquitted person may be detained under an order for protective custody for a period not to exceed 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b), Health and Safety Code, for an extreme emergency.

(f) This subchapter does not affect the power of a peace officer to take an acquitted person into custody under Section 573.001, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.268. Advance Discharge of Acquitted Person and Termination of Jurisdiction.

(a) An acquitted person, the head of the facility to which the acquitted person is committed, the person responsible for providing the outpatient or community-based treatment and supervision, or the state may request that the court discharge an acquitted person from inpatient commitment or outpatient or community-based treatment and supervision.

(b) Not later than the 14th day after the date of the request, the court shall hold a hearing on a request made by the head of the facility to which the acquitted person is committed or the person responsible for providing the outpatient or community-based treatment and supervision.

(c) If a request is made by an acquitted person, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material indicate that modification of the order may be appropriate.

(d) If a request is made by an acquitted person not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(e) The court shall rule on the request during or shortly after any hearing that is held and in any case not later than the 14th day after the date of the request.

(f) The court shall discharge the acquitted person from all court-ordered commitment and treatment and supervision and terminate the court's jurisdiction over the person if the court finds that the acquitted person has established by a preponderance of the evidence that:

(1) the acquitted person does not have a severe mental illness or an intellectual disability; or

(2) the acquitted person is not likely to cause serious harm to another because of any severe mental illness or intellectual disability.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 2.12, effective September 1, 2023.

Art. 46C.269. Termination of Court's Jurisdiction.

(a) The jurisdiction of the court over a person covered by this subchapter automatically terminates on the date when the cumulative total period of institutionalization and outpatient or community-based treatment and supervision imposed under this subchapter equals the maximum term of imprisonment provided by law for the offense of which the person was acquitted by reason of insanity.

(b) On the termination of the court's jurisdiction under this article, the person must be discharged from any inpatient treatment or residential care or outpatient or community-based treatment and supervision ordered under this subchapter.

(c) An inpatient or residential care facility to which a person has been committed under this subchapter or a person responsible for administering a regimen of outpatient or community-based treatment and supervision under this subchapter must notify the court not later than the 30th day before the court's jurisdiction over the person ends under this article.

(d) This subchapter does not affect whether a person may be ordered to receive care or treatment under Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

Art. 46C.270. Appeals.

(a) An acquitted person may appeal a judgment reflecting an acquittal by reason of insanity on the basis of the following:

(1) a finding that the acquitted person committed the offense; or

(2) a finding that the offense on which the prosecution was based involved conduct that:

(A) caused serious bodily injury to another person;

(B) placed another person in imminent danger of serious bodily injury; or

(C) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

(b) Either the acquitted person or the state may appeal from:

(1) an Order of Commitment to Inpatient Treatment or Residential Care entered under Article 46C.256;

(2) an Order to Receive Outpatient or Community-Based Treatment and Supervision entered under Article 46C.257 or 46C.262;

(3) an order renewing or refusing to renew an Order for Inpatient Commitment or Outpatient or Community-Based Treatment and Supervision entered under Article 46C.261;

(4) an order modifying or revoking an Order for Outpatient or Community-Based Treatment and Supervision entered under Article 46C.266 or refusing a request to modify or revoke that order; or

(5) an order discharging an acquitted person under Article 46C.268 or denying a request for discharge of an acquitted person.

(c) An appeal under this subchapter may not be considered moot solely due to the expiration of an order on which the appeal is based.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 831 (S.B. 837), § 2, effective September 1, 2005.

CHAPTER 55

Expunction of Criminal Records [Repealed].

Article
55.01. Right to Expunction [Repealed].
55.02. Procedure for Expunction [Repealed].

HISTORY: Repealed by 2023, 88th Leg., H.B. 4504, § 3.001(6), effective January 1, 2025.

Art. 59.01. Right to Expunction [Repealed].

HISTORY: Repealed by 2023, 88th Leg., H.B. 4504, § 3.001(6), effective January 1, 2025.

Art. 59.01. Procedure for Expunction. [Repealed].

HISTORY: Repealed by 2023, 88th Leg., H.B. 4504, § 3.001(6), effective January 1, 2025.

CHAPTER 59

Forfeiture of Contraband

Article
59.01. Definitions.
59.06. Disposition of Forfeited Property.

Art. 59.01. Definitions.

In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vi) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, including a digital currency, non-fungible token, or stablecoin, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under Chapter 43, Penal Code, except as provided by Paragraph (B);

(iv) any felony under The Securities Act (Title 12, Government Code); or

(v) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 152, Finance Code;

(iv) any felony under Chapter 20A or 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves a health care program, as defined by Section 35A.01, Penal Code;

(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(ix) any offense under Section 42.10, Penal Code;

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xi) any offense under Chapter 71, Penal Code;

(xii) any offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05, Penal Code;

(xiii) an offense under Section 326.002, Business & Commerce Code;

(xiv) any offense under Section 545.420, Transportation Code; or

(xv) any offense punishable under Section 42.03(d) or (e), Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), (xii), (xiv), or (xv) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), (xii), (xiv), or (xv) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or Chapter 43, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of an offense under Section 20.05, 20.06, or 20.07 or Chapter 20A, Penal Code.

(3) "Crime of violence" means:

(A) any criminal offense defined in the Penal Code or in a federal criminal law that results in a personal injury to a victim; or

(B) an act that is not an offense under the Penal Code involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death sustained in a collision caused by a driver in violation of Section 550.021, Transportation Code.

(4) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.

(5) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(3-a) "Digital currency" means a digital representation of value recorded on a cryptographically secured distributed ledger, including blockchain, or similar technology.

(6) "Owner" means a person who claims an equitable or legal ownership interest in property.

(7) "Proceeds" includes:

(A) income a person accused or convicted of a crime or the person's representative or assignee receives from:

(i) a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which the crime was reenacted; or

(ii) the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime; or

(B) with respect to digital currency gained from the commission of an offense, any increase in value of the digital currency between the date of acquisition and the forfeiture of the digital currency.

(8) "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority, and includes the collection of property or the act of taking possession of property.

(9) "Depository account" means the obligation of a regulated financial institution to pay the account owner under a written agreement, including a checking account, savings account, money market account, time deposit, NOW account, certificate of deposit, or digital currency wallet, regardless of whether the wallet is connected to an exchange or network.

(10) "Primary state or federal financial institution regulator" means the state or federal regulatory agency that chartered and comprehensively regulates a regulated financial institution.

(11) "Regulated financial institution" means a depository institution chartered by a state or federal government, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

HISTORY: Enacted by Acts 1989, 71st Leg., 1st C.S., ch. 12 (H.B. 65), § 1, effective October 18, 1989; am. Acts 1991, 72nd Leg., ch. 102 (H.B. 46), § 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 761 (H.B. 354), § 5, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 780 (H.B. 605), § 1, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 828 (S.B. 1285), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), §§ 5.91, 5.95(112), effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 621 (H.B. 1487), § 3, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 708 (S.B. 281), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 306 (H.B. 1482), § 6, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), §§ 3.09, 7.48, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 124 (S.B. 795), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 438 (S.B. 626), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 467 (H.B. 510), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.141, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 257 (H.B. 1743), § 17, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 428 (H.B. 406), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 649 (H.B. 2138), § 3, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1005 (H.B. 236), § 7, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 617 (H.B. 2275), § 1, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 4.008, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 944 (H.B. 840), §§ 1, 2, effective September 1, 2005; am. Acts 2005, 79th Leg., ch. 1026 (H.B. 1048), §§ 3, 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 127 (S.B. 1694), § 6, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 822 (H.B. 73), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 885 (H.B. 2278), § 2.14, effective April 1, 2009; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 6.006, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 153 (S.B. 2225), § 3, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1130 (H.B. 2086), § 11, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1357 (S.B. 554), § 3, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 6.003, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 223 (H.B. 260), § 5, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 515 (H.B. 2014), § 2.04, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 427 (S.B. 529), § 2, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1357 (S.B. 1451), § 1, effective September 1, 2013; Acts 2015, 84th Leg., ch. 333 (H.B. 11), § 3, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 4.004, effective September 1, 2015; Acts 2019, 86th Leg., ch. 412 (H.B. 2613), § 2, effective September 1, 2019; Acts 2019, 86th Leg., ch. 381 (H.B. 2894), § 3, effective September 1, 2019; Acts 2019, 86th Leg., ch. 491 (H.B. 4171), § 2.06, effective January 1, 2022; Acts 2021, 87th Leg., ch. 693 (H.B. 2315), §§ 1(a), 1(b), effective September 1, 2021; Acts 2023, 88th Leg., ch. 709 (H.B. 2190), § 122, effective September 1, 2023; Acts 2023, 88th Leg., ch. 277 (S.B. 895), § 2.02, effective September 1, 2023; Acts 2023, 88th Leg., ch. 369 (H.B. 1442), § 1, effective September 1, 2023; 2025, 89th Leg., ch. 1063 (S.B. 1498), § 1, effective September 1, 2025.

Art. 59.06. Disposition of Forfeited Property.

(a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between

the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest;

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency. A law enforcement agency to which property is transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district. A municipal or county agency, a groundwater conservation district, or a school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

(b-2) An agency that loans property under this article shall:

(1) keep a record of the loan, including the name of the agency or district to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency or district will use the vehicle; and

(2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2A.006 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes. Any expenditures of the proceeds are subject to the audit provisions established under this article.

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(c-3) Notwithstanding Subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by a peace officer employed by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state shall enter into a local agreement with the department that allows the attorney representing the state either to:

(1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by Subsection (b); or

(2) allocate proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, in the following proportions:

(A) 40 percent to a special fund in the department to be used solely for law enforcement purposes;

(B) 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and

(C) 30 percent to the general revenue fund.

(c-4) Notwithstanding Subsections (a) and (c-3), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety concurrently with any other law enforcement agency, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state may allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) witness-related costs, including travel and security; and

(9) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

(2) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;

(3) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) legal fees, including court costs, witness fees, and related costs, including travel and security, audit costs, and professional fees; and

(9) state bar and legal association dues.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g) (1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)—(3) of Subsection (c) of this article that the funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

(1) nonprofit programs for the prevention of drug abuse;

(2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;

(3) nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or

(4) financial assistance as described by Subsection (o).

(i) The governing body of a political subdivision may not use funds received under this subchapter for programs or facilities listed under Subsections (h)(1)—(3) if an officer of or member of the Board of Directors of the entity providing the program or facility is related to a member of the governing body, the attorney representing the state, or the head of the law enforcement agency within the third degree by consanguinity or the second degree by affinity.

(j) As a specific exception to Subdivision (4) of Subsection (c) of this article, the director of a state law enforcement agency may use not more than 10 percent of the amount credited to the special fund of the agency under that subdivision for the prevention of drug abuse and the treatment of persons with drug-related problems.

(k) (1) The attorney for the state shall transfer all forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.

(2) The attorney for the state shall transfer to the attorney general all income from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime, minus the deduction authorized by this subdivision. The attorney for the state shall determine the fair market value of property that is substantially similar to the property that was sold but that has not been increased in value by notoriety and deduct that amount from the proceeds of the

sale. After transferring income to the attorney general, the attorney for the state shall transfer the remainder of the proceeds of the sale to the owner of the property. The attorney for the state, the attorney general, or a person who may be entitled to claim money from the escrow account described by Subdivision (3) in satisfaction of a claim may at any time bring an action to enjoin the waste of income described by this subdivision.

(3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, "victim" has the meaning assigned by Article 56B.003.

(*l*) A law enforcement agency that, or an attorney representing the state who, does not receive proceeds or property under this chapter during an annual period as described by Subsection (g) shall, not later than the 30th day after the date on which the annual period ends, report to the attorney general that the agency or attorney, as appropriate, did not receive proceeds or property under this chapter during the annual period.

(m) As a specific exception to Subdivisions (1)—(3) of Subsection (c), a law enforcement agency or attorney representing the state may use proceeds received under this chapter to contract with a person or entity to prepare an audit as required by Subsection (g).

(n) As a specific exception to Subsection (c)(2) or (3), a local law enforcement agency may transfer not more than a total of 10 percent of the gross amount credited to the agency's fund to a separate special fund in the treasury of the political subdivision. The agency shall administer the separate special fund, and expenditures from the fund are at the sole discretion of the agency and may be used only for financial assistance as described by Subsection (o).

(o) The governing body of a political subdivision or a local law enforcement agency may provide financial assistance under Subsection (h)(4) or (n) only to a person who is a Texas resident, who plans to enroll or is enrolled at an institution of higher education in an undergraduate degree or certificate program in a field related to law enforcement, and who plans to return to that locality to work for the political subdivision or the agency in a field related to law enforcement. To ensure the promotion of a law enforcement purpose of the political subdivision or the agency, the governing body of the political subdivision or the agency shall impose other reasonable criteria related to the provision of this financial assistance, including a requirement that a recipient of the financial assistance work for a certain period of time for the political subdivision or the agency in a field related to law enforcement and including a requirement that the recipient sign an agreement to perform that work for that period of time. In this subsection, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the state's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the affected health care program may otherwise be entitled by law, the attorney representing the state shall transfer to the governmental entity administering the affected health care program all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, with the consent of the governmental entity administering the affected health care program, sell the property and deliver to the governmental entity administering the affected health care program the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

(q) (1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

(r) As a specific exception to Subsection (c)(2), (3), or (4), a law enforcement agency may transfer not more than 10 percent of the gross amount credited to the agency's fund to a separate special fund established in the treasury of the political subdivision or maintained by the state law enforcement agency, as applicable. The law enforcement agency shall administer the separate special fund. Interest received from the investment of money in the fund shall be credited to the fund. The agency may use money in the fund only to provide scholarships to children of peace officers who were employed by the agency or by another law enforcement agency with which the agency has overlapping geographic jurisdiction and who were killed in the line of duty. Scholarships under this subsection may be used only to pay the costs of attendance at an institution of higher education or private or independent institution of higher education, including tuition and fees and costs for housing, books, supplies, transportation, and other related personal expenses. In this subsection, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(s) Not later than April 30 of each year, the attorney general shall develop a report based on information submitted by law enforcement agencies and attorneys representing the state under Subsection (g) detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in this state in the preceding calendar

year. The attorney general shall maintain in a prominent location on the attorney general's publicly accessible Internet website a link to the most recent annual report developed under this subsection.

(t) (1) This subsection applies only to contraband for which forfeiture is authorized with respect to an offense under Section 20.05, 20.06, 20.07, 43.04, or 43.05 or Chapter 20A, Penal Code.

(2) Notwithstanding any other provision of this article, the gross amount credited to the special fund of the office of the attorney representing the state or of a law enforcement agency under Subsection (c) from the forfeiture of contraband described by Subdivision (1) shall be:

(A) used to provide direct victim services by the victim services division or other similar division of the office of the attorney representing the state or of a law enforcement agency, as applicable; or

(B) used by the office of the attorney representing the state or of the law enforcement agency to cover the costs of a contract with a local nonprofit organization to provide direct services to crime victims.

(3) An expenditure of money in the manner required by this subsection is considered to be for an official purpose of the office of the attorney representing the state or for a law enforcement purpose, as applicable.

(u) As a specific exception to Subsection (c) that the funds described by that subsection be used only for the official purposes of the attorney representing the state or for law enforcement purposes, to cover the costs of a contract with a municipal or county program to provide services to domestic victims of trafficking, the attorney representing the state or the head of a law enforcement agency, as applicable, may use any portion of the gross amount credited to the attorney's or agency's special fund under Subsection (c) from the forfeiture of contraband that:

(1) is used in the commission of, or used to facilitate or intended to be used to facilitate the commission of, an offense under Chapter 20A, Penal Code; or

(2) consists of proceeds gained from the commission of, or property acquired with proceeds gained from the commission of, an offense under Chapter 20A, Penal Code.

HISTORY: Enacted by Acts 1989, 71st Leg., 1st C.S., ch. 12 (H.B. 65), § 1, effective October 18, 1989; am. Acts 1991, 72nd Leg., ch. 312 (H.B. 1185), §§ 1, 2, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 780 (H.B. 605), §§ 3, 4, effective September 1, 1993; am. Acts 1993, 73rd Leg., ch. 814 (H.B. 2766), § 1, effective August 30, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(112), effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 975 (H.B. 2257), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 481 (S.B. 1486), §§ 1, 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 582 (S.B. 579), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 707 (H.B. 855), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 124 (S.B. 795), § 2, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 929 (S.B. 563), § 3, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 198 (H.B. 2292), § 2.142, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 257 (H.B. 1743), § 18, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 428 (H.B. 406), § 2, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 556 (H.B. 1239), § 4, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 120 (S.B. 1106), § 2, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 446 (H.B. 195), § 1, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 187 (H.B. 2062), § 1, effective May 27, 2009; am. Acts 2009, 81st Leg., ch. 941 (H.B. 3140), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 508 (H.B. 1674), § 23, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1321 (S.B. 316), § 2, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 157 (S.B. 878), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1357 (S.B. 1451), § 4, effective September 1, 2013; Acts 2015, 84th Leg., ch. 920 (H.B. 530), § 1, effective September 1, 2015; Acts 2019, 86th Leg., ch. 412 (H.B. 2613), § 3, effective September 1, 2019; Acts 2019, 86th Leg., ch. 381 (H.B. 2894), § 4, effective September 1, 2019; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.19, effective January 1, 2021; Acts 2021, 87th Leg., ch. 311 (H.B. 402), § 1, effective September 1, 2021; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.033, effective January 1, 2025.

CIVIL PRACTICE AND REMEDIES CODE

Title
2. Trial, Judgment, and Appeal
6. Miscellaneous Provisions

TITLE 2

TRIAL, JUDGMENT, AND APPEAL

Subtitle
A. General Provisions
C. Judgments

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 14

Inmate Litigation

Section
14.003. Dismissal of Claim.

Sec. 14.003. Dismissal of Claim.

(a) A court may dismiss a claim, either before or after service of process, if the court finds that:

(1) the allegation of poverty in the affidavit or unsworn declaration is false;

(2) the claim is frivolous or malicious; or

(3) the inmate filed an affidavit or unsworn declaration required by this chapter that the inmate knew was false.

(b) In determining whether a claim is frivolous or malicious, the court may consider whether:

(1) the claim's realistic chance of ultimate success is slight;

(2) the claim has no arguable basis in law or in fact;

(3) it is clear that the party cannot prove facts in support of the claim; or

(4) the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

(c) In determining whether Subsection (a) applies, the court may hold a hearing. The hearing may be held before or after service of process, and it may be held on motion of the court, a party, or the clerk of the court.

(d) On the filing of a motion under Subsection (c), the court shall suspend discovery relating to the claim pending the hearing.

(e) A court that dismisses a claim brought by a person housed in a facility operated by or under contract with the department may notify the department of the dismissal and, on the court's own motion or the motion of any party or the clerk of the court, may advise the department that a mental health evaluation of the inmate may be appropriate.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 378 (H.B. 1343), § 2, effective June 8, 1995.

SUBTITLE C

JUDGMENTS

CHAPTER 31

Judgments

Section
31.004. Effect of Adjudication in Lower Trial Court.

Sec. 31.004. Effect of Adjudication in Lower Trial Court.

(a) A judgment or a determination of fact or law in a proceeding in a lower trial court is not res judicata and is not a basis for estoppel by judgment in a proceeding in a district court, except that a judgment rendered in a lower trial court is binding on the parties thereto as to recovery or denial of recovery.

(b) This section does not apply to a judgment in probate, guardianship, mental health, or other matter in which a lower trial court has exclusive subject matter jurisdiction on a basis other than the amount in controversy.

(c) For the purposes of this section, a "lower trial court" is a small claims court, a justice of the peace court, a county court, or a statutory county court.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 959 (S.B. 797), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 3.07(a), effective September 1, 1987.

TITLE 6

MISCELLANEOUS PROVISIONS

Chapter
137. Declaration for Mental Health Treatment
144. Destruction of Certain Records

CHAPTER 137

Declaration for Mental Health Treatment

Section
137.001. Definitions.
137.002. Persons Who May Execute Declaration for Mental Health Treatment; Period of Validity.
137.003. Execution and Witnesses; Execution and Acknowledgment Before Notary Public.
137.004. Health Care Provider to Act in Accordance with Declaration for Mental Health Treatment.
137.005. Limitation on Liability.
137.006. Discrimination Relating to Execution of Declaration for Mental Health Treatment.
137.007. Use and Effect of Declaration for Mental Health Treatment.
137.008. Disregard of Declaration for Mental Health Treatment.
137.009. Conflicting or Contrary Provisions.
137.010. Revocation.

Section
137.011. Form of Declaration for Mental Health Treatment.

Sec. 137.001. Definitions.

In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(3) "Declaration for mental health treatment" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Emergency" means a situation in which it is immediately necessary to treat a patient to prevent:

(A) probable imminent death or serious bodily injury to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily injury to the patient; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts of the patient.

(5) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility as defined by Section 571.003, Health and Safety Code.

(6) "Incapacitated" means that, in the opinion of the court in a guardianship proceeding under Title 3, Estates Code, or in a medication hearing under Section 574.106, Health and Safety Code, a person lacks the ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, and lacks the ability to make mental health treatment decisions because of impairment.

(7) "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication as defined by Section 574.101, Health and Safety Code, or emergency mental health treatment.

(8) "Principal" means a person who has executed a declaration for mental health treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 1, effective June 18, 1999; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.009, effective September 1, 2017.

Sec. 137.002. Persons Who May Execute Declaration for Mental Health Treatment; Period of Validity.

(a) An adult who is not incapacitated may execute a declaration for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

(b) A declaration for mental health treatment is effective on execution as provided by this chapter. Except as provided by Subsection (c), a declaration for mental health treatment expires on the third anniversary of the date of its execution or when revoked by the principal, whichever is earlier.

(c) If the declaration for mental health treatment is in effect and the principal is incapacitated on the third anniversary of the date of its execution, the declaration remains in effect until the principal is no longer incapacitated.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.003. Execution and Witnesses; Execution and Acknowledgment Before Notary Public.

(a) A declaration for mental health treatment must be:

(1) signed by the principal in the presence of two or more subscribing witnesses; or

(2) signed by the principal and acknowledged before a notary public.

(b) A witness may not, at the time of execution, be:

(1) the principal's health or residential care provider or an employee of that provider;

(2) the operator of a community health care facility providing care to the principal or an employee of an operator of the facility;

(3) a person related to the principal by blood, marriage, or adoption;

(4) a person entitled to any part of the estate of the principal on the death of the principal under a will, trust, or deed in existence or who would be entitled to any part of the estate by operation of law if the principal died intestate; or

(5) a person who has a claim against the estate of the principal.

(c) For a witness's signature to be effective, the witness must sign a statement affirming that, at the time the declaration for mental health treatment was signed, the principal:

(1) appeared to be of sound mind to make a mental health treatment decision;

(2) has stated in the witness's presence that the principal was aware of the nature of the declaration for mental health treatment and that the principal was signing the document voluntarily and free from any duress; and

(3) requested that the witness serve as a witness to the principal's execution of the document.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; Acts 2017, 85th Leg., ch. 349 (H.B. 1787), §§ 1, 2, effective September 1, 2017.

Sec. 137.004. Health Care Provider to Act in Accordance with Declaration for Mental Health Treatment.

A physician or other health care provider shall act in accordance with the declaration for mental health treatment when the principal has been found to be incapacitated. A physician or other provider shall continue to seek

and act in accordance with the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.005. Limitation on Liability.

(a) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith under the terms of a declaration for mental health treatment.

(b) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control does not engage in professional misconduct for:

(1) failure to act in accordance with a declaration for mental health treatment if the physician, provider, or other person:

(A) was not provided with a copy of the declaration; and

(B) had no knowledge of the declaration after a good faith attempt to learn of the existence of a declaration; or

(2) acting in accordance with a directive for mental health treatment after the directive has expired or has been revoked if the physician, provider, or other person does not have knowledge of the expiration or revocation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.006. Discrimination Relating to Execution of Declaration for Mental Health Treatment.

A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a declaration for mental health treatment;

(2) require a person to execute a declaration for mental health treatment before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care;

(3) refuse health or residential care to a person solely because the person has executed a declaration for mental health treatment; or

(4) discharge the person solely because the person has or has not executed a declaration for mental health treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997.

Sec. 137.007. Use and Effect of Declaration for Mental Health Treatment.

(a) On being presented with a declaration for mental health treatment, a physician or other health care provider shall make the declaration a part of the principal's medical record. When acting in accordance with a declaration for mental health treatment, a physician or other health care provider shall comply with the declaration to the fullest extent possible.

(b) If a physician or other provider is unwilling at any time to comply with a declaration for mental health treatment, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and must promptly:

(1) make a reasonable effort to transfer care for the principal to a physician or provider who is willing to comply with the declaration;

(2) notify the principal, or principal's guardian, if appropriate, of the decision to withdraw; and

(3) record in the principal's medical record the notification and, if applicable, the name of the physician or provider to whom the principal is transferred.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 2, effective June 18, 1999.

Sec. 137.008. Disregard of Declaration for Mental Health Treatment.

(a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

(b) A declaration for mental health treatment does not limit any authority provided by Chapter 573 or 574, Health and Safety Code:

(1) to take a person into custody; or

(2) to admit or retain a person in a mental health treatment facility.

(c) This section does not apply to the use of electroconvulsive treatment or other convulsive treatment.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 3, effective June 18, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 1, effective September 1, 2019.

Sec. 137.009. Conflicting or Contrary Provisions.

(a) Mental health treatment instructions contained in a declaration executed in accordance with this chapter supersede any contrary or conflicting instructions given by:

(1) a medical power of attorney under Subchapter D, Chapter 166, Health and Safety Code; or

(2) a guardian appointed under Title 3, Estates Code, after the execution of the declaration.

(b) Mental health treatment instructions contained in a declaration executed in accordance with this chapter shall be conclusive evidence of a declarant's preference in a medication hearing under Section 574.106, Health and Safety Code.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.010, effective September 1, 2017.

Sec. 137.010. Revocation.

(a) A declaration for mental health treatment is revoked when a principal who is not incapacitated:

(1) notifies a licensed or certified health or residential care provider of the revocation;

(2) acts in a manner that demonstrates a specific intent to revoke the declaration; or

(3) executes a later declaration for mental health treatment.

(b) A principal's health or residential care provider who is informed of or provided with a revocation of a declaration for mental health treatment immediately shall:

(1) record the revocation in the principal's medical record; and

(2) give notice of the revocation to any other health or residential care provider the provider knows to be responsible for the principal's care.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 464 (S.B. 1361), § 4, effective June 18, 1999.

Sec. 137.011. Form of Declaration for Mental Health Treatment.

The declaration for mental health treatment must be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, wilfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include: _____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____

_____ I do not consent to the administration of the following medications:

_____

_____ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

_____

Conditions or limitations: _____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment.

_____ I do not consent to the administration of convulsive treatment.

Conditions or limitations: _____

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment FIRST (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment SECOND (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment THIRD (circle one) Restraint/Seclusion/Medication.

_____ I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications:

_____

Conditions or limitations: _____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

_____

Conditions or limitations: _____

Signature of Principal/Date: _____

SIGNATURE ACKNOWLEDGED BEFORE NOTARY PUBLIC

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of notary public).

_____

NOTARY PUBLIC, State of Texas

Printed name of Notary Public:

_____

My commission expires:

_____

SIGNATURE IN PRESENCE OF TWO WITNESSES

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider

of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness
Signature: _____
Print Name: _____
Date: _____
Address: _____
Witness
Signature: _____
Print Name: _____
Date: _____
Address: _____

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED. A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is either acknowledged before a notary public or signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1318 (S.B. 972), § 1, effective September 1, 1997; Acts 2017, 85th Leg., ch. 349 (H.B. 1787), § 3, effective September 1, 2017.

CHAPTER 144

Destruction of Certain Records

Section
144.001. Definitions.
144.002. Suit and Order for Destruction of Admission Records [Expired].
144.003. Procedure for Petition, Notice, Hearing, and Order [Expired].
144.004. Actions Following Court Order [Expired].
144.005. Court Records Concerning Order.
144.006. Collateral Effects of Order.
144.007. Limitation on Certain Lawsuits.
144.008. Disclosure of Information Subject to Order; Penalty.
144.009. Applicability of Other Law.
144.010. Expiration of Certain Provisions. [Repealed]

Sec. 144.001. Definitions.

In this chapter:

(1) "Former mental health patient" means an individual who:

(A) between January 1, 1986, and December 31, 1993, was admitted to a mental health facility that has pled guilty, or whose parent or affiliate corporation has so pled, to unlawfully conspiring to offer and pay remuneration to any person to induce that person to refer individuals for services to a mental health facility; and

(B) has been released from that mental health facility; but

(C) was not admitted to the facility on the basis of a court proceeding that included a commitment hearing that was on the record.

(2) "Record" means a medical record:

(A) that a federal statute or regulation does not require to be retained, maintained, or preserved; or

(B) for which the requirement under a federal statute or regulation to retain, maintain, or preserve the record has expired.

(3) "Court" means a district or statutory probate court.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.002. Suit and Order for Destruction of Admission Records [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.003. Procedure for Petition, Notice, Hearing, and Order [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.004. Actions Following Court Order [Expired].

Expired pursuant to Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective January 1, 1999.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.005. Court Records Concerning Order.

The court shall seal records concerning an order issued under this chapter and ensure that the court's records are not open for inspection by any person except the former mental patient or on further order of the court after notice to the former mental patient and a finding of good cause. The institution of a suit or bringing of a claim by or on behalf of the former mental patient or the former patient's assignee or insurer constitutes good cause.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.006. Collateral Effects of Order.

(a) A former mental health patient who successfully petitions for an order under this chapter and a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, that is subject to an order under this chapter may deny:

(1) the existence of any record subject to the order;

(2) the existence of the order itself;

(3) the occurrence of the former mental patient's admission to a mental health facility if the records of the admission are subject to the order; and

(4) the occurrence of any treatment related to the admission if the records of the admission are subject to the order.

(b) A former mental health patient who makes a denial under Subsection (a) or a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, that is subject to an order under this chapter and that makes a denial under Subsection (a) is not liable for a civil or criminal penalty for perjury.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.007. Limitation on Certain Lawsuits.

(a) Except as provided by Subsection (b), a former mental patient who successfully petitions a court for an order under this chapter or a person acting on the former mental patient's behalf may not file an action against a facility or health care provider, or the owner, operator, parent, or affiliate of a facility or health care provider, related to an event or activity that formed the basis of a record subject to the court's order.

(b) A juvenile former mental health patient whose records have been sealed under this chapter may file an action or complaint at any time before the records have been destroyed under Section 144.002(c).

(c) A finding made under this chapter is not admissible against any party in litigation to establish liability for damages, expenses, or other relief as an alleged result of any treatment or admission.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.008. Disclosure of Information Subject to Order; Penalty.

(a) A person commits an offense if the person:

(1) knows of a former mental patient's admission to a mental health facility;

(2) knows of a court order issued under this chapter that relates to that admission; and

(3) intentionally releases, disseminates, or publishes a record or index reference subject to that order.

(b) A person commits an offense if the person:

(1) knowingly fails to delete, seal, destroy, or present to the court a record or index reference subject to an order issued under this chapter; and

(2) knows or should know that the record or index reference is subject to that order.

(c) An offense under this chapter is a Class B misdemeanor.

(d) This chapter does not prohibit an attorney or insurer of a provider or patient from retaining or communicating confidentially about a privileged document as necessary to provide legal advice regarding an actual or potential claim or issue. The document or communication remains privileged and not subject to a subpoena.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.009. Applicability of Other Law.

This chapter supersedes other state law regarding the retention or destruction of patient records.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997.

Sec. 144.010. Expiration of Certain Provisions. [Repealed]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1295 (S.B. 443), § 1, effective September 1, 1997; repealed by Acts 2021, 87th Leg., ch. 915 (H.B. 3607), § 3.002, effective September 1, 2021.

EDUCATION CODE

TITLE 2

PUBLIC EDUCATION

SUBTITLE F

CURRICULUM, PROGRAMS, AND SERVICES

CHAPTER 29

Educational Programs

Subchapter

A. Special Education Program

L. School District Program for Residents of Forensic State Supported Living Center

Subchapter A

Special Education Program

Section

29.001. Implementation of Special Education Law .

29.0011. Prohibited Performance Indicator.

29.0012. Annual Meeting on Special Education [2 Versions: As Added by Acts 2025, 89th Leg., SB 568].

29.0012. Annual Meeting on Special Education [2 Versions: As Added by Acts 2025, 89th Leg., HB 2].

29.002. Definition. [Repealed]

29.003. Eligibility Criteria.

29.0031. Dyslexia and Related Disorders.

29.0032. Providers of Dyslexia Instruction.

29.004. Full Individual and Initial Evaluation.

29.0041. Information and Consent for Certain Psychological Examinations or Tests.

29.005. Individualized Education Program.

29.0051. Model Form.

29.0056. Information Regarding State Supported Living Centers.

29.006. Continuing Advisory Committee.

29.007. Shared Services Arrangements. [Repealed]

29.008. Contracts for Services; Residential and Day Placement Programs.

29.009. Public Notice Concerning Early Childhood Special Education Programs.

29.0091. Strategic Plan to Improve and Expand Early Learning and Educational Opportunities for Young Children with Disabilities.

29.010. General Supervision and Compliance.

29.011. Transition Planning.

29.0111. Beginning of Transition Planning.

29.0112. Transition and Employment Guide.

29.0113. Driving with Disability Program Information.

29.012. Residential Facilities.

29.013. Noneducational Community-Based Support Services Grants for Certain Students with Disabilities.

29.014. School Districts That Provide Education Solely to Students Confined to or Educated in Hospitals.

29.015. Special Education Decision-Making for Children in Foster Care.

29.0151. Appointment of Surrogate Parent for Certain Children.

Section

29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings. [Repealed]

29.0162. Representation in Special Education Due Process Hearing.

29.0162. Representation in Special Education Due Process Hearing.

29.0163. Protection of the Rights of Military Families with Children with Disabilities.

29.0164. Limitation Period for Filing Complaint and Requesting Special Education Due Process Hearing.

29.017. Transfer of Parental Rights at Age of Majority.

29.018. Special Education Grant.

29.019. Individualized Education Program Facilitation.

29.020. Individualized Education Program Facilitation Project.

29.022. Video Surveillance of Special Education Settings.

29.026. Rules. [As Added by Acts 2025, 89th Leg., SB 568]

29.026. Rules. [As Added by Acts 2025, 89th Leg., HB 2]

29.027. Grant Program Providing Training In Dyslexia for Teachers and Staff. [Expired]

29.030. Provision of Information Regarding Local Intellectual and Developmental Disability Authority.

Sec. 29.001. Implementation of Special Education Law.

(a) As the state education agency responsible for carrying out the purposes of Part B, Individuals with Disabilities Education Act (20 U.S.C. Section 1411 et seq.), the agency shall develop, and revise as necessary, a comprehensive system to ensure statewide and local compliance with federal and state law related to special education.

(b) The comprehensive system must include the provision of services primarily through school districts and shared services arrangements, supplemented by regional education service centers.

(c) The comprehensive system must focus on maximizing student outcomes and include:

(1) rulemaking, technical assistance, guidance documents, monitoring protocols, data elements necessary for statewide reporting, and other resources as necessary to implement and ensure compliance with federal and state law related to special education;

(2) the facilitation of interagency coordination when other state agencies are involved in the delivery of instructional or related services to students with disabilities;

(3) the pursuit of strategies to meet statewide special education and related services personnel needs;

(4) ensuring that regional education service centers throughout the state maintain a regional support function, which may include procedures for service centers to assist school districts in identifying existing public or private educational or related services in each region,

cooperatively developing programs for students with disabilities, providing to or obtaining for school districts special equipment, delivering services, and facilitating the placement of students with disabilities who cannot be appropriately served in their resident districts;

(5) effectively monitoring and periodically conducting site visits of all school districts to ensure that rules adopted under this subchapter are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts and not otherwise available through the Public Education Information Management System under Sections 48.008 and 48.009 are accurate and complete; and

(6) the provision of training and technical assistance to ensure that:

(A) appropriately trained personnel are involved in the diagnostic and evaluative procedures operating in all districts and that those personnel routinely serve on district multidisciplinary evaluation teams and admissions, review, and dismissal committees;

(B) an individualized education program for each student with a disability is properly developed, implemented, and maintained in the least restrictive environment that is appropriate to meet the student's educational needs;

(C) appropriately trained personnel are available to students with disabilities who have significant behavioral support needs, including by making behavioral support training available to each paraprofessional or teacher placed in a classroom or other setting that is intended to provide specialized behavioral supports to a student with a disability, as needed or at regular intervals as provided in the student's individualized education program;

(D) when appropriate, each student with a disability is provided an opportunity to participate in career and technology and physical education classes;

(E) each student with a disability is provided necessary related services;

(F) school districts have an opportunity to request technical assistance from the agency or a regional education service center in establishing classroom environments conducive to learning for students with disabilities, including environments for students whose data indicate behavior that significantly impedes the student's own learning and the learning of other students;

(G) an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b), is required to:

(i) complete a training program that complies with minimum standards established by agency rule;

(ii) visit the child and the child's school;

(iii) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;

(iv) review the child's educational records;

(v) attend meetings of the child's admission, review, and dismissal committee;

(vi) exercise independent judgment in pursuing the child's interests; and

(vii) exercise the child's due process rights under applicable state and federal law; and

(H) each district develops a process to be used by a teacher who instructs a student with a disability in a general education classroom setting:

(i) to request a review of the student's individualized education program;

(ii) to provide input in the development of the student's individualized education program;

(iii) that provides for a timely district response to the teacher's request; and

(iv) that provides for notification to the student's parent or legal guardian of that response.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 430 (S.B. 1141), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., ch. 1283 (H.B. 1335), § 1, effective June 17, 2011; Acts 2015, 84th Leg., ch. 1192 (S.B. 1259), § 1, effective June 19, 2015; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.023, effective September 1, 2019; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.05, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 5, effective June 20, 2025.

Sec. 29.0011. Prohibited Performance Indicator.

(a) Notwithstanding Section 29.001(5), Section 29.010, or any other provision of this code, the commissioner or agency may not adopt or implement a performance indicator in any agency monitoring system, including the performance-based monitoring analysis system, that solely measures a school district's or open-enrollment charter school's aggregated number or percentage of enrolled students who receive special education services.

(b) Subsection (a) does not prohibit or limit the commissioner or agency from meeting requirements under:

(1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the:

(A) identification of children as children with disabilities, including the identification of children as children with particular impairments;

(B) placement of children with disabilities in particular educational settings; and

(C) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions; or

(2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of school districts and open-enrollment charter schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification.

HISTORY: Acts 2017, 85th Leg., ch. 59 (S.B. 160), § 1, effective May 22, 2017.

Sec. 29.0012. Annual Meeting on Special Education [2 Versions: As Added by Acts 2025, 89th Leg., SB 568].

(a) At least once each year, the board of trustees of a

school district or the governing body of an open-enrollment charter school shall include during a public meeting a discussion of the performance of students receiving special education services at the district or school.

(b) The agency by rule shall adopt a set of performance indicators for measuring and evaluating the quality of learning and achievement for students receiving special education services at the school district or open-enrollment charter school to be considered at a meeting held under this section. The indicators must include performance on the college, career, or military readiness outcomes described by Section 48.110.

HISTORY: Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 6, effective June 20, 2025.

Sec. 29.0012. Annual Meeting on Special Education [2 Versions: As Added by Acts 2025, 89th Leg., HB 2].

(a) At least once each year, the board of trustees of a school district or the governing body of an open-enrollment charter school shall include during a public meeting a discussion of the performance of students receiving special education services at the district or school.

(b) The agency by rule shall adopt a set of performance indicators for measuring and evaluating the quality of learning and achievement for students receiving special education services at the school district or open-enrollment charter school to be considered at a meeting held under this section. The indicators must include performance on the college, career, or military readiness outcomes described by Section 48.110.

HISTORY: Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.06, effective June 20, 2025.

Sec. 29.002. Definition. [Repealed]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 1, effective June 13, 2001; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.024, effective September 1, 2019; repealed by 2025, 89th Leg., ch. 1137 (S.B. 568), § 64(3), effective June 20, 2025; repealed by 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.63 (3), effective June 20, 2025.

Sec. 29.003. Eligibility Criteria.

(a) The agency shall develop specific eligibility criteria based on the general classifications established by this section and in accordance with federal law. Eligible students with disabilities shall enjoy the right to a free appropriate public education, which may include instruction in the general education classroom, instruction through special teaching, or instruction through contracts approved under this subchapter. Instruction shall be supplemented by the provision of related services when appropriate.

(b) A student is eligible to participate in a school district's special education program:

(1) from birth through 21 years of age if the student has a visual impairment, is deaf or hard of hearing, or is deaf-blind and that disability prevents the student from being adequately or safely educated in public school without the provision of special education services;

(2) from three years of age through nine years of age if the student is experiencing developmental delays as described by 20 U.S.C. Section 1401(3)(B) and defined by commissioner rule; or

(3) from 3 years of age through 21 years of age if the student has one or more of the disabilities described by 20 U.S.C. Section 1401(3)(A) and that disability prevents the student from being adequately or safely educated in public school without the provision of special education services.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 2, effective September 1, 2019; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.07, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 7, effective June 20, 2025.

Sec. 29.0031. Dyslexia and Related Disorders.

(a) Dyslexia is an example of and meets the definition of a specific learning disability under the Individuals with Disabilities Education Act (20 U.S.C. Section 1401(30)). If a district suspects or has a reason to suspect that a student may have dyslexia, including after evaluation or use of a reading diagnosis under Section 28.006 or 38.003, and that the student may be a child with a disability under the Individuals with Disabilities Education Act (20 U.S.C. Section 1401(3)), the district must:

(1) provide to the student's parent or a person standing in parental relation to the student a form developed by the agency explaining the rights available under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) that may be additional to the rights available under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794);

(2) comply with all federal and state requirements, including the Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders, as adopted by the State Board of Education, and its subsequent amendments, regarding any evaluation of the student; and

(3) if the student is evaluated for dyslexia or a related disorder, also evaluate the student in any other areas in which the district suspects the student may have a disability.

(b) The multidisciplinary evaluation team and any subsequent team convened to determine a student's eligibility for special education and related services must include at least one member with specific knowledge regarding the reading process, dyslexia and related disorders, and dyslexia instruction. The member must:

(1) hold a licensed dyslexia therapist license under Chapter 403, Occupations Code;

(2) hold the most advanced dyslexia-related certification issued by an association recognized by the State Board of Education, and identified in, or substantially similar to an association identified in, the program and rules adopted under Sections 7.102 and 38.003; or

(3) if a person qualified under Subdivision (1) or (2) is not available, meet the applicable training requirements adopted by the State Board of Education pursuant to Sections 7.102 and 38.003.

(c) A member of a multidisciplinary evaluation team and any subsequent team convened to determine a student's eligibility for special education and related services

as described by Subsection (b) must sign a document describing the member's participation in the evaluation of a student described by that subsection and any resulting individualized education program developed for the student.

(d) At least once each grading period, and more often if provided for in a student's individualized education program, a school district shall provide the parent of or person standing in parental relation to a student receiving dyslexia instruction with information regarding the student's progress as a result of the student receiving that instruction.

(e) A school district shall notify the parent of a student identified with dyslexia or a related disorder of the Talking Book Program administered by the Texas State Library and Archives Commission and other available audio book services.

HISTORY: Acts 2023, 88th Leg., ch. 542 (H.B. 3928), § 3, effective June 10, 2023; 2025, 89th Leg., ch. 1065 (H.B. 2), § 5.12, effective June 20, 2025.

Sec. 29.0032. Providers of Dyslexia Instruction.

(a) A provider of dyslexia instruction to students with dyslexia and related disorders:

(1) must be fully trained in the district's adopted instructional materials for students with dyslexia; and

(2) is not required to hold a certificate or permit in special education issued under Subchapter B, Chapter 21, unless the provider is employed in a special education position that requires the certification.

(b) The completion of a literacy achievement academy under Section 21.4552 by an educator who participates in the evaluation or instruction of students with dyslexia and related disorders does not satisfy the requirements of Subsection (a)(1).

HISTORY: Acts 2023, 88th Leg., ch. 542 (H.B. 3928), § 3, effective June 10, 2023.

Sec. 29.004. Full Individual and Initial Evaluation.

(a) A written report of a full individual and initial evaluation of a student for purposes of special education services shall be completed as follows, except as otherwise provided by this section:

(1) not later than the 45th school day following the date on which the school district, in accordance with 20 U.S.C. Section 1414(a), as amended, receives written consent for the evaluation, signed by the student's parent or legal guardian, except that if a student has been absent from school during that period on three or more days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation, signed by a student's parent or legal guardian.

(a-1) If a school district receives written consent signed by a student's parent or legal guardian for a full individual and initial evaluation of a student at least 35 but less than 45 school days before the last instructional day of the school year, the evaluation must be completed and the written report of the evaluation must be provided to the parent or legal guardian not later than June 30 of that year. The student's admission, review, and dismissal committee shall meet not later than the 15th school day of the following school year to consider the evaluation. If a district receives written consent signed by a student's parent or legal guardian less than 35 school days before the last instructional day of the school year or if the district receives the written consent at least 35 but less than 45 school days before the last instructional day of the school year but the student is absent from school during that period on three or more days, Subsection (a)(1) applies to the date the written report of the full individual and initial evaluation is required.

(a-2) For purposes of this section, "school day" does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. The commissioner by rule may determine days during which year-round schools are recessed that, consistent with this subsection, are not considered to be school days for purposes of this section.

(a-3) Subsection (a) does not impair any rights of an infant or toddler with a disability who is receiving early intervention services in accordance with 20 U.S.C. Section 1431.

(b) The evaluation shall be conducted using procedures that are appropriate for the student's most proficient method of communication.

(c) If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

(1) provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or

(2) refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. Section 1415(b).

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 2, effective June 13, 2001; am. Acts 2003, 78th Leg., ch. 539 (H.B. 1339), § 3, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 757 (S.B. 816), § 1, effective September 1, 2013.

Sec. 29.0041. Information and Consent for Certain Psychological Examinations or Tests.

(a) On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, a school district shall provide to the child's parent:

(1) the name and type of the examination or test; and

(2) an explanation of how the examination or test will be used to develop an appropriate individualized education program for the child.

(b) If the district determines that an additional examination or test is required for the evaluation of a child's

need for special education after obtaining consent from the child's parent under Subsection (a), the district shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.

(c) [Repealed].

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1008 (H.B. 320), § 2, effective June 20, 2003; Acts 2025, 89th Leg., chs. 1065 (H.B. 2), § 4.63(4), and 1137 (S.B. 568), § 64(4), eff. June 20, 2025.

Sec. 29.005. Individualized Education Program.

(a) Before a child is enrolled in a special education program of a school district, the district shall establish a committee composed of the persons required under 20 U.S.C. Section 1414(d) to develop the child's individualized education program. If a committee is required to include a general education teacher, the teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's individualized education program.

(b) The committee shall develop the individualized education program by agreement of the committee members or, if those persons cannot agree, by an alternate method provided by the agency. Majority vote may not be used to determine the individualized education program.

(b-1) The written statement of the individualized education program must document the decisions of the committee with respect to issues discussed at each committee meeting. The written statement must include:

(1) the date of the meeting;

(2) the name, position, and signature of each member participating in the meeting; and

(3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee.

(c) If the individualized education program is not developed by agreement, the written statement of the program required under 20 U.S.C. Section 1414(d) must include the basis of the disagreement. Each member of the committee who disagrees with the individualized education program developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

(d) If the primary language of the child's parent is a language other than English, the district shall:

(1) provide the parent with a written or audiotaped copy of the child's individualized education program translated into Spanish if Spanish is the parent's primary language; or

(2) if the parent's primary language is a language other than Spanish, make a good faith effort to provide the parent with a written or audiotaped copy of the child's individualized education program translated into the parent's primary language.

(e) The commissioner by rule may require a school district to include in the individualized education program of a student with autism any information or requirement determined necessary to ensure the student receives a free appropriate public education as required under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(f) [Repealed].

(g) The committee may determine that a behavior improvement plan or a behavioral intervention plan is appropriate for a student for whom the committee has developed an individualized education program. If the committee makes that determination, the behavior improvement plan or the behavioral intervention plan shall be included as part of the student's individualized education program and provided to each teacher with responsibility for educating the student.

(h) If a behavior improvement plan or a behavioral intervention plan is included as part of a student's individualized education program under Subsection (g), the committee shall review the plan at least annually and more frequently if appropriate to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized unsupervised departure from an educational setting; or

(2) the safety of the student or others.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 1372 (H.B. 1275), § 1, effective June 19, 1999; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 3, effective June 13, 2001; am. Acts 2005, 79th Leg., ch. 838 (S.B. 882), § 12, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 458 (S.B. 914), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1192 (S.B. 1259), § 2, effective June 19, 2015; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.08 and § 4.63(5), and Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 8, and § 64(5), effective June 20, 2025.

Sec. 29.0051. Model Form.

(a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:

(1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);

(2) a state-imposed requirement relevant to an individualized education program not required under federal law; and

(3) the requirements identified under 20 U.S.C. Section 1407(a)(2).

(b) The agency shall post on the agency's Internet website the form developed under Subsection (a).

(c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

(d) From federal money appropriated or otherwise available for the purpose, the commissioner may develop or procure the model form developed under Subsection (a) in a digital format. If the commissioner develops or procures the model form in a digital format, the commissioner shall adopt rules regarding school district use of the form in that format.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 2, effective June 17, 2011; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.09, and ch. 1137 (S.B. 568), § 9, effective June 20, 2025.

Sec. 29.0056. Information Regarding State Supported Living Centers.

(a) In this section, "state supported living center" has the meaning assigned by Section 531.002, Health and Safety Code.

(b) The Health and Human Services Commission, in collaboration with the agency and stakeholders who represent the full continuum of educational residential placement options, shall develop and provide to the agency materials regarding educational residential placement options for children who may qualify for placement in a state supported living center. The agency shall make the materials developed under this subsection available to school districts.

(c) At a meeting of a child's admission, review, and dismissal committee at which residential placement is discussed, the school district shall provide to the child's parent the materials developed under Subsection (b).

HISTORY: Added by Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.10, and ch. 1137 (S.B. 568), § 10, effective June 20, 2025.

Sec. 29.006. Continuing Advisory Committee.

(a) The governor shall appoint a continuing advisory committee consistent with 20 U.S.C. Section 1412(a)(21). At least one member appointed under this subsection must be a director of special education programs for a school district.

(b) The appointments are not subject to confirmation by the senate.

(c) Members of the committee are appointed for staggered terms of four years with the terms of half of the members or, for an odd number of members, half of the members rounded down or half of the members rounded up expiring on February 1 of each odd-numbered year.

(d) Committee meetings must be conducted in compliance with Chapter 551, Government Code.

(e) The committee shall provide a procedure for members of the public to speak at committee meetings. The procedure may not require a member of the public to register to speak earlier than the day of the meeting.

(f) The agency must post on the agency's Internet website:

(1) contact information for the committee, including an e-mail address;

(2) notice of each open meeting of the committee;

(3) minutes of each open meeting of the committee; and

(4) guidance concerning how to submit public comments to the committee.

(g) The committee shall develop a policy to encourage public participation with the committee.

(h) Not later than January 1 of each odd-numbered year, the committee shall submit a report to the legislature with recommended changes to state law and agency rules relating to special education. The committee shall include the committee's current policy on encouraging public participation, as required by Subsection (g), in the report.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 4, effective June 13, 2001; am. Acts 2011, 82nd Leg., ch. 44 (H.B. 861), § 1, effective May 12, 2011; Acts 2017, 85th Leg., ch. 547 (S.B. 436), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 439 (S.B. 1376), § 1.02, effective June 4, 2019; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.11, and ch. 1137 (S.B. 568), § 11, effective June 20, 2025.

Sec. 29.007. Shared Services Arrangements. [Repealed]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; repealed by Acts 2019, 86th Leg., ch. 439 (S.B. 1376), § 4.01(a)(3), effective June 4, 2019.

Sec. 29.008. Contracts for Services; Residential and Day Placement Programs.

(a) The commissioner shall set minimum standards for and develop and update as necessary a list of approved public or private facilities, institutions, agencies, or businesses inside or outside of this state that a school district, shared services arrangement unit, or regional education service center may contract with for the provision of services to students with disabilities in a residential or day placement program.

(a-1) The commissioner may approve a facility, institution, agency, or business under Subsection (a) only after at least a programmatic evaluation of personnel qualifications, costs, adequacy of physical plant and equipment, and curriculum content.

(a-2) Each contract described by this section must be approved by the commissioner. A school district, shared services arrangement unit, or regional education service center seeking to place a student in a residential or day placement program that is not on the list developed under Subsection (a) must submit to the commissioner an application for approval in accordance with Subsections (a) and (a-1).

(b) Except as provided by Subsection (c), costs of an approved contract for residential placement may be paid from a combination of federal, state, and local funds. The local share of the total contract cost for each student is that portion of the local tax effort that exceeds the district's local fund assignment under Section 48.256, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that amount remaining after subtracting the local share. If the contract involves a public facility, the state share is that amount remaining after subtracting the local share from the portion of the contract that involves the costs of instructional and related services. For purposes of this subsection, "local tax effort" means the total amount of money generated by taxes imposed for debt service and maintenance and operation less any amounts paid into a tax increment fund under Chapter 311, Tax Code. This subsection expires September 1, 2027.

(c) When a student, including one for whom the state is managing conservator, is placed primarily for care or treatment reasons in a private facility that operates its own private education program, none of the costs may be paid from public education funds. If a placement primarily for care or treatment reasons involves a private facility in

which the education program is provided by the school district, the portion of the costs that includes appropriate education services, as determined by the school district's admission, review, and dismissal committee, shall be paid from local, state, and federal education funds.

(d) A district that contracts for the provision of education services rather than providing the services itself shall oversee the implementation of the student's individualized education program and shall annually reevaluate the appropriateness of the arrangement. The reevaluation must include standards and expectations that must be met to reintegrate the student to the general education setting. An approved facility, institution, agency, or business with whom the district contracts shall periodically report to the district and the agency on the services the student has received or will receive in accordance with the contract as well as diagnostic or other evaluative information that the district or agency requires in order to fulfill its obligations under this subchapter.

(e) The commissioner shall adopt rules for residential and day placement of students receiving special education services.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1997, 75th Leg., ch. 1071 (S.B. 1873), § 3, effective September 1, 1997; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.025, effective September 1, 2019; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.12, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 12, effective June 20, 2025.

Sec. 29.009. Public Notice Concerning Early Childhood Special Education Programs.

Each school district shall develop a system to notify the population in the district with children who are at least three years of age but younger than six years of age and who are eligible for enrollment in a special education program of the availability of the program.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; 2025, 89th Leg., S.B. 568, § 13, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.13, and ch. 1137 (S.B. 568), § 13, effective June 20, 2025.

Sec. 29.0091. Strategic Plan to Improve and Expand Early Learning and Educational Opportunities for Young Children with Disabilities.

(a) The agency, in collaboration with the Health and Human Services Commission and the Texas Workforce Commission, shall develop and implement a strategic plan to improve early learning and educational opportunities for young children with disabilities or developmental delays.

(b) In developing the strategic plan, the agency, in coordination with the Health and Human Services Commission and the Texas Workforce Commission, shall:

(1) develop strategies for the inclusion of children with disabilities in early childhood education settings;

(2) consider topics and existing barriers relating to ensuring, and any changes to existing practices or policies necessary to ensure, more effective inclusion of children with disabilities in early learning programs, including in:

(A) prekindergarten programs under Subchapter E, including prekindergarten programs provided under a partnership between school districts and community-based child-care providers;

(B) early childhood special education settings; and

(C) child-care programs participating in the Texas Workforce Commission's subsidized child-care program; and

(3) coordinate with, at a minimum, representatives of state, regional, and local agencies, the governor's Texas Early Learning Council, nonprofit organizations, and relevant social services providers.

(c) The strategic plan must include:

(1) the strategies for the inclusion of children with disabilities in early childhood education settings developed under Subsection (b)(1) signed by the commissioner, the executive commissioner of the Health and Human Services Commission, and the executive director of the Texas Workforce Commission;

(2) a description of existing barriers to the effective inclusion of children with disabilities in early learning programs;

(3) recommendations for statutory, regulatory, guidance, or funding changes, and policy implementation changes, necessary to improve the inclusion of young children with disabilities in early childhood education programs; and

(4) current and proposed strategies and recommendations to achieve:

(A) improved provider staffing, training, sustainability, and effectiveness across public schools, child-care programs, and early childhood intervention services providers that serve young children with disabilities;

(B) the effective leveraging of existing funding and resources;

(C) streamlined transitions for families:

(i) from early childhood intervention programs to early childhood special education programs; and

(ii) from early childhood special education programs to special education programs; and

(D) improved collaboration and partnerships between child-care programs, early childhood intervention services providers, and public schools.

(d) Not later than September 1 of the last state fiscal year in each four-year period covered by the most recent strategic plan:

(1) the agency shall update the strategic plan for the subsequent four-year period;

(2) the agency shall submit the updated strategic plan developed under Subdivision (1) to the governor, the lieutenant governor, and the speaker of the house of representatives; and

(3) the agency, the Health and Human Services Commission, and the Texas Workforce Commission shall publish the updated strategic plan developed under Subdivision (1) on the agencies' respective Internet websites.

HISTORY: 2025, 89th Leg., ch. 588 (H.B. 2310), § 1, effective June 20, 2025.

Sec. 29.010. General Supervision and Compliance.

(a) The agency shall develop and implement a comprehensive system for monitoring school district compliance

with federal and state laws relating to special education. The monitoring system must include a comprehensive cyclical process and a targeted risk-based process. The agency shall establish criteria and instruments for use in determining district compliance under this section.

(a-1) As part of the monitoring system, the agency may require a school district to obtain specialized technical assistance for a documented noncompliance issue or if data indicates that technical assistance is needed, such as an incident involving injury to staff or students by a student receiving special education services or data indicating an excessive number of restraints are used on students receiving special education services.

(b) As part of the monitoring process, the agency must obtain information from parents and teachers of students in special education programs in the district.

(c) The agency shall develop and implement a system of interventions and sanctions for school districts the agency identifies as being in noncompliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), federal regulations, state statutes, or agency requirements necessary to carry out federal law or regulations or state law relating to special education.

(d) The agency shall establish a system of progressive sanctions and enforcement provisions to apply to districts that remain in noncompliance for more than one year. The sanctions must range in severity and may include the withholding of funds. If funds are withheld, the agency may use the funds, or direct the funds to be used, to provide, through alternative arrangements, services to students and staff members in the district from which the funds are withheld.

(e) The agency's complaint management division shall develop a system for expedited investigation and resolution of complaints concerning a district's failure to provide special education or related services to a student eligible to participate in the district's special education program.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 1417 (H.B. 2172), § 1, effective June 19, 1999; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.14, and ch. 1137 (S.B. 568), § 14, effective June 20, 2025.

Sec. 29.011. Transition Planning.

(a) The commissioner shall by rule adopt procedures for compliance with federal requirements relating to transition services for students who are enrolled in special education programs under this subchapter. The procedures must specify the manner in which a student's admission, review, and dismissal committee must consider, and if appropriate, address the following issues in the student's individualized education program:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Chapter 1357, Estates Code;

(4) appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(5) an appropriate functional vocational evaluation;

(6) appropriate employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;

(8) appropriate independent living goals and objectives;

(9) appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); and

(10) the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Chapter 1357, Estates Code.

(a-1) A student's admission, review, and dismissal committee shall annually review the issues described by Subsection (a) and, if necessary, update the portions of the student's individualized education program that address those issues.

(a-2) The commissioner shall develop and post on the agency's Internet website a list of services and public benefits for which referral may be appropriate under Subsection (a)(9).

(b) The commissioner shall require each school district or shared services arrangement to designate at least one employee to serve as the district's or shared services arrangement's designee on transition and employment services for students enrolled in special education programs under this subchapter. The commissioner shall develop minimum training guidelines for a district's or shared services arrangement's designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:

(1) students enrolled in special education programs under this subchapter and the parents of those students; and

(2) as appropriate, local and regional staff of the:

(A) Health and Human Services Commission;

(B) Texas Workforce Commission;

(C) Department of State Health Services; and

(D) Department of Family and Protective Services.

(c) The commissioner shall review and, if necessary, update the minimum training guidelines developed under Subsection (b) at least once every four years. In reviewing and updating the guidelines, the commissioner shall solicit input from stakeholders.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 2003, 78th Leg., ch. 704 (H.B. 2823), §§ 1, 2, effective June 20, 2003; am. Acts 2013, 83rd Leg., ch. 257 (H.B. 617), § 2, effective September 1, 2013; Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 1, effective June 9, 2017; Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 2, effective June 15, 2017.

Sec. 29.0111. Beginning of Transition Planning.

Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1250 (S.B. 1788), § 3, effective June 17, 2011.

Sec. 29.0112. Transition and Employment Guide.

(a) The agency, with assistance from the Health and Human Services Commission, shall develop a transition and employment guide for students enrolled in special education programs and their parents to provide information on statewide services and programs that assist in the transition to life outside the public school system. The agency may contract with a private entity to prepare the guide.

(b) The transition and employment guide must be written in plain language and contain information specific to this state regarding:

(1) transition services;

(2) employment and supported employment services;

(3) social security programs;

(4) community and long-term services and support, including the option to place the student on a waiting list with a governmental agency for public benefits available to the student, such as a waiver program established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c));

(5) postsecondary educational programs and services, including the inventory maintained by the Texas Higher Education Coordinating Board under Section 61.0663;

(6) information sharing with health and human services agencies and providers;

(7) guardianship and alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code;

(8) self-advocacy, person-directed planning, and self-determination; and

(9) contact information for all relevant state agencies.

(c) The transition and employment guide must be produced in an electronic format and posted on the agency's website in a manner that permits the guide to be easily identified and accessed.

(d) The agency must update the transition and employment guide posted on the agency's website at least once every two years.

(e) A school district shall:

(1) post the transition and employment guide on the district's website if the district maintains a website;

(2) provide written information and, if necessary, assistance to a student or parent regarding how to access the electronic version of the guide at:

(A) the first meeting of the student's admission, review, and dismissal committee at which transition is discussed; and

(B) the first committee meeting at which transition is discussed that occurs after the date on which the guide is updated; and

(3) on request, provide a printed copy of the guide to a student or parent.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 257 (H.B. 617), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 747 (H.B. 1807), § 2, effective June 17, 2015; Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 2, effective June 9, 2017; Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 3, effective June 15, 2017.

Sec. 29.0113. Driving with Disability Program Information.

(a) Each school district and open-enrollment charter school shall provide information regarding the Texas Driving with Disability Program to:

(1) students who have a health condition or disability that may impede effective communication with a peace officer and:

(A) who receive special education services under Subchapter A; or

(B) who are covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794); and

(2) the parents of students described by Subdivision (1).

(b) The information described under Subsection (a) shall be provided to each student who is 16 years of age or older and annually until the earlier of the student's:

(1) graduation from high school; or

(2) 21st birthday.

(c) The agency shall collaborate with the Department of Public Safety, the Texas Department of Motor Vehicles, and the Governor's Committee on People with Disabilities to develop the information materials to be provided under Subsection (a). The materials:

(1) must include information regarding a person's option to voluntarily list any health condition or disability that may impede the person's communication with a peace officer on a person's vehicle registration information in accordance with Section 502.061, Transportation Code, or application for an original license under Section 521.142, Transportation Code; and

(2) may be provided with any transition planning materials provided under this subchapter.

HISTORY: Acts 2023, 88th Leg., ch. 970 (S.B. 2304), § 1, effective June 18, 2023.

Sec. 29.012. Residential Facilities.

(a) Except as provided by Subsection (b)(2), not later than the third day after the date a person 22 years of age

or younger is placed in a residential facility, the residential facility shall:

(1) if the person is three years of age or older, notify the school district in which the facility is located, unless the facility is an open-enrollment charter school; or

(2) if the person is younger than three years of age, notify a local early intervention program in the area in which the facility is located.

(b) An agency or political subdivision that funds, licenses, certifies, contracts with, or regulates a residential facility must:

(1) require the facility to comply with Subsection (a) as a condition of the funding, licensing, certification, or contracting; or

(2) if the agency or political subdivision places a person in a residential facility, provide the notice under Subsection (a) for that person.

(c) For purposes of enrollment in a school, a person who resides in a residential facility is considered a resident of the school district or geographical area served by the open-enrollment charter school in which the facility is located.

(c-1) The commissioner by rule shall require each school district and open-enrollment charter school to include in the district's or school's Public Education Information Management System (PEIMS) report the number of children with disabilities residing in a residential facility who:

(1) are required to be tracked by the Residential Facility Monitoring (RFM) System; and

(2) receive educational services from the district or school.

(d) The Texas Education Agency, the Health and Human Services Commission, the Department of Family and Protective Services, and the Texas Juvenile Justice Department by a cooperative effort shall develop and adopt a memorandum of understanding. The memorandum must:

(1) establish the respective responsibilities of school districts and of residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities;

(2) coordinate regulatory and planning functions of the parties to the memorandum;

(3) establish criteria for determining when a public school will provide educational services;

(4) provide for appropriate educational space when education services will be provided at the residential facility;

(5) establish measures designed to ensure the safety of students and teachers; and

(6) provide for binding arbitration consistent with Chapter 2009, Government Code, and Section 154.027, Civil Practice and Remedies Code.

(e) This section does not apply to a residential treatment facility for juveniles established under Section 221.056, Human Resources Code.

(f) Except as provided by Subsection (g), a residential facility shall provide to a school district or open-enrollment charter school that provides educational services to a student placed in the facility any information retained by the facility relating to:

(1) the student's school records, including records regarding:

(A) special education eligibility or services;

(B) behavioral intervention plans;

(C) school-related disciplinary actions; and

(D) other documents related to the student's educational needs;

(2) any other behavioral history information regarding the student that is not confidential under another provision of law; and

(3) the student's record of convictions or the student's probation, community supervision, or parole status, as provided to the facility by a law enforcement agency, local juvenile probation department or juvenile parole office, community supervision and corrections department, or parole office, if the information is needed to provide educational services to the student.

(g) Subsection (f) does not apply to a:

(1) juvenile pre-adjudication secure detention facility; or

(2) juvenile post-adjudication secure correctional facility.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; am. Acts 1999, 76th Leg., ch. 396 (S.B. 4), art. 2, § 2.13, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 5, effective June 13, 2001; am. Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 4.002, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.003, effective September 1, 2011; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 22, effective September 1, 2015; Acts 2017, 85th Leg., ch. 1026 (H.B. 1569), § 1, effective June 15, 2017; Acts 2017, 85th Leg., ch. 764 (S.B. 2080), § 1, effective June 12, 2017; Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 3, effective September 1, 2019; 2025, 89th Leg., S.B. 568, § 15, effective June 20, 2025.

Sec. 29.013. Noneducational Community-Based Support Services Grants for Certain Students with Disabilities.

(a) The commissioner shall adopt rules establishing procedures and criteria for the allocation of grants under this section to students who are eligible under Subsection (b) and the students' families for the provision of noneducational community-based support services.

(b) A grant may be awarded under this section only to a student with a disability who is placed by the student's admission, review, and dismissal committee in:

(1) a residential program approved under Section 29.008; or

(2) a day placement program and is at risk of being placed in a residential program approved under Section 29.008.

(c) The support services may not be related to the provision of a free appropriate public education to the student and may include in-home family support, behavioral and other disability-related supports for the student's family, respite care, and case management for the student's family.

(d) A school district shall:

(1) notify the parent of a student described by Subsection (b) of the availability of grants under this section; and

(2) designate a campus or district staff member to assist families of students described by Subsection (b) in accessing grants under this section.

(e) On request by the parent of a student described by Subsection (b), the commissioner shall create an account for the student to access a grant under this section through which the parent may request payment for approved support services.

(f) In adopting rules under this section, the commissioner shall adopt rules and guidelines detailing the process to access grant money and the amount of each grant, including a process for a parent to apply for an increase in the grant amount.

(g) The provision of services under this section does not supersede or limit the responsibility of a school district or other agencies to provide or pay for costs to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment.

(h) The commissioner may designate a regional education service center to administer grants under this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; 2025, 89th Leg., ch. 1137 (S.B. 568), § 16, effective June 20, 2025; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.16, effective June 20, 2025.

Sec. 29.013. Noneducational Community-Based Support Services Grants for Certain Students with Disabilities.

(a) The commissioner shall adopt rules establishing procedures and criteria for the allocation of grants under this section to students who are eligible under Subsection (b) and the students' families for the provision of noneducational community-based support services.

(b) A grant may be awarded under this section only to a student with a disability who is placed by the student's admission, review, and dismissal committee in:

(1) a residential program approved under Section 29.008; or

(2) a day placement program and is at risk of being placed in a residential program approved under Section 29.008.

(c) The support services may not be related to the provision of a free appropriate public education to the student and may include in-home family support, behavioral and other disability-related supports for the student's family, respite care, and case management for the student's family.

(d) A school district shall:

(1) notify the parent of a student described by Subsection (b) of the availability of grants under this section; and

(2) designate a campus or district staff member to assist families of students described by Subsection (b) in accessing grants under this section.

(e) On request by the parent of a student described by Subsection (b), the commissioner shall create an account for the student to access a grant under this section through which the parent may request payment for approved support services.

(f) In adopting rules under this section, the commissioner shall adopt rules and guidelines detailing the process to access grant money and the amount of each grant, including a process for a parent to apply for an increase in the grant amount.

(g) The provision of services under this section does not supersede or limit the responsibility of a school district or other agencies to provide or pay for costs to enable any student with disabilities to receive a free appropriate public education in the least restrictive environment.

(h) The commissioner may designate a regional education service center to administer grants under this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; 2025, 89th Leg., ch. 1137 (S.B. 568), § 16, effective June 20, 2025; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.16, effective June 20, 2025.

Sec. 29.014. School Districts That Provide Education Solely to Students Confined to or Educated in Hospitals.

(a) This section applies only to a school district that provides education and related services only to students who are confined in or receive educational services in a hospital.

(b) A school district to which this section applies may operate an extended year program for a period not to exceed 45 days. The district's average daily attendance shall be computed for the regular school year plus the extended year.

(c) Notwithstanding any other provision of this code, a student whose appropriate education program is a general education program may receive services and be counted for attendance purposes for the number of hours per week appropriate for the student's condition if the student:

(1) is temporarily classified as eligible for participation in a special education program because of the student's confinement in a hospital; and

(2) the student's education is provided by a district to which this section applies.

(d) The basic allotment for a student enrolled in a district to which this section applies is adjusted by the tier of intensity of service defined in accordance with Section 48.102 and designated by commissioner rule for use under this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 260 (S.B. 1), § 1, effective May 30, 1995; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.026, effective September 1, 2019; 2025, 89th Leg., ch. 1137 (S.B. 568), § 17, effective June 20, 2025; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.17, effective June 20, 2025.

Sec. 29.015. Special Education Decision-Making for Children in Foster Care.

(a) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child;

(2) the rights and duties of the department to make decisions regarding education provided to the child under Section 153.371, Family Code, have not been limited by court order; and

(3) the foster parent agrees to:

(A) participate in making special education decisions on the child's behalf; and

(B) complete a training program that complies with minimum standards established by agency rule.

(b) A foster parent who will act as a parent of a child with a disability as provided by Subsection (a) must complete a training program before the next scheduled admission, review, and dismissal committee meeting for the child but not later than the 90th day after the date the foster parent begins acting as the parent for the purpose of making special education decisions.

(b-1) A school district may not require a foster parent to retake a training program to continue serving as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training program to act as a parent of a child with a disability provided by:

(1) the Department of Family and Protective Services;

(2) a school district;

(3) an education service center; or

(4) any other entity that receives federal funds to provide special education training to parents.

(c) A foster parent who is denied the right to act as a parent under this section by a school district may file a complaint with the agency in accordance with federal law and regulations.

(d) Not later than the fifth day after the date a child with a disability is enrolled in a school, the Department of Family and Protective Services must inform the appropriate school district if the child's foster parent is unwilling or unable to serve as a parent for the purposes of this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 430 (S.B. 1141), § 2, effective September 1, 1999; Acts 2017, 85th Leg., ch. 1025 (H.B. 1556), § 1, effective September 1, 2017.

Sec. 29.0151. Appointment of Surrogate Parent for Certain Children.

(a) This section applies to a child with a disability for whom:

(1) the Department of Family and Protective Services is appointed as the temporary or permanent managing conservator of the child; and

(2) the rights and duties of the department to make decisions regarding the child's education under Section 153.371, Family Code, have not been limited by court order.

(b) Except as provided by Section 263.0025, Family Code, a school district must appoint an individual to serve as the surrogate parent for a child if:

(1) the district is unable to identify or locate a parent for a child with a disability; or

(2) the foster parent of a child is unwilling or unable to serve as a parent for the purposes of this subchapter.

(c) A surrogate parent appointed by a school district may not:

(1) be an employee of the agency, the school district, or any other agency involved in the education or care of the child; or

(2) have any interest that conflicts with the interests of the child.

(d) A surrogate parent appointed by a district must:

(1) be willing to serve in that capacity;

(2) exercise independent judgment in pursuing the child's interests;

(3) ensure that the child's due process rights under applicable state and federal laws are not violated;

(4) complete a training program that complies with minimum standards established by agency rule within the time specified in Section 29.015(b);

(5) visit the child and the school where the child is enrolled;

(6) review the child's educational records;

(7) consult with any person involved in the child's education, including the child's:

(A) teachers;

(B) caseworkers;

(C) court-appointed volunteers;

(D) guardian ad litem;

(E) attorney ad litem;

(F) foster parent; and

(G) caregiver; and

(8) attend meetings of the child's admission, review, and dismissal committee.

(e) The district may appoint a person who has been appointed to serve as a child's guardian ad litem or as a court-certified volunteer advocate, as provided under Section 107.031(c), Family Code, as the child's surrogate parent.

(e-1) As soon as practicable after appointing a surrogate parent under this section, a school district shall provide written notice of the appointment to the child's educational decision-maker and caseworker as required under Section 25.007(b)(10)(H).

(f) If a court appoints a surrogate parent for a child with a disability under Section 263.0025, Family Code, and the school district determines that the surrogate parent is not properly performing the duties listed under Subsection (d), the district shall consult with the Department of Family and Protective Services regarding whether another person should be appointed to serve as the surrogate parent for the child.

(g) On receiving notice from a school district under Subsection (f), if the Department of Family and Protective Services agrees with the district that the appointed surrogate parent is unable or unwilling to properly perform the duties required under this section:

(1) the department shall promptly notify the court of the agreement; and

(2) as soon as practicable after receiving notice under Subdivision (1), the court shall:

(A) review the appointment; and

(B) enter any orders necessary to ensure the child has a surrogate parent who performs the duties required under this section.

HISTORY: Acts 2017, 85th Leg., ch. 1025 (H.B. 1556), § 2, effective September 1, 2017; Acts 2019, 86th Leg., ch. 781 (H.B. 1709), § 2, effective June 10, 2019.

Sec. 29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is

suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 8, effective June 13, 2001.

Sec. 29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings. [Repealed]

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 201 (H.B. 3459), § 18, effective September 1, 2003; repealed by 2025, 89th Leg., ch. 1137 (S.B. 568), § 64(6), effective June 20, 2025; repealed by 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.63 (6), effective June 20, 2025.

Sec. 29.0162. Representation in Special Education Due Process Hearing.

(a) A person in an impartial due process hearing brought under 20 U.S.C. Section 1415 may be represented by:

(1) an attorney who is licensed in this state; or

(2) an individual who is not an attorney licensed in this state but who has special knowledge or training with respect to problems of children with disabilities and who satisfies qualifications under Subsection (b).

(b) The commissioner by rule shall adopt additional qualifications and requirements for a representative for purposes of Subsection (a)(2). The rules must:

(1) prohibit an individual from being a representative under Subsection (a)(2) opposing a school district if:

(A) the individual has prior employment experience with the district; and

(B) the district raises an objection to the individual serving as a representative;

(2) include requirements that the representative have knowledge of:

(A) all special education dispute resolution options available to parents, including due process and due process rules, hearings, and procedure; and

(B) federal and state special education laws;

(3) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative agree to abide by a voluntary code of ethics and professional conduct during the period of representation; and

(4) require, if the representative receives monetary compensation from a person for representation in an impartial due process hearing, that the representative enter into a written agreement for representation with the person who is the subject of the special education due process hearing that includes a process for resolving any disputes between the representative and the person.

(c) A special education due process hearing officer shall determine whether an individual satisfies qualifications under Subsections (a)(2) and (b).

(d) The agency is not required to license or in any way other than as provided by Subsection (b) regulate representatives described by Subsection (a)(2) in a special education impartial due process hearing.

(e) The written agreement for representation required under Subsection (b)(4) is considered confidential and may not be disclosed.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1333 (S.B. 709), § 1, effective June 14, 2013; Acts 2017, 85th Leg., ch. 767 (S.B. 2141), § 1, effective June 12, 2017; 2025, 89th Leg., ch. 1137 (S.B. 568), § 18, effective June 20, 2025; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.18, effective June 20, 2025

Sec. 29.0163. Protection of the Rights of Military Families with Children with Disabilities.

(a) In this section, "servicemember" means a member of:

(1) the armed forces;

(2) the Commissioned Corps of the National Oceanic and Atmospheric Administration; or

(3) the Commissioned Corps of the United States Public Health Service.

(b) The agency must include in the notice of procedural safeguards that the statute of limitations for the parent of a student to request an impartial due process hearing under 20 U.S.C. Section 1415(b) may be tolled if the parent is an active-duty servicemember and 50 U.S.C. Section 3936 applies to the parent.

(c) The commissioner shall adopt rules to implement this section.

HISTORY: Acts 2017, 85th Leg., ch. 1089 (H.B. 3632), § 1, effective June 15, 2017.

Sec. 29.0164. Limitation Period for Filing Complaint and Requesting Special Education Due Process Hearing.

The commissioner or agency may not adopt or enforce a rule that establishes a shorter period for filing a due process complaint alleging a violation of state or federal special education laws and requesting an impartial due process hearing than the maximum timeline designated under 20 U.S.C. Sections 1415(b)(6) and (f)(3).

HISTORY: Acts 2021, 87th Leg., ch. 651 (H.B. 1252), § 2, effective September 1, 2022.

Sec. 29.017. Transfer of Parental Rights at Age of Majority.

(a) A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability, except that the school district shall provide any notice required by this subchapter or 20 U.S.C. Section 1415 to both the student and the parents. All other rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to the student.

(b) All rights accorded to parents under this subchapter or 20 U.S.C. Section 1415 transfer to students who are incarcerated in an adult or juvenile, state or local correctional institution.

(c) Not later than one year before the 18th birthday of a student with a disability, the school district at which the student is enrolled shall:

(1) provide to the student and the student's parents:

(A) written notice regarding the transfer of rights under this section; and

(B) information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Chapter 1357, Estates Code, and other supports and services that may enable the student to live independently; and

(2) ensure that the student's individualized education program includes a statement that the district provided the notice, information, and resources required under Subdivision (1).

(c-1) In accordance with 34 C.F.R. Section 300.520, the school district shall provide written notice to the student and the student's parents of the transfer of rights under this section. The notice must include the information and resources provided under Subsection (c)(1)(B).

(c-2) If a student with a disability or the student's parent requests information regarding guardianship or alternatives to guardianship from the school district at which the student is enrolled, the school district shall provide to the student or parent information and resources on supported decision-making agreements under Chapter 1357, Estates Code.

(c-3) The commissioner shall develop and post on the agency's Internet website a model form for use by school districts in notifying students and parents as required by Subsections (c) and (c-1). The form must include the information and resources described by Subsection (c). The commissioner shall review and update the form, including the information and resources, as necessary.

(d) The commissioner shall develop and post on the agency's Internet website the information and resources described by Subsections (c), (c-1), and (c-2).

(e) Nothing in this section prohibits a student from entering into a supported decision-making agreement under Chapter 1357, Estates Code, after the transfer of rights under this section.

(f) The commissioner shall adopt rules implementing the provisions of 34 C.F.R. Section 300.520(b).

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 767 (S.B. 1735), § 8, effective June 13, 2001; Acts 2017, 85th Leg., ch. 574 (S.B. 748), § 3, effective June 9, 2017; Acts 2017, 85th Leg., ch. 1044 (H.B. 1886), § 4, effective June 15, 2017.

Sec. 29.018. Special Education Grant.

(a) From funds appropriated for the purposes of this section, federal funds, or any other funds available, the commissioner shall make grants available to school districts to assist districts in covering the cost of educating students with disabilities..

(b) A school district is eligible to apply for a grant under this section if:

(1) the district does not receive sufficient funds, including state funds provided under Sections 48.102 and 48.1021 and federal funds, for a student with disabilities to pay for the special education services provided to the student; orr

(2) the district does not receive sufficient funds, including state funds provided under Sections 48.102 and 48.1021 and federal funds, for all students with disabilities in the district to pay for the special education services provided to the students.

(c) A school district that applies for a grant under this section must provide the commissioner with a report comparing the state and federal funds received by the district for students with disabilities and the expenses incurred by the district in providing special education services to students with disabilities.

(d) A school district that receives a grant under this section must educate students with disabilities in the least restrictive environment that is appropriate to meet the student's educational needs.

(e) A school district that receives a grant under this section must educate students with disabilities in the least restrictive environment that is appropriate to meet the student's educational needs.

(f) The commissioner shall adopt rules as necessary to administer this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1328 (H.B. 3646), § 16, effective September 1, 2009; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.027, effective September 1, 2019; 2025, 89th Leg., ch. 1137 (S.B. 568), § 19, effective June 20, 2025; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.19, effective June 20, 2025.

Sec. 29.019. Individualized Education Program Facilitation.

(a) The agency shall provide information to parents regarding individualized education program facilitation as an alternative dispute resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability. A district that chooses to use individualized education program facilitation shall provide information to parents regarding individualized education program facilitation. The information:

(1) must be included with other information provided to the parent of a student with a disability, although it may be provided as a separate document; and

(2) may be provided in a written or electronic format.

(b) Information provided by the agency under this section must indicate that individualized education program facilitation is an alternative dispute resolution method that some districts may choose to provide.

(c) If a school district chooses to offer individualized education program facilitation as an alternative dispute resolution method:

(1) the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators;

(2) the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation; and

(3) the facilitation must be provided at no cost to a parent.

(d) The use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law.

(e) Nothing in this section prohibits a school district from using individualized education program facilitation as the district's preferred method of conducting initial and annual admission, review, and dismissal committee meetings.

(f) The commissioner shall adopt rules necessary to implement this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 539 (S.B. 542), § 1, effective June 14, 2013.

Sec. 29.020. State-Administered Individualized Education Program Facilitation.

(a) The agency shall develop rules in accordance with this section applicable to the administration of a state individualized education program facilitation project. The program shall include the provision of an independent individualized education program facilitator to facilitate an admission, review, and dismissal committee meeting with parties who are in a dispute about decisions relating to the provision of a free appropriate public education to a student with a disability. Facilitation implemented under the project must comply with rules developed under this subsection.

(b) The rules must include:

(1) a definition of independent individualized education program facilitation;

(2) forms and procedures for requesting, conducting, and evaluating independent individualized education program facilitation;

(3) training, knowledge, experience, and performance requirements for independent facilitators; and

(4) conditions required to be met in order for the agency to provide individualized education program facilitation at no cost to the parties.

(c) If the commissioner determines that adequate funding is available, the commissioner may authorize the use of federal funds to implement the individualized education program facilitation project in accordance with this section.

(d) The commissioner shall adopt rules necessary to implement this section.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 539 (S.B. 542), § 1, effective June 14, 2013; 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.20, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.21, and ch. 1137 (S.B. 568), §§ 20, 21, effective June 20, 2025; .

Sec. 29.022. Video Surveillance of Special Education Settings.

(a) In order to promote student safety, on receipt of a written request authorized under Subsection (a-1), a school district or open-enrollment charter school shall provide equipment, including a video camera, to the school or schools in the district or the charter school campus or campuses specified in the request. A school or campus that receives equipment as provided by this subsection shall place, operate, and maintain one or more video cameras in special education classrooms and other special education settings, provided that:

(1) a school or campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and

(2) a school or campus that receives equipment as a result of the request by a board of trustees, governing body, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to this subsection.

(a-1) For purposes of Subsection (a):

(1) a parent of a child who receives special education services in one or more special education classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the child receives those services;

(2) a board of trustees or governing body may request in writing that equipment be provided to one or more specified schools or campuses at which one or more children receive special education services in special education classrooms or other special education settings;

(3) the principal or assistant principal of a school or campus at which one or more children receive special education services in special education classrooms or other special education settings may request in writing that equipment be provided to the principal's or assistant principal's school or campus; and

(4) a staff member assigned to work with one or more children receiving special education services in special education classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the staff member works.

(a-2) Each school district or open-enrollment charter school shall designate an administrator at the primary administrative office of the district or school with responsibility for coordinating the provision of equipment to schools and campuses in compliance with this section.

(a-3) A written request must be submitted and acted on as follows:

(1) a parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the school or campus addressed in the request, and the principal or designee must provide a copy of the request to the administrator designated under Subsection (a-2);

(2) a principal must submit a request by the principal to the administrator designated under Subsection (a-2); and

(3) a board of trustees or governing body must submit a request to the administrator designated under Subsection (a-2), and the administrator must provide a copy of the request to the principal or the principal's designee of the school or campus addressed in the request.

(b) A school or campus that places a video camera in a special education classroom or other special education setting in accordance with Subsection (a) shall operate and maintain the video camera in the classroom or setting, as long as the classroom or setting continues to satisfy the requirements under Subsection (a), for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing. If for any reason a school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the par-

ents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request under Subsection (a-1). Not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year under Subsection (a-1) submits a new request.

(c) Except as provided by Subsection (c-1), video cameras placed under this section must be capable of:

(1) covering all areas of the special education classroom or other special education setting, including a room attached to the classroom or setting used for time-out; and

(2) recording audio from all areas of the special education classroom or other special education setting, including a room attached to the classroom or setting used for time-out.

(c-1) The inside of a bathroom or any area in the special education classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the classroom or setting.

(d) Before a school or campus activates a video camera in a special education classroom or other special education setting under this section, the school or campus shall provide written notice of the placement to all school or campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.

(e) Except as provided by Subsection (e-1), a school district or open-enrollment charter school shall retain video recorded from a video camera placed under this section for at least three months after the date the video was recorded.

(e-1) If a person described by Subsection (i) requests to view a video recording from a video camera placed under this section, a school district or open-enrollment charter school must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or school shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

(f) A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person for use in placing video cameras in special education classrooms or other special education settings under this section.

(g) This section does not:

(1) waive any immunity from liability of a school district or open-enrollment charter school, or of district or school officers or employees; or

(2) create any liability for a cause of action against a school district or open-enrollment charter school or against district or school officers or employees.

(h) A school district or open-enrollment charter school may not:

(1) allow regular or continual monitoring of video recorded under this section; or

(2) use video recorded under this section for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services in a special education classroom or other special education setting.

(i) A video recording of a student made according to this section is confidential and may not be released or viewed except as provided by this subsection or Subsection (i-1) or (j). A school district or open-enrollment charter school shall release a recording for viewing by:

(1) an employee who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the employee;

(2) a parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the parent;

(3) appropriate Department of Family and Protective Services personnel as part of an investigation under Section 261.406, Family Code;

(4) a peace officer, a school nurse, a district or school administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the board of trustees of the school district or the governing body of the open-enrollment charter school in response to a report of an alleged incident or an investigation of district or school personnel or a report of alleged abuse committed by a student; or

(5) appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i-1) A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording is not in violation of Subsection (i).

(j) If a person described by Subsection (i)(4) or (5) who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Family Code, the person shall notify the Department of Family and Protective Services for investigation in accordance with Section 261.406, Family Code. If any person described by Subsection (i)(3), (4), or (5) who views the recording believes that the recording documents a possible violation of district or school policy, the person may allow access to the recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of district or school policy relating to the neglect or abuse of a student may be used as part of a disciplinary action against district or school personnel and shall be released at the request of the student's parent in a legal proceeding. This subsection does not limit the access of a student's parent to a record regarding the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other law.

(k) The commissioner may adopt rules to implement and administer this section, including rules regarding the

special education classrooms and other special education settings to which this section applies.

(*l*) A school district or open-enrollment charter school policy relating to the placement, operation, or maintenance of video cameras under this section must:

(1) include information on how a person may appeal an action by the district or school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeals process under Section 7.057;

(2) require that the district or school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under Subsection (a-3) that authorizes the request or states the reason for denying the request;

(3) except as provided by Subdivision (5), require that a school or a campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the agency grants an extension of time;

(4) permit the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a special education classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:

(A) the date on which the current school year ends; or

(B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee; and

(5) if a request is made by a parent in compliance with Subdivision (4), unless the agency grants an extension of time, require that a school or campus begin operation of a video camera in compliance with this section not later than the later of:

(A) the 10th school day of the fall semester; or

(B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made.

(m) A school district, parent, staff member, or administrator may request an expedited review by the agency of the district's:

(1) denial of a request made under this section;

(2) request for an extension of time to begin operation of a video camera under Subsection (l)(3) or (5); or

(3) determination to not release a video recording to a person described by Subsection (i).

(n) If a school district, parent, staff member, or administrator requests an expedited review under Subsection (m), the agency shall notify all other interested parties of the request.

(o) If an expedited review has been requested under Subsection (m), the agency shall issue a preliminary judgment as to whether the district is likely to prevail on the issue under a full review by the agency. If the agency determines that the district is not likely to prevail, the district must fully comply with this section notwithstanding an appeal of the agency's decision. The agency shall notify the requestor and the district, if the district is not the requestor, of the agency's determination.

(p) The commissioner:

(1) shall adopt rules relating to the expedited review process under Subsections (m), (n), and (o), including standards for making a determination under Subsection (o); and

(2) may adopt rules relating to an expedited review process under Subsections (m), (n), and (o) for an open-enrollment charter school.

(q) The agency shall collect through the Public Education Information Management System (PEIMS) data relating to requests made under this section and actions taken by a school district or open-enrollment charter school in response to a request, including the number of requests made, authorized, and denied.

(r) A video recording under this section is a governmental record only for purposes of Section 37.10, Penal Code.

(s) This section applies to the placement, operation, and maintenance of a video camera in a special education classroom or other special education setting during the regular school year and extended school year services.

(t) A video camera placed under this section is not required to be in operation for the time during which students are not present in the special education classroom or other special education setting.

(u) In this section:

(1) "Parent" includes a guardian or other person standing in parental relation to a student.

(2) "School business day" means a day that campus or school district administrative offices are open.

(3) "Special education classroom or other special education setting" means a classroom or setting primarily used for delivering special education services to students who spend on average less than 50 percent of an instructional day in a general education classroom or setting.

(4) "Staff member" means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a special education classroom or other special education setting.

(5) "Time-out" has the meaning assigned by Section 37.0021.

HISTORY: Acts 2015, 84th Leg., ch. 1147 (S.B. 507), § 2, effective June 19, 2015; Acts 2017, 85th Leg., ch. 751 (S.B. 1398), § 1, effective June 12, 2017; Acts 2019, 86th Leg., ch. 943 (H.B. 3), § 3.028, effective September 1, 2019; 2025, 89th Leg., ch. 1137 (S.B. 568), § 23, effective June 20, 2025; Acts 2025, 89th Leg., ch. 1065 (H.B. 2), article 4, §§ 4.22, 4.23, and ch. 1137 (S.B. 568), § 22, effective June 20, 2025.

Sec. 29.026. Rules [As Added by Acts 2025, 89th Leg., SB 568].

The commissioner may adopt rules as necessary to implement this subchapter.

HISTORY: Acts 2025, 89th Leg., ch. 1137 (S.B. 568), § 24, effective June 20, 2025.

Sec. 29.026. Rules [As Added by Acts 2025, 89th Leg., HB 2].

The commissioner may adopt rules as necessary to implement this subchapter.

HISTORY: Acts 2025, 89th Leg., ch. 1065 (H.B. 2), § 4.24, effective June 20, 2025.

Sec. 29.027. Grant Program Providing Training In Dyslexia for Teachers and Staff. [Expired]

HISTORY: Acts 2017, 85th Leg., 1st C.S., ch. 8 (H.B. 21), § 3, effective November 14, 2017; Acts 2021, 87th Leg., ch. 806 (H.B. 1525), § 10, effective September 1, 2021.

Sec. 29.030. Provision of Information Regarding Local Intellectual and Developmental Disability Authority.

(a) At the first individualized education program committee meeting during which a student's individualized education program is developed under Section 29.005, a school district shall provide the parent or legal guardian of a student who has an intellectual disability or a developmental delay with information about services and public benefits provided by the local intellectual and developmental disability authority that serves the county in which the student resides, including services under waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)).

(b) The agency, in collaboration with the Health and Human Services Commission, shall develop informational materials that include the information described by Subsection (a) and make those materials available for use by school districts.

HISTORY: 2025, 89th Leg., ch. (H.B. 1188), § 2, effective May 29, 2025.

Subchapter L

School District Program for Residents of Forensic State Supported Living Center

Section
29.451. Definitions.
29.452. Applicability.
29.453. School District Services.
29.454. Behavior Management; Behavior Support Specialists.
29.455. Memorandum of Understanding.
29.456. Failure of School District and Center to Agree.
29.457. Funding.
29.458. Rules.

Sec. 29.451. Definitions.

In this subchapter, "alleged offender resident," "interdisciplinary team," and "state supported living center" have the meanings assigned by Section 555.001, Health and Safety Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.452. Applicability.

This subchapter applies only to an alleged offender resident of a forensic state supported living center designated under Section 555.002, Health and Safety Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; Acts 2017, 85th Leg., ch. 207 (S.B. 1300), § 3, effective September 1, 2017.

Sec. 29.453. School District Services.

(a) A school district shall provide educational services, including services required under Subchapter A, to each alleged offender resident who is under 22 years of age and otherwise eligible under Section 25.001 to attend school in the district. The district shall provide educational services to each alleged offender resident who is 21 years of age on September 1 of the school year and otherwise eligible to attend school in the district until the earlier of:

(1) the end of that school year; or

(2) the student's graduation from high school.

(b) The educational placement of an alleged offender resident and the educational services to be provided by a school district to the resident shall be determined by the resident's admission, review, and dismissal committee consistent with federal law and regulations regarding the placement of students with disabilities in the least restrictive environment. The resident's admission, review, and dismissal committee shall:

(1) inform the resident's interdisciplinary team of a determination the committee makes in accordance with this subsection; and

(2) consult, to the extent practicable, with the resident's interdisciplinary team concerning such a determination.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.454. Behavior Management; Behavior Support Specialists.

(a) The discipline of an alleged offender resident by a school district is subject to Sections 37.0021 and 37.004 and to federal law governing the discipline of students with disabilities.

(b) A school district in which alleged offender residents are enrolled shall employ one or more behavior support specialists to serve the residents while at school. A behavior support specialist must:

(1) hold a baccalaureate degree;

(2) have training in providing to students positive behavioral support and intervention, as determined by the commissioner of education; and

(3) meet any other requirement jointly determined by the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(c) A behavior support specialist shall conduct for each alleged offender resident enrolled in the school district a functional behavioral assessment that includes:

(1) data collection, through interviews with and observation of the resident;

(2) data analysis; and

(3) development of an individualized school behavioral intervention plan for the resident.

(d) Each behavior support specialist shall:

(1) ensure that each alleged offender resident enrolled in the school district is provided behavior management services under a school behavioral intervention plan based on the resident's functional behavioral assessment, as described by Subsection (c);

(2) communicate and coordinate with the resident's interdisciplinary team to ensure that behavioral inter-

vention actions of the district and of the forensic state supported living center do not conflict;

(3) in the case of a resident who regresses:

(A) ensure that necessary corrective action is taken in the resident's individualized education program or school behavioral intervention plan, as appropriate; and

(B) communicate with the resident's interdisciplinary team concerning the regression and encourage the team to aggressively address the regression;

(4) participate in the resident's admission, review, and dismissal committee meetings in conjunction with:

(A) developing and implementing the resident's school behavioral intervention plan; and

(B) determining the appropriate educational placement for each resident, considering all available academic and behavioral information;

(5) coordinate each resident's school behavioral intervention plan with the resident's program of active treatment provided by the forensic state supported living center to ensure consistency of approach and response to the resident's identified behaviors;

(6) provide training for school district staff and, as appropriate, state supported living center staff in implementing behavioral intervention plans for each resident; and

(7) remain involved with the resident during the school day.

(e) Section 22.0511 applies to a behavior support specialist employed under this section by a school district.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.455. Memorandum of Understanding.

(a) A school district in which alleged offender residents are enrolled in school and the forensic state supported living center shall enter into a memorandum of understanding to:

(1) establish the duties and responsibilities of the behavior support specialist to ensure the safety of all students and teachers while educational services are provided to a resident at a school in the district; and

(2) ensure the provision of appropriate facilities for providing educational services and of necessary technological equipment if a resident's admission, review, and dismissal committee determines that the resident must receive educational services at the forensic state supported living center.

(b) A memorandum of understanding under Subsection (a) remains in effect until superseded by a subsequent memorandum of understanding between the school district and the forensic state supported living center or until otherwise rescinded.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

Sec. 29.456. Failure of School District and Center to Agree.

(a) If a school district in which alleged offender residents are enrolled in school and the forensic state supported living center fail to agree on the services required for residents or responsibility for those services, the district or center may refer the issue in disagreement to the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(b) If the commissioner of education and the executive commissioner of the Health and Human Services Commission are unable to bring the school district and forensic state supported living center to agreement, the commissioners shall jointly submit a written request to the attorney general to appoint a neutral third party knowledgeable in special education and intellectual and developmental disability issues to resolve each issue on which the district and the center disagree. The decision of the neutral third party is final and may not be appealed. The district and the center shall implement the decision of the neutral third party. The commissioner of education or the executive commissioner of the Health and Human Services Commission shall ensure that the district and the center implement the decision of the neutral third party.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 4, effective September 1, 2019.

Sec. 29.457. Funding.

(a) In addition to other funding to which a school district is entitled under this code, each district in which alleged offender residents attend school is entitled to an annual allotment of $5,100 for each resident in average daily attendance or a different amount for any year provided by appropriation.

(b) Not later than December 1 of each year, a school district that receives an allotment under this section shall submit a report accounting for the expenditure of funds received under this section to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with intellectual and developmental disabilities and public education, and each member of the legislature whose district contains any portion of the territory included in the school.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009; Acts 2019, 86th Leg., ch. 1279 (H.B. 965), § 5, effective September 1, 2019.

Sec. 29.458. Rules.

The commissioner may adopt rules as necessary to administer this subchapter.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 284 (S.B. 643), § 2, effective June 11, 2009.

ESTATES CODE

Title
1. General Provisions
2. Estates of Decedents; Durable Powers of Attorney
3. Guardianship and Related Procedures

TITLE 1

GENERAL PROVISIONS

CHAPTER 22

Definitions

Section
22.007. Court; County Court, Probate Court, and Statutory Probate Court.

Sec. 22.007. Court; County Court, Probate Court, and Statutory Probate Court.

(a) "Court" means and includes:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising original probate jurisdiction in a contested matter.

(b) The terms "county court" and "probate court" are synonymous and mean:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising probate jurisdiction in a contested matter.

(c) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 680 (H.B. 2502), § 1, effective January 1, 2014.

TITLE 2

ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE P

DURABLE POWERS OF ATTORNEY

Chapter
751. General Provisions Regarding Durable Powers of Attorney
752. Statutory Durable Power of Attorney
753. Removal of Attorney in Fact or Agent

CHAPTER 751

General Provisions Regarding Durable Powers of Attorney

Subchapter
A. General Provisions
A-1. Appointment of Agents
B. Effect of Certain Acts on Exercise of Durable Power of Attorney
C. Duty to Inform and Account
C-1. Other Duties of Agent
D. Recording Durable Power of Attorney for Certain Real Property Transactions
E. Acceptance of and Reliance on Durable Power of Attorney
F. Civil Remedies

Subchapter A

General Provisions

Section
751.001. Short Title.
751.002. Definitions.
751.00201. Meaning of Disabled or Incapacitated for Purposes of Durable Power of Attorney.
751.0021. Requirements of Durable Power of Attorney.
751.0022. Presumption of Genuine Signature.
751.0023. Validity of Power of Attorney.
751.0024. Meaning and Effect of Durable Power of Attorney.
751.003. Uniformity of Application and Construction.
751.004. Duration of Durable Power of Attorney. [Repealed]
751.005. Extension of Principal's Authority to Other Persons.
751.006. Remedies Under Other Law.
751.007. Conflict with or Effect on Other Law.
751.0015. Applicability of Subtitle.

Sec. 751.001. Short Title.

This subtitle may be cited as the Durable Power of Attorney Act.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 751.002. Definitions.

In this subtitle:

(1) "Actual knowledge" means the knowledge of a person without that person making any due inquiry, and without any imputed knowledge, except as expressly set forth in Section 751.211(c).

(2) "Affiliate" means a business entity that directly or indirectly controls, is controlled by, or is under common control with another business entity.

(3) "Agent" includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(4) "Durable power of attorney" means a writing or other record that complies with the requirements of

Section 751.0021(a) or is described by Section 751.0021(b).

(5) "Principal" means an adult individual who signs or directs the signing of the individual's name on a power of attorney that designates an agent to act on the individual's behalf.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017; Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 1, effective September 1, 2023.

Sec. 751.00201. Meaning of Disabled or Incapacitated for Purposes of Durable Power of Attorney.

Unless otherwise defined by a durable power of attorney, an individual is considered disabled or incapacitated for purposes of the durable power of attorney if a physician certifies in writing at a date later than the date the durable power of attorney is executed that, based on the physician's medical examination of the individual, the individual is determined to be mentally incapable of managing the individual's financial affairs.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017; Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 2, effective September 1, 2023.

Sec. 751.0021. Requirements of Durable Power of Attorney.

(a) An instrument is a durable power of attorney for purposes of this subtitle if the instrument:

(1) is a writing or other record that designates another person as agent and grants authority to that agent to act in the place of the principal, regardless of whether the term "power of attorney" is used;

(2) is signed by an adult principal or in the adult principal's conscious presence by another adult directed by the principal to sign the principal's name on the instrument;

(3) contains:

(A) the words:

(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or

(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that clearly indicate that the authority conferred on the agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths.

(b) If the law of a jurisdiction other than this state determines the meaning and effect of a writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term "power of attorney" is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the writing or other record is considered a durable power of attorney under this subtitle.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0022. Presumption of Genuine Signature.

A signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal as authorized by Section 751.0021(a)(2) is presumed to be genuine, and the durable power of attorney is presumed to have been executed under Section 751.0021(a) if the officer taking the acknowledgment has complied with the requirements of Section 121.004(b), Civil Practice and Remedies Code.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0023. Validity of Power of Attorney.

(a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.0021(a).

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.0024; or

(2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0024. Meaning and Effect of Durable Power of Attorney.

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by:

(1) the law of the jurisdiction of the principal's domicile, if the principal's domicile is indicated in the power of attorney; or

(2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal's domicile is not indicated in the power of attorney.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.003. Uniformity of Application and Construction.

This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform

to the fullest extent possible the law with respect to the subject of this subtitle among states enacting these provisions.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.004. Duration of Durable Power of Attorney. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(1), effective September 1, 2017.

Sec. 751.005. Extension of Principal's Authority to Other Persons.

If, in this subtitle, a principal is given an authority to act, that authority includes:

(1) any person designated by the principal;

(2) a guardian of the estate of the principal; or

(3) another personal representative of the principal.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 751.006. Remedies Under Other Law.

The remedies under this chapter are not exclusive and do not abrogate any right or remedy under any law of this state other than this chapter.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.007. Conflict with or Effect on Other Law.

This subtitle does not:

(1) supersede any other law applicable to financial institutions or other entities, and to the extent of any conflict between this subtitle and another law applicable to an entity, the other law controls; or

(2) have the effect of validating a conveyance of an interest in real property executed by an agent under a durable power of attorney if the conveyance is determined under a statute or common law to be void but not voidable.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 2, effective September 1, 2017.

Sec. 751.0015. Applicability of Subtitle.

This subtitle applies to all durable powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 1, effective September 1, 2017.

Subchapter A-1

Appointment of Agents

Section

751.021. Co-Agents.
751.022. Acceptance of Appointment As Agent.
751.023. Successor Agents.
751.024. Reimbursement and Compensation of Agent.

Sec. 751.021. Co-Agents.

A principal may designate in a durable power of attorney two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.022. Acceptance of Appointment As Agent.

Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.023. Successor Agents.

(a) A principal may designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve.

(b) A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

(c) Unless the durable power of attorney otherwise provides, a successor agent:

(1) has the same authority as the authority granted to the predecessor agent; and

(2) is not considered an agent under this subtitle and may not act until all predecessor agents, including co-agents, to the successor agent have resigned, died, or become incapacitated, are not qualified to serve, or have declined to serve.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Sec. 751.024. Reimbursement and Compensation of Agent.

Unless the durable power of attorney otherwise provides, an agent is entitled to:

(1) reimbursement of reasonable expenses incurred on the principal's behalf; and

(2) compensation that is reasonable under the circumstances.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 3, effective September 1, 2017.

Subchapter B

Effect of Certain Acts on Exercise of Durable Power of Attorney

Section
751.051. Effect of Acts Performed by Agent.
751.052. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate. [Repealed]
751.053. Effect of Principal's Divorce or Marriage Annulment if Former Spouse Is Attorney in Fact or Agent. [Repealed]
751.054. Knowledge of Termination of Power; Good-Faith Acts.
751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance.
751.056. Nonliability of Third Party on Good-Faith Reliance. [Repealed]
751.057. Effect of Bankruptcy Proceeding.
751.058. Effect of Revocation of Durable Power of Attorney on Third Party. [Repealed]

Sec. 751.051. Effect of Acts Performed by Agent.

An act performed by an agent under a durable power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.052. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 2, effective September 1, 2017; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 6, effective September 1, 2017; repealed by Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 8(1), effective September 1, 2023.

Sec. 751.053. Effect of Principal's Divorce or Marriage Annulment if Former Spouse Is Attorney in Fact or Agent. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(2), effective September 1, 2017.

Sec. 751.054. Knowledge of Termination of Power; Good-Faith Acts.

(a) The revocation by, the death of, or the qualification of a temporary or permanent guardian of the estate of a principal who has executed a durable power of attorney or the removal of an attorney in fact or agent under Chapter 753 does not revoke, suspend, or terminate the agency as to the attorney in fact, agent, or other person who acts in good faith under or in reliance on the power without actual knowledge of the termination or suspension, as applicable, of the power by:

(1) the revocation;

(2) the principal's death;

(3) the qualification of a temporary or permanent guardian of the estate of the principal; or

(4) the attorney in fact's or agent's removal.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 3, effective September 1, 2017; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(3), effective September 1, 2017.

Sec. 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance.

(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination or suspension of the power, as applicable, by revocation, the principal's death, the principal's divorce or the annulment of the principal's marriage if the attorney in fact or agent was the principal's spouse, the qualification of a temporary or permanent guardian of the estate of the principal, or the attorney in fact's or agent's removal, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation, nonsuspension, or nontermination of the power at that time.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 4, effective September 1, 2017; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(4), effective September 1, 2017.

Sec. 751.056. Nonliability of Third Party on Good-Faith Reliance. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(5), effective September 1, 2017.

Sec. 751.057. Effect of Bankruptcy Proceeding.

(a) The filing of a voluntary or involuntary petition in bankruptcy in connection with the debts of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the principal's agent.

(b) Any act the agent may undertake with respect to the principal's property is subject to the limitations and requirements of the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) until a final determination is made in the bankruptcy proceeding.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.058. Effect of Revocation of Durable Power of Attorney on Third Party. [Repealed]

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; repealed by Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 15(6), effective September 1, 2017.

Subchapter C

Duty to Inform and Account

Section
751.101. Fiduciary Duties.
751.102. Duty to Timely Inform Principal.

Section
751.103. Maintenance of Records.
751.104. Accounting.
751.105. Effect of Failure to Comply; Suit.
751.106. Effect of Subchapter on Principal's Rights.

Sec. 751.101. Fiduciary Duties.

A person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022 is a fiduciary as to the principal only when acting as an agent under the power of attorney and has a duty to inform and to account for actions taken under the power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.102. Duty to Timely Inform Principal.

(a) The agent shall timely inform the principal of each action taken under a durable power of attorney.

(b) Failure of an agent to timely inform, as to third parties, does not invalidate any action of the agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.103. Maintenance of Records.

(a) The agent shall maintain records of each action taken or decision made by the agent.

(b) The agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.104. Accounting.

(a) The principal may demand an accounting by the agent.

(b) Unless otherwise directed by the principal, an accounting under Subsection (a) must include:

(1) the property belonging to the principal that has come to the agent's knowledge or into the agent's possession;

(2) each action taken or decision made by the agent;

(3) a complete account of receipts, disbursements, and other actions of the agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(4) a listing of all property over which the agent has exercised control that includes:

(A) an adequate description of each asset; and

(B) the asset's current value, if the value is known to the agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) Unless directed otherwise by the principal, the agent shall also provide to the principal all documentation regarding the principal's property.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.105. Effect of Failure to Comply; Suit.

If the agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the agent to deliver the accounting or the assets; or

(2) terminate the durable power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Sec. 751.106. Effect of Subchapter on Principal's Rights.

This subchapter does not limit the right of the principal to terminate the durable power of attorney or to make additional requirements of or to give additional instructions to the agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 4, effective September 1, 2017.

Subchapter C-1

Other Duties of Agent

Section
751.121. Duty to Notify of Breach of Fiduciary Duty by other Agent.
751.122. Duty to Preserve Principal's Estate Plan.

Sec. 751.121. Duty to Notify of Breach of Fiduciary Duty by other Agent.

(a) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. An agent who fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

(b) Except as otherwise provided by Subsection (a) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Sec. 751.122. Duty to Preserve Principal's Estate Plan.

An agent shall preserve to the extent reasonably possible the principal's estate plan to the extent the agent has

actual knowledge of the plan if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(1) the value and nature of the principal's property;

(2) the principal's foreseeable obligations and need for maintenance;

(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(4) eligibility for a benefit, a program, or assistance under a statute or regulation.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 5, effective September 1, 2017.

Subchapter D

Recording Durable Power of Attorney for Certain Real Property Transactions

Section

751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments.

Sec. 751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments.

A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, including a reverse mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, including a home equity lien, or other claim or right to real property, must be recorded in the office of the county clerk of the county in which the property is located not later than the 30th day after the date the instrument is filed for recording.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2015, 84th Leg., ch. 808 (H.B. 3316), § 1, effective September 1, 2015; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 7, effective September 1, 2017.

Subchapter E

Acceptance of and Reliance on Durable Power of Attorney

Section

751.201. Acceptance of Durable Power of Attorney Required; Exceptions.
751.202. Other Form or Recording of Durable Power of Attorney As Condition of Acceptance Prohibited.
751.203. Agent's Certification.
751.204. Opinion of Counsel.
751.205. English Translation.
751.206. Grounds for Refusing Acceptance.
751.207. Written Statement of Refusal of Acceptance Required.
751.208. Date of Acceptance.
751.209. Good Faith Reliance on Durable Power of Attorney.
751.210. Reliance on Certain Requested Information.
751.211. Actual Knowledge of Person When Transactions Conducted Through Employees.
751.212. Cause of Action for Refusal to Accept Durable Power of Attorney.
751.213. Liability of Principal.

Sec. 751.201. Acceptance of Durable Power of Attorney Required; Exceptions.

(a) Unless one or more grounds for refusal under Section 751.206 exist, a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney shall:

(1) accept the power of attorney; or

(2) before accepting the power of attorney:

(A) request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented, except as provided by Subsection (c); or

(B) if applicable, request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented, except as provided by Subsection (c).

(b) Unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), a person who requests:

(1) an agent's certification must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested certification; and

(2) an opinion of counsel must accept the durable power of attorney not later than the seventh business day after the date the person receives the requested opinion.

(c) An agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

(d) If an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. On and after that date, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) A person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.202. Other Form or Recording of Durable Power of Attorney As Condition of Acceptance Prohibited.

A person who is asked to accept a durable power of attorney under Section 751.201 may not require that:

(1) an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person; or

(2) the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by Section 751.151 or another law of this state.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.203. Agent's Certification.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal, the person to whom the power of attorney is presented may request that the certification include a written statement from a physician attending the principal that states that the principal is presently disabled or incapacitated.

(b) A certification described by Subsection (a) may be in the following form:

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____ (date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____. Date: _____, 20____.

_____ (signature of agent)

(c) A certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.204. Opinion of Counsel.

(a) Before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an opinion of counsel requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the opinion later than the 10th business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.205. English Translation.

(a) Before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an English translation of the power of attorney.

(b) Except as otherwise provided in an agreement to extend the request period under Section 751.201(c), an

English translation requested under this section must be provided by the principal or agent, at the principal's expense. If, without an extension, the requestor requests the translation later than the fifth business day after the date the durable power of attorney is presented to the requestor, the principal or agent may, but is not required to, provide the translation, at the requestor's expense.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.206. Grounds for Refusing Acceptance.

A person is not required to accept a durable power of attorney under this subchapter if:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

(i) material loss to the person;

(ii) financial mismanagement by the agent;

(iii) litigation between the person and the agent alleging substantial damages; or

(iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

(A) the power of attorney is not valid;

(B) the agent does not have the authority to act as attempted; or

(C) the performance of the requested act would violate the terms of:

(i) a business entity's governing documents; or

(ii) an agreement affecting a business entity, including how the entity's business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.207. Written Statement of Refusal of Acceptance Required.

(a) Except as provided by Subsection (b), a person who refuses to accept a durable power of attorney under this subchapter shall provide to the agent presenting the

power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) If the reason a person is refusing to accept a durable power of attorney is a reason described by Section 751.206(2) or (3):

(1) the person shall provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); and

(2) the person refusing to accept the power of attorney is not required to provide any additional explanation for refusing to accept the power of attorney.

(c) The person must provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.208. Date of Acceptance.

A durable power of attorney is considered accepted by a person under Section 751.201 on the first day the person agrees to act at the agent's direction under the power of attorney.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.209. Good Faith Reliance on Durable Power of Attorney.

(a) A person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal or of another adult directed by the principal to sign the principal's name as authorized by Section 751.0021 is not genuine may rely on the presumption under Section 751.0022 that the signature is genuine and that the power of attorney was properly executed.

(b) A person who in good faith accepts a durable power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the power of attorney as if:

(1) the power of attorney were genuine, valid, and still in effect;

(2) the agent's authority were genuine, valid, and still in effect; and

(3) the agent had not exceeded and had properly exercised the authority.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.210. Reliance on Certain Requested Information.

A person may rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the person under this subchapter.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.211. Actual Knowledge of Person When Transactions Conducted Through Employees.

(a) This section applies to a person who conducts a transaction or activity through an employee of the person.

(b) For purposes of this chapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

(c) For purposes of this chapter, a person is considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney has actual knowledge of the fact.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.212. Cause of Action for Refusal to Accept Durable Power of Attorney.

(a) The principal or an agent acting on the principal's behalf may bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) An action under Subsection (a) may not be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) If the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, the court, as the exclusive remedy under this chapter:

(1) shall order the person to accept the power of attorney; and

(2) may award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) The court shall dismiss an action under this section that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Notwithstanding Subsection (c), if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, the court may not order the person to accept the durable power of attorney, but instead may award the plaintiff court costs and reasonable and necessary attorney's fees as the exclusive remedy under this chapter.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Sec. 751.213. Liability of Principal.

(a) Subsection (b) applies to an action brought under Section 751.212 if:

(1) the court finds that the action was commenced after the date the written statement described by Section 751.207(b) was timely provided to the agent;

(2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under this chapter; or

(3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

(b) Under any of the circumstances described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action as the exclusive remedy under this chapter.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017.

Subchapter F

Civil Remedies

Section
751.251. Judicial Relief.

Sec. 751.251. Judicial Relief.

(a) The following may bring an action requesting a court to construe, or determine the validity or enforceability of, a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief:

(1) the principal or the agent;

(2) a guardian, conservator, or other fiduciary acting for the principal;

(3) a person named as a beneficiary to receive property, a benefit, or a contractual right on the principal's death;

(4) a governmental agency with authority to provide protective services to the principal; and

(5) a person who demonstrates to the court sufficient interest in the principal's welfare or estate.

(b) A person who is asked to accept a durable power of attorney may bring an action requesting a court to construe, or determine the validity or enforceability of, the power of attorney.

(c) On the principal's motion, the court shall dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

(d) In an action brought under this section, the court may award costs and reasonable and necessary attorney's fees in an amount the court considers equitable and just.

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 8, effective September 1, 2017; Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 4, effective September 1, 2023.

CHAPTER 752

Statutory Durable Power of Attorney

Subchapter
A. General Provisions Regarding Statutory Durable Power of Attorney
B. Form of Statutory Durable Power of Attorney
C. Construction of Powers Related to Statutory Durable Power of Attorney

Subchapter A

General Provisions Regarding Statutory Durable Power of Attorney

Section
752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney.
752.002. Validity Not Affected.
752.003. Prescribed Form Not Exclusive.
752.004. Legal Sufficiency of Statutory Durable Power of Attorney.

Sec. 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney.

(a) An individual may use a statutory durable power of attorney to grant an agent powers with respect to an individual's property and financial matters.

(b) A power of attorney in substantially the form prescribed by Section 752.051 has the meaning and effect prescribed by this subtitle.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 5, effective September 1, 2023.

Sec. 752.002. Validity Not Affected.

A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

(1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 2, effective January 1, 2014.

Sec. 752.003. Prescribed Form Not Exclusive.

The form prescribed by Section 752.051 is not exclusive, and other forms of power of attorney may be used.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.004. Legal Sufficiency of Statutory Durable Power of Attorney.

A statutory durable power of attorney is legally sufficient under this subtitle if:

(1) the wording of the form complies substantially with the wording of the form prescribed by Section 752.051;

(2) the form is properly completed; and

(3) the signature of the principal is acknowledged.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Subchapter B

Form of Statutory Durable Power of Attorney

Section
752.051. Form.
752.052. Modifying Statutory Form to Grant Specific Authority.

Sec. 752.051. Form.

The following form is known as a "statutory durable power of attorney":

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until:

(1) you die or revoke the power of attorney;

(2) your agent resigns, is removed by court order, or is unable to act for you; or

(3) a guardian is appointed for your estate.

I, _____ (insert your name and address),appoint _____ (insert the name and address of the person appointed) as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

_____ (A) Real property transactions;

_____ (B) Tangible personal property transactions;

_____ (C) Stock and bond transactions;

_____ (D) Commodity and option transactions;

_____ (E) Banking and other financial institution transactions;

_____ (F) Business operating transactions;

_____ (G) Insurance and annuity transactions;

_____ (H) Estate, trust, and other beneficiary transactions;

_____ (I) Claims and litigation;

_____ (J) Personal and family maintenance;

_____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

_____ (L) Retirement plan transactions;

_____ (M) Tax matters;

_____ (N) Digital assets and the content of an electronic communication;

_____ (O) ALL OF THE POWERS LISTED IN (A) THROUGH (N). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O).

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

_____My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

_____My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

_____Each of my co-agents may act independently for me.

_____My co-agents may act for me only if the co-agents act jointly.

_____ My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

_____ I grant my agent the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

_____

_____

_____

_____

_____

_____

_____

_____

_____

UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination of this durable power of attorney is not effective as to a third party until the third party has actual knowledge of the termination. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated, resigns, refuses to act, or is removed by court order, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent 's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Signed this _____ day of _____, _____.

_____
(your signature)

State of _____
County of _____
This document was acknowledged before me on _____by _____
(date) (name of principal)

_____
(signature of notarial officer)
(Seal, if any, of notary)

_____
(printed name)
My commission expires: ____

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, suspended, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

(1) act in good faith;

(2) do nothing beyond the authority granted in this power of attorney;

(3) act loyally for the principal's benefit;

(4) avoid conflicts that would impair your ability to act in the principal's best interest; and

(5) disclose your identity as an agent when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

(1) maintain records of each action taken or decision made on behalf of the principal;

(2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and

(3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;

(B) each action taken or decision made by you as agent;

(C) a complete account of receipts, disbursements, and other actions of you as agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;

(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(F) each known liability;

(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or suspends this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

(1) the principal's death;

(2) the principal's revocation of this power of attorney or your authority;

(3) the occurrence of a termination event stated in this power of attorney;

(4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;

(5) the appointment and qualification of a permanent guardian of the principal's estate unless a court order provides otherwise; or

(6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event

that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise..

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 700 (H.B. 2918), § 1, effective January 1, 2014; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 9, effective September 1, 2017; Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 2, effective September 1, 2017; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 5, effective September 1, 2017.

Sec. 752.052. Modifying Statutory Form to Grant Specific Authority.

The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.031(b) by including the following language: "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below: (CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

____ Create, amend, revoke, or terminate an inter vivos trust

____ Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney

____ Create or change rights of survivorship

____ Create or change a beneficiary designation

____ Authorize another person to exercise the authority granted under this power of attorney".

HISTORY: Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 10, effective September 1, 2017.

Subchapter C

Construction of Powers Related to Statutory Durable Power of Attorney

Section

752.101. Construction in General.
752.102. Real Property Transactions.
752.103. Tangible Personal Property Transactions.
752.104. Stock and Bond Transactions.
752.105. Commodity and Option Transactions.
752.106. Banking and Other Financial Institution Transactions.
752.107. Business Operation Transactions.
752.108. Insurance and Annuity Transactions.
752.109. Estate, Trust, and Other Beneficiary Transactions.
752.110. Claims and Litigation.
752.111. Personal and Family Maintenance.
752.112. Benefits from Certain Governmental Programs or Civil or Military Service.
752.113. Retirement Plan Transactions.
752.114. Tax Matters.
752.115. Existing Interests; Foreign Interests.

Sec. 752.101. Construction in General.

By executing a statutory durable power of attorney that confers authority with respect to any class of transactions, the principal empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;

(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify that contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney in fact or agent considers desirable to accomplish a purpose of a transaction;

(5) with respect to a claim existing in favor of or against the principal:

(A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or

(B) intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for an expenditure made in exercising the powers granted by the durable power of attorney; and

(11) in general, perform any other lawful act that the principal may perform with respect to the transaction.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.102. Real Property Transactions.

(a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the agent, without further reference to a specific description of the real property, to:

(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate;

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property;

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;

(D) conducting or contracting for the conducting of seismic evaluation operations;

(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;

(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;

(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;

(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation in the drilling or reworking of wells;

(I) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;

(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests;

(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds of those contracts, conveyances, and other agreements and transfers on behalf of the principal; and

(L) taking an action described by Paragraph (K) regardless of whether the action is, at the time the action is taken or subsequently, recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals; and

(10) designate the property that constitutes the principal's homestead.

(b) The power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the princi-

pal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 11, effective September 1, 2017.

Sec. 752.103. Tangible Personal Property Transactions.

The language conferring general authority with respect to tangible personal property transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) accept tangible personal property or an interest in tangible personal property as a gift or as security for a loan or reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) perform an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring the property or interest against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations to the property.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.104. Stock and Bond Transactions.

The language conferring authority with respect to stock and bond transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, and exchange:

(A) stocks;

(B) bonds;

(C) mutual funds; and

(D) all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes;

(2) receive certificates and other evidences of ownership with respect to securities;

(3) exercise voting rights with respect to securities in person or by proxy;

(4) enter into voting trusts; and

(5) consent to limitations on the right to vote.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.105. Commodity and Option Transactions.

The language conferring authority with respect to commodity and option transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange; and

(2) establish, continue, modify, or terminate option accounts with a broker.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.106. Banking and Other Financial Institution Transactions.

The language conferring authority with respect to banking and other financial institution transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney in fact or agent;

(3) rent a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to those documents;

(7) enter a safe deposit box or vault and withdraw from or add to its contents;

(8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security the principal's property as necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;

(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.107. Business Operation Transactions.

Subject to the terms of an agreement or other document governing or relating to an entity or entity ownership interest, to the extent the agent is permitted by law to act for the principal and unless the power of attorney provides otherwise, the language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(2) perform a duty or discharge a liability, or exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) enforce the terms of an agreement or other document governing or relating to an entity or entity ownership interest;

(4) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of an entity ownership interest;

(5) exercise in person or by proxy, or enforce by litigation, action, or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a certificated or uncertificated ownership interest;

(6) defend, submit to alternative dispute resolution, settle, or compromise litigation to which the principal is a party concerning a certificated or uncertificated ownership interest;

(7) with respect to a business or entity owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the business or entity;

(B) determine:

(i) the location of the business's or entity's operation;

(ii) the nature and extent of the business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business's or entity's operation;

(iv) the amount and types of insurance carried; and

(v) the method of engaging, compensating, and dealing with the business's or entity's employees and accountants, attorneys, or other agents;

(C) change the name or form of organization under which the business or entity is operated and enter into an agreement with other persons to take over all or part of the operation of the business or entity; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business or entity and control and disburse the money in the operation of the business or entity;

(8) put additional capital into a business or entity in which the principal has an interest;

(9) join in a plan of reorganization, consolidation, interest exchange, conversion, or merger of the business or entity;

(10) sell or liquidate a business or entity or all or part of the assets of the business or entity;

(11) establish the value of a business or entity under a buy-out agreement to which the principal is a party;

(12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business or entity and make related payments; and

(13) pay, compromise, or contest taxes or assessments and perform any other act to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business or entity, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2023, 88th Leg., ch. 210 (S.B. 1650), § 6, effective September 1, 2023.

Sec. 752.108. Insurance and Annuity Transactions.

(a) The language conferring authority with respect to insurance and annuity transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, or additional insurance contracts and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and method of payment;

(3) pay the premium or assessment on, or modify, rescind, release, or terminate, an insurance contract or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the insurance contract, except as provided by Subsection (b);

(5) apply for and receive a loan on the security of the insurance contract or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described by this section;

(10) change the beneficiary of an insurance contract or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subsection (b);

(11) apply for and procure government aid to guarantee or pay premiums of an insurance contract on the life of the principal;

(12) collect, sell, assign, borrow on, or pledge the principal's interest in an insurance contract or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, or apply for refunds in connection with a tax or assessment imposed by a taxing authority with respect to an insurance contract or annuity or the proceeds of the contract or annuity or liability accruing because of the tax or assessment.

(b) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an agent may be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the extent the agent was named as a beneficiary by the principal.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 12, effective September 1, 2017.

Sec. 752.109. Estate, Trust, and Other Beneficiary Transactions.

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, life estate, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to:

(A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or

(B) remove, substitute, or surcharge a fiduciary;

(4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal's interest in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 13, effective September 1, 2017.

Sec. 752.110. Claims and Litigation.

The language conferring general authority with respect to claims and litigation in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset, or defend against an individual, a legal entity, or a government, including an action to:

(A) recover property or other thing of value;

(B) recover damages sustained by the principal;

(C) eliminate or modify tax liability; or

(D) seek an injunction, specific performance, or other relief;

(2) bring an action to determine an adverse claim, intervene in an action or litigation, and act as an amicus curiae;

(3) in connection with an action or litigation:

(A) procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree; and

(B) perform any lawful act the principal could perform, including:

(i) acceptance of tender;

(ii) offer of judgment;

(iii) admission of facts;

(iv) submission of a controversy on an agreed statement of facts;

(v) consent to examination before trial; and

(vi) binding of the principal in litigation;

(4) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(5) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(6) act for the principal regarding voluntary or involuntary bankruptcy or insolvency proceedings concerning:

(A) the principal; or

(B) another person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects the principal's interest in property or other thing of value; and

(7) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.111. Personal and Family Maintenance.

The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including:

(A) providing living quarters by purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1):

(A) normal domestic help;

(B) usual vacations and travel expenses; and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) and open new accounts the agent considers desirable to accomplish a lawful purpose;

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations;

(7) perform all acts necessary in relation to the principal's mail, including:

(A) receiving, signing for, opening, reading, and responding to any mail addressed to the principal, whether through the United States Postal Service or a private mail service;

(B) forwarding the principal's mail to any address; and

(C) representing the principal before the United States Postal Service in all matters relating to mail service; and

(8) subject to the needs of the individuals described by Subdivision (1), provide for the reasonable care of the principal's pets.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 13, effective September 1, 2017.

Sec. 752.112. Benefits from Certain Governmental Programs or Civil or Military Service.

The language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) execute a voucher in the principal's name for an allowance or reimbursement payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including an allowance or reimbursement for:

(A) transportation of the individuals described by Section 752.111(1); and

(B) shipment of the household effects of those individuals;

(2) take possession and order the removal and shipment of the principal's property from a post, warehouse, depot, dock, or other governmental or private place of storage or safekeeping and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described by this section and conserve, invest, disburse, or use anything received for a lawful purpose.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.113. Retirement Plan Transactions.

(a) In this section, "retirement plan" means:

(1) an employee pension benefit plan as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002), without regard to the provisions of Section (2)(B) of that section;

(2) a plan that does not meet the definition of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does not cover common law employees;

(3) a plan that is similar to an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), regardless of whether the plan is covered by Title 1 of that Act, including a plan that provides death benefits to the beneficiary of employees; and

(4) an individual retirement account or annuity, a self-employed pension plan, or a similar plan or account.

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to:

(1) apply for service or disability retirement benefits;

(2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except as provided by Subsection (c);

(4) make voluntary contributions to retirement plans if authorized by the plan;

(5) exercise the investment powers available under any self-directed retirement plan;

(6) make rollovers of plan benefits into other retirement plans;

(7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;

(8) waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan;

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the principal's right to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), an agent may be named a beneficiary under a retirement plan only to the extent the agent was named a beneficiary by the principal under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 6.001, effective September 1, 2019; Acts 2017, 85th Leg., ch. 834 (H.B. 1974), § 14, effective September 1, 2017.

Sec. 752.114. Tax Matters.

The language conferring authority with respect to tax matters in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) prepare, sign, and file:

(A) federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act (26 U.S.C. Chapter 21), and other tax returns;

(B) claims for refunds;

(C) requests for extensions of time;

(D) petitions regarding tax matters; and

(E) any other tax-related documents, including:

(i) receipts;

(ii) offers;

(iii) waivers;

(iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);

(v) closing agreements; and

(vi) any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters, for all periods, before the Internal Revenue Service and any other taxing authority.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014.

Sec. 752.115. Existing Interests; Foreign Interests.

The powers described by Sections 752.102-752.1145 may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not:

(1) the property is located in this state; or

(2) the powers are exercised or the durable power of attorney is executed in this state.

HISTORY: Enacted by Acts 2011, ch. 823 (H.B. 2759), § 1.01, effective January 1, 2014; Acts 2017, 85th Leg., ch. 400 (S.B. 1193), § 4, effective September 1, 2017.

CHAPTER 753

Removal of Attorney in Fact or Agent

Section
753.001. Procedure for Removal.
753.002. Notice to Third Parties.

Sec. 753.001. Procedure for Removal.

(a) In this section, "person interested," notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.

(b) The following persons may file a petition under this section:

(1) any person named as a successor attorney in fact or agent in a durable power of attorney; or

(2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.

(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:

(1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;

(2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and

(3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact's or agent's compensation.

(d) A court may enter an order under Subsection (c) if the court finds:

(1) that the attorney in fact or agent has breached the attorney in fact's or agent's fiduciary duties to the principal;

(2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;

(3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact's or agent's duties; or

(4) that the attorney in fact or agent has failed to make an accounting:

(A) that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or

(B) as ordered by the court.

HISTORY: Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 6, effective September 1, 2017.

Sec. 753.002. Notice to Third Parties.

Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and

authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.

HISTORY: Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 6, effective September 1, 2017.

TITLE 3

GUARDIANSHIP AND RELATED PROCEDURES

Subtitle
A. General Provisions
B. Scope, Jurisdiction, and Venue
C. Procedural Matters
D. Creation of Guardianship
E. Administration of Guardianship
F. Evaluation, Modification, or Termination of Guardianship
I. Other Special Proceedings and Substitutes For Guardianship

SUBTITLE A

GENERAL PROVISIONS

CHAPTER 1002

Definitions

Section
1002.018. Interested Person; Person Interested.
1002.030. Ward.

Sec. 1002.018. Interested Person; Person Interested.

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or

(2) a person interested in the welfare of an incapacitated person.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1002.030. Ward.

"Ward" means a person for whom a guardian has been appointed.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE B

SCOPE, JURISDICTION, AND VENUE

Chapter
1021. General Provisions
1022. Jurisdiction
1023. Venue

CHAPTER 1021

General Provisions

Section
1021.001. Matters Related to Guardianship Proceeding.

Sec. 1021.001. Matters Related to Guardianship Proceeding.

(a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) the granting of letters of guardianship;

(2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward's estate;

(3) a claim brought by or against a guardianship estate;

(4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5) an action for trial of the right of property that is guardianship estate property;

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:

(A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;

(C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155; and

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

(a-1) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a);

(2) the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and

(3) the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsections (a) and (a-1);

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and

(3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 20.007, effective September 1, 2015; Acts 2021, 87th Leg., ch. 521 (S.B. 626), § 13, effective September 1, 2021.

CHAPTER 1022

Jurisdiction

Section

1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals.
1022.002. Original Jurisdiction for Guardianship Proceedings.
1022.003. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court or County Court at Law.
1022.004. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court.
1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County with Statutory Probate Court.
1022.007. Transfer of Proceeding by Statutory Probate Court.

Sec. 1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals.

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 1021.001 for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.002. Original Jurisdiction for Guardianship Proceedings.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The judge of a county court may hear guardianship proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

(d) From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 2(a), effective January 1, 2014 ((d) renumbered from Tex. Probate Code Sec. 604).

Sec. 1022.003. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court or County Court at Law.

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(d) A party to a guardianship proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.

(e) Notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(f) A statutory probate court judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a guardianship proceeding shall,

on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire guardianship proceeding as provided by Subsection (c) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) A district court to which a contested matter in a guardianship proceeding is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(h) If only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a guardianship proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a guardianship proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on the court's own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship.

(i) If a contested matter in a guardianship proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a guardianship proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(j) The clerk of a district court to which a contested matter in a guardianship proceeding is transferred under this section may perform in relation to the transferred matter any function a county clerk may perform with respect to that type of matter.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.004. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court.

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County with Statutory Probate Court.

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 1022.006 or with the jurisdiction of any other court.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

Sec. 1022.007. Transfer of Proceeding by Statutory Probate Court.

(a) A judge of a statutory probate court, on the motion of a party to the action or of a person interested in the guardianship, may:

(1) transfer to the judge's court from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and

(2) consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

(b) Notwithstanding any other provision of this title, the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014.

CHAPTER 1023

Venue

Section
1023.001. Venue for Appointment of Guardian.

Section
1023.002. Concurrent Venue and Transfer for Want of Venue.
1023.003. Transfer of Guardianship to Another County.

Sec. 1023.001. Venue for Appointment of Guardian.

(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

(1) in the county in which both the minor's parents reside;

(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;

(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or

(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

(d) [Repealed by Acts 1999, 76th Leg., ch. 379 (H.B. 3337), § 10, effective September 1, 1999.]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 957 (H.B. 2685), § 1, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 379 (H.B. 3337), § 10, effective September 1, 1999; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(c), effective January 1, 2014 (renumbered from Tex. Probate Code Sec. 610).

Sec. 1023.002. Concurrent Venue and Transfer for Want of Venue.

(a) If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b) If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

(c) If it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county in the manner prescribed by Section 1023.006.

(d) When a proceeding is transferred to another county under a provision of this chapter, all orders entered in connection with the proceeding shall be valid and shall be recognized in the court to which the guardianship was ordered transferred, if the orders were made and entered in conformance with the procedures prescribed by this code.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(d), effective January 1, 2014, ((b), (c), and (d) renumbered from Tex. Probate Code Sec. 611(b), (c) and (d)); 2025, 89th Leg., ch. 855 (S.B. 1760), § 1, effective September 1, 2025.

Sec. 1023.003. Transfer of Guardianship to Another County.

(a) When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

(b) With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court's own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.015(a), effective January 1, 2014; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 1(c), effective September 1, 2017.

SUBTITLE C

PROCEDURAL MATTERS

Chapter
1051. Notices and Process in Guardianship Proceedings in General
1055. Trial and Hearing Matters

CHAPTER 1051

Notices and Process in Guardianship Proceedings in General

Subchapter
C. Notice and Citation Required for Application for Guardianship
F. Additional Notice Provisions

Subchapter C

Notice and Citation Required for Application for Guardianship

Section
1051.102. Issuance of Citation for Application for Guardianship.

Section
1051.103. Service of Citation for Application for Guardianship.
1051.104. Notice by Applicant for Guardianship.
1051.106. Action by Court on Application for Guardianship.

Sec. 1051.102. Issuance of Citation for Application for Guardianship.

(a) On the filing of an application for guardianship, the court clerk shall issue a citation stating:

(1) that the application was filed;

(2) the name of the proposed ward;

(3) the name of the applicant; and

(4) the name of the person to be appointed guardian as provided in the application, if that person is not the applicant.

(b) The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if the persons wish to contest the application.

(c) The citation shall be posted.

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.017, effective January 1, 2014.

Sec. 1051.103. Service of Citation for Application for Guardianship.

(a) The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

(1) a proposed ward who is 12 years of age or older;

(2) the proposed ward's parents, if the whereabouts of the parents are known or can be reasonably ascertained;

(3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;

(4) the proposed ward's spouse, if the whereabouts of the spouse are known or can be reasonably ascertained; and

(5) the person named in the application to be appointed guardian, if that person is not the applicant.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1051.252 that is required in the citation issued under Section 1051.102.

(c) A citation served as provided by Subsection (a) to a relative of the proposed ward described by Subsection (a)(2) or (4) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.018, effective January 1, 2014; Acts 2017, 85th Leg., ch. 1125 (S.B. 1709), § 1, effective June 15, 2017.

Sec. 1051.104. Notice by Applicant for Guardianship.

(a) The person filing an application for guardianship shall send a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by a qualified delivery method to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) each adult child of the proposed ward;

(2) each adult sibling of the proposed ward;

(3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(4) the operator of a residential facility in which the proposed ward resides;

(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;

(6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;

(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;

(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and

(9) each adult named in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(b) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (a) and the return receipts or other proofs of delivery of the notice; and

(2) an affidavit sworn to by the applicant or the applicant's attorney stating:

(A) that the notice was sent as required by Subsection (a); and

(B) the name of each person to whom the notice was sent, if the person's name is not shown on the return receipt or other proof of delivery.

(c) Failure of the applicant to comply with Subsections (a)(2)—(9) does not affect the validity of a guardianship created under this title.

(d) Notice required by Subsection (a) to a relative of the proposed ward described by Subsection (a)(1) or (2) must contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative must elect in writing in order to receive notice about the ward under Section 1151.056.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.019, effective January 1, 2014; Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 3, effective September 1, 2015; Acts 2017, 85th Leg., ch. 1125 (S.B. 1709), § 2, effective June 15, 2017; Acts 2023, 88th Leg., ch. 123 (H.B. 785), § 7, effective September 1, 2023; Acts 2023, 88th Leg., ch. 207 (S.B. 1457), § 7, effective September 1, 2023.

Sec. 1051.106. Action by Court on Application for Guardianship.

The court may not act on an application for the creation of a guardianship until the applicant has complied with Section 1051.104(b) and not earlier than the Monday following the expiration of the 10-day period beginning on the date service of notice and citation has been made as provided by Sections 1051.102, 1051.103, and 1051.104(a)(1).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter F

Additional Notice Provisions

Section
1051.252. Request for Notice of Filing of Pleading.

Sec. 1051.252. Request for Notice of Filing of Pleading.

(a) At any time after an application is filed to commence a guardianship proceeding, a person interested in the estate or welfare of a ward or incapacitated person may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by a person specifically designated in the request. A person filing a request under this section is responsible for payment of the fees and other costs of providing the requested documents, and the clerk may require a deposit to cover the estimated costs of providing the notice. The clerk shall send to the requestor by regular mail a copy of any requested document.

(b) A county clerk's failure to comply with a request under this section does not invalidate a proceeding.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

CHAPTER 1055

Trial and Hearing Matters

Subchapter
A. Standing and Pleadings
B. Trial and Hearing
C. Evidence

Subchapter A

Standing and Pleadings

Section
1055.001. Standing to Commence or Contest Proceeding.
1055.003. Intervention by Interested Person.

Sec. 1055.001. Standing to Commence or Contest Proceeding.

(a) Except as provided by Subsection (b), any person has the right to:

(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(2) appear and contest a guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship or for the appointment of a guardian for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person;

(3) contest the appointment of a person as a guardian of the proposed ward or incapacitated person;

(4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(5) file a motion or complaint to request the removal of a guardian or contest the request for removal of a guardian.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; 2025, 89th Leg., ch. 283 (S.B. 746), § 5, effective September 1, 2025.

Sec. 1055.003. Intervention by Interested Person.

(a) Notwithstanding the Texas Rules of Civil Procedure and except as provided by Subsection (d), an interested person may intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether:

(1) the intervention will unduly delay or prejudice the adjudication of the original parties' rights; or

(2) the proposed intervenor has such an adverse relationship with the ward or proposed ward that the intervention would unduly prejudice the adjudication of the original parties' rights.

(d) A person who is entitled to receive notice under Section 1051.104 is not required to file a motion under this section to intervene in a guardianship proceeding.

HISTORY: Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 7, effective September 1, 2015; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 7, effective September 1, 2017.

Subchapter B

Trial and Hearing

Section
1055.052. Trial by Jury.

Sec. 1055.052. Trial by Jury.

A party in a contested guardianship proceeding is entitled to a jury trial on request.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter C

Evidence

Section
1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence.

Sec. 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence.

The rules relating to witnesses and evidence that apply in the district court apply in a guardianship proceeding to the extent practicable.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE D

CREATION OF GUARDIANSHIP

Chapter
1101. General Procedure to Appoint Guardian
1104. Selection of and Eligibility to Serve As Guardian
1105. Qualification of Guardians
1106. Letters of Guardianship

CHAPTER 1101

General Procedure to Appoint Guardian

Subchapter
A. Initiation of Proceeding for Appointment of Guardian
B. Hearing; Jury Trial
C. Determination of Necessity of Guardianship; Findings and Proof
D. Court Action

Subchapter A

Initiation of Proceeding for Appointment of Guardian

Section
1101.001. Application for Appointment of Guardian; Contents.

Sec. 1101.001. Application for Appointment of Guardian; Contents.

(a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election;

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C) the right of a proposed ward to make personal decisions regarding residence;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

(7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;

(8) to enable a criminal history record information background check to be obtained on the person, the name, address, phone number, and date of birth, if applicable, of any person having the care and custody of the proposed ward or the proposed ward's estate;

(9) the approximate value and a detailed description of the proposed ward's property, including:

(A) liquid assets, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled; and

(B) non-liquid assets, including real property;

(10) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

(c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.07, effective September 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.035, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 7, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 8, effective September 1, 2015; Acts 2021, 87th Leg., ch. 576 (S.B. 615), § 19, effective September 1, 2021; Acts 2021, 87th Leg., ch. 521 (S.B. 626), § 21, effective September 1, 2021; 2025, 89th Leg., ch. 1155 (S.B. 2587), § 18, effective September 1, 2025.

Subchapter B

Hearing; Jury Trial

Section
1101.051. Hearing.

Sec. 1101.051. Hearing.

(a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;

(B) care for his or her own physical health; and

(C) manage his or her property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

(b) A proposed ward must be present at the hearing unless the court, on the record or in the order, determines that a personal appearance is not necessary.

(c) The court may close the hearing at the request of the proposed ward or the proposed ward's counsel.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Subchapter C

Determination of Necessity of Guardianship; Findings and Proof

Section
1101.101. Findings and Proof Required.
1101.1011. Limitation on Acts by Advanced Practice Registered Nurse.
1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences.
1101.103. Determination of Incapacity of Certain Adults: Health Care Provider Examination.
1101.103. Determination of Incapacity of Certain Adults: Physician or Psychologist Examination.
1101.104. Examinations and Documentation Regarding Intellectual Disability.

Sec. 1101.101. Findings and Proof Required.

(a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian;

(C) the proposed ward's rights or property will be protected by the appointment of a guardian;

(D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(C) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this title.

(c) A finding under Subsection (a)(2)(D)(ii) must specifically state whether the proposed ward lacks the capacity, or lacks sufficient capacity with supports and services, to make personal decisions regarding residence, voting, operating a motor vehicle, and marriage.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 8, effective September 1, 2015.

Sec. 1101.1011. Limitation on Acts by Advanced Practice Registered Nurse.

An advanced practice registered nurse may act under this subchapter only if the advanced practice registered nurse is acting under a physician's delegation authority and supervision in accordance with Chapter 157, Occupations Code.

HISTORY: Acts 2023, 88th Leg., ch. 1012 (H.B. 3009), § 1, effective September 1, 2023.

Sec. 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences.

A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences in the preceding six months and not by isolated instances of negligence or bad judgment.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1101.103. Determination of Incapacity of Certain Adults: Health Care Provider Examination.

(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse that is:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or advanced practice registered nurse performed not earlier than the 120th day before the date the application is filed.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) For purposes of Subsection (b)(2), the opinion of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion.

(c) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or advanced practice registered nurse's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or advanced practice registered nurse who examines the proposed ward, other than a physician,

advanced practice registered nurse, or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician or advanced practice registered nurse that complies with the requirements of Subsections (a) and (b).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 9, effective September 1, 2015; Acts 2023, 88th Leg., ch. 1012 (H.B. 3009), § 2, effective September 1, 2023; Acts 2023, 88th Leg., ch. 939 (S.B. 1624), § 7, effective September 1, 2023.

Sec. 1101.103. Determination of Incapacity of Certain Adults: Physician or Psychologist Examination.

(a) Except as provided by Section 1101.104, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from:

(1) a physician licensed in this state, if the proposed ward's alleged incapacity results from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the proposed ward's alleged incapacity results from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the proposed ward's alleged incapacity; or

(2) have an established patient-provider relationship with the proposed ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician or psychologist performed not earlier than the 120th day before the date the application is filed.

(b) A letter or certificate from a physician must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems;

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

(b-1) Consistent with the scope of practice of a psychologist under Chapter 501, Occupations Code, a letter or certificate from a psychologist must include the information required under Subsection (b) only in relation to the proposed ward's mental capacity.

(c) If the court determines it is necessary, the court may appoint a physician or psychologist to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's or psychologist's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

(d) A physician or psychologist who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from:

(1) the physician that complies with the requirements of Subsections (a), (a-1), (a-2), and (b); or

(2) the psychologist that complies with the requirements of Subsections (a), (a-1), (a-2), and (b-1).

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 9, effective September 1, 2015; Acts 2023, 88th Leg., ch. 1012 (H.B. 3009), § 2, effective September 1, 2023; Acts 2023, 88th Leg., ch. 939 (S.B. 1624), § 7, effective September 1, 2023.

Sec. 1101.104. Examinations and Documentation Regarding Intellectual Disability.

(a) If an intellectual disability is the basis of the proposed ward's alleged incapacity, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) and (b); or

(2) shows that not earlier than 24 months before the hearing date:

(A) the proposed ward has been examined by a physician or advanced practice registered nurse or by a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules of the executive commissioner of the commission governing examinations of that kind, and the physician's or psychologist's written findings and recommendations include a determination of an intellectual disability; or

(B) a physician or advanced practice registered nurse or a psychologist licensed in this state or certified by the Health and Human Services Commission to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or by a psychologist licensed in this state or certified by the commission.

(a-1) For purposes of Subsection (a), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(b) [As added by Acts 2023, 88th Leg., SB 1606] A physician or psychologist described by Subsection (a)(2)(A) must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the proposed ward.

(b) [As added by Acts 2023, 88th Leg., HB 3009] For purposes of Subsection (a)(2)(B), the determination of an advanced practice registered nurse that is based on an examination of a proposed ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's determination.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 780 (S.B. 1235), § 2, effective January 1, 2014; Acts 2023, 88th Leg., ch. 938 (S.B. 1606), § 1, effective September 1, 2023; Acts 2023, 88th Leg., ch. 1012 (H.B. 3009), § 3, effective September 1, 2023.

Subchapter D

Court Action

Section
1101.151. Order Appointing Guardian with Full Authority.
1101.152. Order Appointing Guardian with Limited Authority.
1101.153. General Contents of Order Appointing Guardian.

Sec. 1101.151. Order Appointing Guardian with Full Authority.

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN

JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 9, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 10, effective September 1, 2015.

Sec. 1101.152. Order Appointing Guardian with Limited Authority.

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(2-a) the specific rights and powers retained by the person:

(A) with the necessity for supports and services; and

(B) without the necessity for supports and services;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 10, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 11, effective September 1, 2015.

Sec. 1101.153. General Contents of Order Appointing Guardian.

(a) A court order appointing a guardian must:

(1) specify:

(A) the name of the person appointed;

(B) the name of the ward;

(C) whether the guardian is of the person or estate of the ward, or both;

(D) the amount of any bond required;

(E) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and

(F) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2) if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to determine continued necessity for the guardianship, an order appointing a guardian must include the date by which the guardian must submit to the court an updated letter or certificate containing the requirements of Section 1101.103(b).

(b) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 12, effective September 1, 2015; Acts 2021, 87th Leg., ch. 576 (S.B. 615), § 20, effective September 1, 2021; Acts 2021, 87th Leg., ch. 521 (S.B. 626), § 22, effective September 1, 2021.

CHAPTER 1104

Selection of and Eligibility to Serve As Guardian

Subchapter F

Certification Requirements for Certain Guardians

Section
1104.251. Certification Required for Certain Guardians.

Sec. 1104.251. Certification Required for Certain Guardians.

(a) An individual must be certified under Subchapter C, Chapter 155, Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; or

(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward of the program.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 2.08, effective September 1, 2014.

CHAPTER 1105

Qualification of Guardians

Subchapter A

General Provisions

Section
1105.003. Period for Taking Oath or Making Declaration and Giving Bond.

Sec. 1105.003. Period for Taking Oath or Making Declaration and Giving Bond.

(a) Except as provided by Section 1103.003, an oath may be taken and subscribed or a declaration may be made, and a bond may be given and approved, at any time before:

(1) the 21st day after the date of the order granting letters of guardianship; or

(2) the letters of guardianship are revoked for a failure to qualify within the period allowed.

(b) A guardian of an estate must give a bond before being issued letters of guardianship unless a bond is not required under this title.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2021, 87th Leg., ch. 521 (S.B. 626), § 26, effective September 1, 2021.

CHAPTER 1106

Letters of Guardianship

Section
1106.001. Issuance of Certificate As Letters of Guardianship.

Sec. 1106.001. Issuance of Certificate As Letters of Guardianship.

(a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under the court's seal stating:

(1) the fact of the appointment and of the qualification;

(2) the date of the appointment and of the qualification; and

(3) the date the letters of guardianship expire.

(b) The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2023, 88th Leg., ch. 207 (S.B. 1457), § 12, effective September 1, 2023.

SUBTITLE E

ADMINISTRATION OF GUARDIANSHIP

CHAPTER 1151

Rights, Powers, and Duties Under Guardianship

Subchapter B

Powers and Duties of Guardians Relating to Care of Ward

Section
1151.051. General Powers and Duties of Guardians of the Person.
1151.052. Care of Adult Ward.
1151.0525. Access and Management of Ward's Funds by Guardian of Person.
1151.053. Commitment of Ward.
1151.054. Administration of Medication.

Sec. 1151.051. General Powers and Duties of Guardians of the Person.

(a) The guardian of the person of a ward is entitled to take charge of the person of the ward.

(b) The duties of the guardian of the person correspond with the rights of the guardian.

(c) A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward;

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code;

(6) the duty to notify the court, as soon as practicable, if the ward has died or is admitted to a medical facility for acute care for a period of three or more days;

(7) the duty to notify the court not later than the 30th day after the date the ward's residence or address has changed;

(8) the duty to notify the court not later than the 30th day after the date of a change in the guardian's resi-

dence, address, phone number, or any other information used by the court to contact the guardian; and

(9) the power to sign documents necessary or appropriate to facilitate employment of the ward if:

(A) the guardian was appointed with full authority over the person of the ward under Section 1101.151; or

(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152.

(d) Notwithstanding Subsection (c)(4), a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code. The guardian shall immediately provide written notice to the court that granted the guardianship as required by Section 573.004, Health and Safety Code, of the filing of an application under that section.

(e) Notwithstanding Subsection (c)(1) and except in cases of emergency, a guardian of the person of a ward may only place the ward in a more restrictive care facility if the guardian provides notice of the proposed placement to the court, the ward, and any person who has requested notice and after:

(1) the court orders the placement at a hearing on the matter, if the ward or another person objects to the proposed placement before the eighth business day after the person's receipt of the notice; or

(2) the seventh business day after the court's receipt of the notice, if the court does not schedule a hearing, on its own motion, on the proposed placement before that day.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 982 (H.B. 2080), § 16, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 14, effective September 1, 2015; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 9, effective September 1, 2017; 2025, 89th Leg., ch. 855 (S.B. 1760), § 7, effective September 1, 2025.

Sec. 1151.052. Care of Adult Ward.

(a) The guardian of an adult ward may spend funds of the guardianship as provided by court order to care for and maintain the ward.

(b) The guardian of an adult ward who has decision-making ability may apply on the ward's behalf for residential care and services provided by a public or private facility if the ward agrees to be placed in the facility. The guardian shall report the condition of the ward to the court at regular intervals at least annually, unless the court orders more frequent reports. The guardian shall include in a report of an adult ward who is receiving residential care in a public or private residential care facility a statement as to the necessity for continued care in the facility.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

Sec. 1151.0525. Access and Management of Ward's Funds by Guardian of Person.

(a) This section applies only to the guardian of the person of a ward for whom the court has not appointed a guardian of the estate.

(b) On application to and order from the court, the guardian of the person of a ward may access, manage, and spend the ward's funds in an amount not to exceed $20,000 per year for the ward's benefit. The court shall require the guardian to file a new bond or a rider to an existing bond that meets the surety requirements for a guardian of the estate's bond under Section 1105.160.

(c) A guardian of the person shall include any expenditures made for the benefit of the ward if authorized by court order under Subsection (b) in the annual report required by Section 1163.101.

(d) When there is no longer a need for the guardian of the person to access, manage, or spend the ward's funds, the guardian of the person shall file a sworn affidavit of fulfillment with the court. After the filing of the affidavit, the court, on motion filed with the court, may authorize the guardian to file a new bond or a rider to an existing bond that meets the requirements for a guardian of the person's bond under Section 1105.102, and may discharge the guardian of the person and the guardian's sureties on a bond required by Subsection (b).

HISTORY: Acts 2023, 88th Leg., ch. 207 (S.B. 1457), § 14, effective September 1, 2023.

Sec. 1151.053. Commitment of Ward.

(a) Except as provided by Subsection (b) or (c), a guardian may not voluntarily admit a ward to a public or private inpatient psychiatric facility operated by the Department of State Health Services for care and treatment or to a residential facility operated by the Department of Aging and Disability Services for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the ward or the ward's guardian may:

(1) apply for services under Section 593.027 or 593.028, Health and Safety Code;

(2) apply to a court to commit the person under Subtitle C or D, Title 7, Health and Safety Code, or Chapter 462, Health and Safety Code; or

(3) transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(b) A guardian of a person younger than 18 years of age may voluntarily admit the ward to a public or private inpatient psychiatric facility for care and treatment.

(c) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 6.040, effective January 1, 2014.

Sec. 1151.054. Administration of Medication.

(a) In this section, "psychoactive medication" has the meaning assigned by Section 574.101, Health and Safety Code.

(b) The guardian of the person of a ward who is not a minor and who is under a protective custody order as provided by Subchapter B, Chapter 574, Health and

Safety Code, may consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014.

SUBTITLE F

EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTER 1202

Modification or Termination of Guardianship

Subchapter
B. Application for Complete Restoration of Ward's Capacity or Modification of Guardianship
D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

Subchapter B

Application for Complete Restoration of Ward's Capacity or Modification of Guardianship

Section
1202.051. Application Authorized.

Sec. 1202.051. Application Authorized.

(a) Notwithstanding Section 1055.003, a ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity, or lacks sufficient capacity with supports and services, to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity, or sufficient capacity with supports and services, to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the guardian's powers or duties; and

(B) permitting the ward to care for himself or herself, make personal decisions regarding residence, or manage the ward's own financial affairs commensurate with the ward's ability, with or without supports and services.

(b) If the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, the court may not require the appointment of a successor guardian before considering the application.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 16, effective September 1, 2015; Acts 2017, 85th Leg., ch. 935 (S.B. 1710), § 1, effective September 1, 2017.

Subchapter D

Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

Section
1202.151. Evidence and Burden of Proof at Hearing.
1202.152. Health Care Provider's Letter or Certificate Required.
1202.152. Letter or Certificate Required.
1202.1521. Letter or Certificate: Requirements If Alleged Incapacity Based on Intellectual Disability.
1202.1521. Physician's Letter or Certificate: Requirement If Alleged Incapacity Based on Intellectual Disability.
1202.153. Findings Required.

Sec. 1202.151. Evidence and Burden of Proof at Hearing.

(a) Except as provided by Section 1202.201, at a hearing on an application filed under Section 1202.051, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the complete restoration of the ward's capacity or modification of the ward's guardianship, including whether:

(1) the guardianship is necessary; and

(2) specific powers or duties of the guardian should be limited if the ward receives supports and services.

(b) The party who filed the application has the burden of proof at the hearing.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; am. Acts 2013, 83rd Leg., ch. 684 (H.B. 2407), § 2, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 17, effective September 1, 2015.

Sec. 1202.152. Health Care Provider's Letter or Certificate Required.

(a) [As amended by Acts 2023, 88th Leg., HB 3009] In this section:

(1) "Advanced practice registered nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" has the meaning assigned by Section 1101.100.

(a) [As amended by Acts 2023, 88th Leg., SB 1606] Except as provided by Section 1202.1521, the court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(b) An advanced practice registered nurse may act under this section only if the advanced practice registered nurse is acting under a physician's delegation authority

and supervision in accordance with Chapter 157, Occupations Code.

(c) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician or advanced practice registered nurse licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(c-1) For purposes of Subsection (c), a letter or certificate based on an examination by an advanced practice registered nurse must be signed by the supervising physician.

(d) A letter or certificate presented under Subsection (c) must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(e) For purposes of Subsection (d), the opinion of an advanced practice registered nurse that is based on an examination of a ward conducted by the advanced practice registered nurse under delegation from and supervision by a physician and is signed by the supervising physician is considered the supervising physician's opinion.

(f) If the court determines it is necessary, the court may appoint the necessary physicians or advanced practice registered nurses to examine the ward in the same manner and to the same extent as a ward is examined by a physician or advanced practice registered nurse under Section 1101.103 or 1101.104.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 18, effective September 1, 2015; Acts 2023, 88th Leg., ch. 938 (S.B. 1606), § 2, effective September 1, 2023.

Sec. 1202.152. Letter or Certificate Required.

(a) [As amended by Acts 2023, 88th Leg., SB 1606] Except as provided by Section 1202.1521, the court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(a) [As amended by Acts 2023, 88th Leg., SB 1624] Subject to Section 1202.1521, the applicant must present to the court and the court shall consider a written letter or certificate as evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151 from:

(1) a physician licensed in this state, if the ward's incapacity resulted from a physical condition or mental condition; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind, if the ward's incapacity resulted from a mental condition.

(a-1) The physician or psychologist who provides the letter or certificate under Subsection (a) must:

(1) have experience examining individuals with the physical or mental condition resulting in the ward's incapacity; or

(2) have an established patient-provider relationship with the ward.

(a-2) The letter or certificate required by Subsection (a) must be:

(1) signed by the physician or psychologist; and

(2) dated:

(A) not earlier than the 120th day before the date the application was filed; or

(B) after the date the application was filed but before the date of the hearing.

(a-3) The court may consider the following evidence of capacity, or sufficient capacity with supports and services, at a hearing under Section 1202.151:

(1) a statement from a representative of the local mental health authority or the local intellectual and developmental disability authority listing services received by the ward and the effectiveness of those services;

(2) medical records;

(3) affidavits of treating professionals regarding the effectiveness of supports and services the ward is receiving;

(4) documentation from a health care provider providing supports or services to the ward under Medicaid, including a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(5) an affidavit of the ward's employer or day habilitation program manager regarding the ward's ability to perform the necessary tasks;

(6) documentation from the United States Social Security Administration identifying the ward's representative payee; or

(7) any other evidence demonstrating the ward's capacity.

(b) A letter or certificate presented under Subsection (a) must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, or sufficient capacity with supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(c) If the court determines it is necessary, the court shall appoint a physician or psychologist to complete an examination of the ward. The physician or psychologist must be chosen by the ward, provided, however, that if the ward makes no choice, the ward's physician or psychologist of choice is not available, or additional information is needed or required after an examination by the ward's physician or psychologist of choice, the court may appoint the necessary physicians or psychologists to examine the ward. A physician appointed by the court must examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 1101.103 or 1101.104.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 18, effective September 1, 2015; Acts 2023, 88th Leg., ch. 938 (S.B. 1606), § 2, effective September 1, 2023.

Sec. 1202.1521. Letter or Certificate: Requirements If Alleged Incapacity Based on Intellectual Disability.

(a) If an intellectual disability is the basis of a ward's alleged incapacity, instead of the letter or certificate required under Section 1202.152(a), the court shall, subject to Subsection (c), consider a written letter or certificate the applicant presents from:

(1) a physician licensed in this state; or

(2) a psychologist licensed in this state or certified by the Health and Human Services Commission to perform the examination, in accordance with rules adopted by the executive commissioner of the commission governing examinations of that kind.

(b) The letter or certificate must:

(1) state, in the physician's or psychologist's opinion, whether the ward has the capacity, or sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1);

(2) state how or in what manner the ward's ability to make or communicate reasonable decisions concerning himself or herself is affected by the ward's mental capacity;

(3) include any other information required by the court; and

(4) be dated within the period prescribed by Section 1202.152(a)(1) or (2).

(c) The physician or psychologist who provides a letter or certificate under this section must preferably have experience examining individuals with an intellectual disability. For purposes of this subsection, a physician or psychologist is considered to have experience examining individuals with an intellectual disability if the physician or psychologist has an established patient-provider relationship with the ward.

HISTORY: Acts 2023, 88th Leg., ch. 938 (S.B. 1606), § 3, effective September 1, 2023.

Sec. 1202.1521. Physician's Letter or Certificate: Requirement If Alleged Incapacity Based on Intellectual Disability.

If an intellectual disability is the basis of a ward's alleged incapacity, the written letter or certificate presented under Section 1202.152(a), instead of containing the information required by Section 1202.152(b), must:

(1) state, in the physician's or psychologist's opinion, whether the ward has the capacity, or sufficient capacity with supports and services, to do any of the activities listed in Section 1202.152(b)(1);

(2) state how or in what manner the ward's ability to make or communicate reasonable decisions concerning himself or herself is affected by the ward's mental capacity; and

(3) include any other information required by the court.

HISTORY: Acts 2023, 88th Leg., ch. 939 (S.B. 1624), § 16, effective September 1, 2023.

Sec. 1202.153. Findings Required.

(a) Before ordering the settlement and closing of a guardianship under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity, with or without supports and services, warrants a modification of the guardianship and that some of the ward's rights need to be restored, with or without supports and services.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 823 (H.B. 2759), § 1.02, effective January 1, 2014; Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 19, effective September 1, 2015.

SUBTITLE I

OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR GUARDIANSHIP

CHAPTER 1357

Supported Decision-Making Agreement Act

Subchapter

A. General Provisions
B. Scope of Agreement and Agreement Requirements
C. Duty of Certain Persons with Respect to Agreement

Subchapter A

General Provisions

Section

1357.001. Short Title.
1357.002. Definitions.
1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 214].
1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 1224].

Sec. 1357.001. Short Title.

This chapter may be cited as the Supported Decision-Making Agreement Act.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.002. Definitions.

In this chapter:

(1) "Adult" means an individual 18 years of age or older or an individual under 18 years of age who has had the disabilities of minority removed.

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to where the adult wants to live, the services, supports, and medical care the adult wants to receive, whom the adult wants to live with, and where the adult wants to work, without impeding the self-determination of the adult.

(4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter.

(5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 214].

The purpose of this chapter is to recognize a less restrictive substitute for guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015.

Sec. 1357.003. Purpose [2 Versions: As added by Acts 2015, 84th Leg., ch. 1224].

The purpose of this chapter is to recognize a less restrictive alternative to guardianship for adults with disabilities who need assistance with decisions regarding daily living but who are not considered incapacitated persons for purposes of establishing a guardianship under this title.

HISTORY: Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Subchapter B

Scope of Agreement and Agreement Requirements

Section

1357.051. Scope of Supported Decision-Making Agreement.
1357.052. Authority of Supporter; Nature of Relationship.
1357.0525. Designation of Alternate Supporter in Certain Circumstances.
1357.053. Term of Agreement.
1357.054. Access to Personal Information.
1357.055. Authorizing and Witnessing of Supported Decision-Making Agreement.
1357.056. Form of Supported Decision-Making Agreement.

Sec. 1357.051. Scope of Supported Decision-Making Agreement.

An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) subject to Section 1357.054, assist the adult in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;

(3) assist the adult with a disability in understanding the information described by Subdivision (2); and

(4) assist the adult in communicating the adult's decisions to appropriate persons.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.052. Authority of Supporter; Nature of Relationship.

(a) A supporter may exercise the authority granted to

the supporter in the supported decision-making agreement.

(b) The supporter owes to the adult with a disability fiduciary duties as listed in the form provided by Section 1357.056(a), regardless of whether that form is used for the supported decision-making agreement.

(c) The relationship between an adult with a disability and the supporter with whom the adult enters into a supported decision-making agreement:

(1) is one of trust and confidence; and

(2) does not undermine the decision-making authority of the adult.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 10, effective September 1, 2017.

Sec. 1357.0525. Designation of Alternate Supporter in Certain Circumstances.

In order to prevent a conflict of interest, if a determination is made by an adult with a disability that the supporter with whom the adult entered into a supported decision-making agreement is the most appropriate person to provide to the adult supports and services for which the supporter will be compensated, the adult may amend the supported decision-making agreement to designate an alternate person to act as the adult's supporter for the limited purpose of participating in person-centered planning as it relates to the provision of those supports and services.

HISTORY: Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 11, effective September 1, 2017.

Sec. 1357.053. Term of Agreement.

(a) Except as provided by Subsection (b), the supported decision-making agreement extends until terminated by either party or by the terms of the agreement.

(b) The supported decision-making agreement is terminated if:

(1) the Department of Family and Protective Services finds that the adult with a disability has been abused, neglected, or exploited by the supporter;

(2) the supporter is found criminally liable for conduct described by Subdivision (1); or

(3) a temporary or permanent guardian of the person or estate appointed for the adult with a disability qualifies.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 12, effective September 1, 2017.

Sec. 1357.054. Access to Personal Information.

(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.055. Authorizing and Witnessing of Supported Decision-Making Agreement.

(a) A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) If signed before two witnesses, the attesting witnesses must be at least 14 years of age.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.056. Form of Supported Decision-Making Agreement.

(a) Subject to Subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

SUPPORTED DECISION-MAKING AGREEMENT

Important Information For Supporter: Duties

When you agree to provide support to an adult with a disability under this supported decision-making agreement, you have a duty to:

(1) act in good faith;

(2) act within the authority granted in this agreement;

(3) act loyally and without self-interest; and

(4) avoid conflicts of interest.

Appointment of Supporter

I, (insert your name), make this agreement of my own free will.

I agree and designate that:_____

Name:_____

Address:_____

Phone Number:____

E-mail Address:_____

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

2. Help me understand my options so I can make an informed decision; or

3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

Effective Date of Supported Decision-Making Agreement

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this _____ day of _____, 20_____

Consent of Supporter

I, (name of supporter), consent to act as a supporter under this agreement.

_____ _____

(signature of supporter) (printed name of supporter)

Signature

_____ _____

(my signature) (my printed name)

_____ _____

(witness 1 signature) (printed name of witness 1)

_____ _____

(witness 2 signature) (printed name of witness 2)

State of _____

County of _____

This document was acknowledged before me

on _____(date)

by _____ and

(name of adult with a disability)

_____

(name of supporter)

_____

(signature of notarial officer)

_____

(Seal, if any, of notary)

(printed name)

My commission expires:_____

WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT WWW.TXABUSEHOTLINE.ORG.

(b) A supported decision-making agreement may be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015; Acts 2017, 85th Leg., ch. 514 (S.B. 39), § 13, effective September 1, 2017.

Subchapter C

Duty of Certain Persons with Respect to Agreement

Section

1357.101. Reliance on Agreement; Limitation of Liability.
1357.102. Reporting of Suspected Abuse, Neglect, or Exploitation.

Sec. 1357.101. Reliance on Agreement; Limitation of Liability.

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Sec. 1357.102. Reporting of Suspected Abuse, Neglect, or Exploitation.

If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the Department of Family and Protective Services in accordance with Section 48.051, Human Resources Code.

HISTORY: Acts 2015, 84th Leg., ch. 214 (H.B. 39), § 23, effective September 1, 2015; enacted by Acts 2015, 84th Leg., ch. 1224 (S.B. 1881), § 1, effective June 19, 2015.

Title
2. Child In Relation to the Family
3. Juvenile Justice Code
3A. Truancy Court Proceedings
5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship

TITLE 2

CHILD IN RELATION TO THE FAMILY

SUBTITLE A

LIMITATIONS OF MINORITY

Chapter
32. Consent to Treatment of Child by Non-Parent or Child
35A. Temporary Authorization for Inpatient Mental Health Services for Minor Child

CHAPTER 32

Consent to Treatment of Child by Non-Parent or Child

Subchapter
A. Consent to Medical, Dental, Psychological, and Surgical Treatment
C. Miscellaneous Provisions

Subchapter A

Consent to Medical, Dental, Psychological, and Surgical Treatment

Section
32.001. Consent by Non-Parent.
32.002. Consent Form.
32.003. Consent to Treatment by Child.
32.004. Consent to Counseling.
32.005. Examination Without Consent of Abuse or Neglect of Child.

Sec. 32.001. Consent by Non-Parent.

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;

(5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;

(6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;

(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

(b) Except as otherwise provided by this subsection, the Texas Juvenile Justice Department may consent to the medical, dental, psychological, and surgical treatment of a child committed to the department under Title 3 when the person having the right to consent has been contacted and that person has not given actual notice to the contrary. Consent for medical, dental, psychological, and surgical treatment of a child for whom the Department of Family and Protective Services has been appointed managing conservator and who is committed to the Texas Juvenile Justice Department is governed by Sections 266.004, 266.009, and 266.010.

(c) This section does not apply to consent for the immunization of a child.

(d) A person who consents to the medical treatment of a minor under Subsection (a)(7) or (8) is immune from liability for damages resulting from the examination or treatment of the minor, except to the extent of the person's own acts of negligence. A physician or dentist licensed to practice in this state, or a hospital or medical facility at which a minor is treated is immune from liability for damages resulting from the examination or treatment of a minor under this section, except to the extent of the person's own acts of negligence.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1995, 74th Leg., ch. 751 (H.B. 433), § 5, effective September 1, 1995; am. Acts 2009, 81st Leg., ch. 108 (H.B. 1629), § 1, effective May 23, 2009; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 37, effective September 1, 2015.

Sec. 32.002. Consent Form.

(a) Consent to medical treatment under this subchapter must be in writing, signed by the person giving consent, and given to the doctor, hospital, or other medical facility that administers the treatment.

(b) The consent must include:

(1) the name of the child;

(2) the name of one or both parents, if known, and the name of any managing conservator or guardian of the child;

(3) the name of the person giving consent and the person's relationship to the child;

(4) a statement of the nature of the medical treatment to be given; and

(5) the date the treatment is to begin.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995.

Sec. 32.003. Consent to Treatment by Child.

(a) A child may consent to medical, dental, psychologi-

cal, and surgical treatment for the child by a licensed physician or dentist if the child:

(1) is on active duty with the armed services of the United States of America;

(2) is:

(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and

(B) managing the child's own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;

(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;

(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use;

(6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child; or

(7) is serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice, unless the treatment would constitute a prohibited practice under Section 164.052(a)(19), Occupations Code.

(b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.

(c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.

(d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.

(e) A physician, dentist, psychologist, hospital, or medical facility is not liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.

(f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1995, 74th Leg., ch. 751 (H.B. 433), § 6, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 821 (H.B. 920), § 2.01, effective June 14, 2001; am. Acts 2007, 80th Leg., ch. 1227 (H.B. 2389), § 2, effective June 15, 2007.

Sec. 32.004. Consent to Counseling.

(a) A child may consent to counseling for:

(1) suicide prevention;

(2) chemical addiction or dependency; or

(3) sexual, physical, or emotional abuse.

(b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:

(1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;

(2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and

(3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.

(c) Unless consent is obtained as otherwise allowed by law, a physician, psychologist, counselor, or social worker may not counsel a child if consent is prohibited by a court order.

(d) A physician, psychologist, counselor, or social worker counseling a child under this section is not liable for damages except for damages resulting from the person's negligence or wilful misconduct.

(e) A parent, or, if applicable, managing conservator or guardian, who has not consented to counseling treatment of the child is not obligated to compensate a physician, psychologist, counselor, or social worker for counseling services rendered under this section.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995.

Sec. 32.005. Examination Without Consent of Abuse or Neglect of Child.

(a) Except as provided by Subsection (c), a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to treatment under this subchapter.

(b) An examination under this section may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

(c) Unless consent is obtained as otherwise allowed by law, a physician, dentist, or psychologist may not examine a child:

(1) 16 years of age or older who refuses to consent; or

(2) for whom consent is prohibited by a court order.

(d) A physician, dentist, or psychologist examining a child under this section is not liable for damages except for damages resulting from the physician's or dentist's negligence.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 1997, 75th Leg., ch. 575 (H.B. 1826), § 1, effective September 1, 1997.

Subchapter C

Miscellaneous Provisions

Section
32.201. Emergency Shelter or Care for Minors.

Section
32.202. Consent to Emergency Shelter or Care by Minor.
32.203. Consent by Minor to Housing or Care Provided Through Transitional Living Program.

Sec. 32.201. Emergency Shelter or Care for Minors.

(a) An emergency shelter facility may provide shelter and care to a minor and the minor's child or children, if any.

(b) An emergency shelter facility may provide shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor or the minor's child or children.

(c) Shelter or care provided under this section may not be provided after the 15th day after the date the shelter or care is commenced unless:

(1) the facility receives consent to continue services from the minor in accordance with Section 32.202; or

(2) the minor has qualified for financial assistance under Chapter 31, Human Resources Code, and is on the waiting list for housing assistance.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 20 (H.B. 655), § 1, effective April 20, 1995; am. Acts 2003, 78th Leg., ch. 192 (H.B. 1364), § 1, effective June 2, 2003.

Sec. 32.202. Consent to Emergency Shelter or Care by Minor.

(a) A minor may consent to emergency shelter or care to be provided to the minor or the minor's child or children, if any, under Section 32.201(c) if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(b) Consent by a minor to emergency shelter or care under this section is not subject to disaffirmance because of minority.

(c) An emergency shelter facility may, with or without the consent of the minor's parent, managing conservator, or guardian, provide emergency shelter or care to the minor or the minor's child or children under Section 32.201(c).

(d) An emergency shelter facility is not liable for providing emergency shelter or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the facility is liable for the facility's own acts of negligence.

(e) An emergency shelter facility may rely on the minor's written statement containing the grounds on which the minor has capacity to consent to emergency shelter or care.

(f) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 192 (H.B. 1364), § 2, effective June 2, 2003.

Sec. 32.203. Consent by Minor to Housing or Care Provided Through Transitional Living Program.

(a) In this section, "transitional living program" means a residential services program for children provided in a residential child-care facility licensed or certified by the Department of Family and Protective Services under Chapter 42, Human Resources Code, that:

(1) is designed to provide basic life skills training and the opportunity to practice those skills, with a goal of basic life skills development toward independent living; and

(2) is not an independent living program.

(b) A minor may consent to housing or care provided to the minor or the minor's child or children, if any, through a transitional living program if the minor is:

(1) 16 years of age or older and:

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income; or

(2) unmarried and is pregnant or is the parent of a child.

(c) Consent by a minor to housing or care under this section is not subject to disaffirmance because of minority.

(d) A transitional living program may, with or without the consent of the parent, managing conservator, or guardian, provide housing or care to the minor or the minor's child or children.

(e) A transitional living program must attempt to notify the minor's parent, managing conservator, or guardian regarding the minor's location.

(f) A transitional living program is not liable for providing housing or care to the minor or the minor's child or children if the minor consents as provided by this section, except that the program is liable for the program's own acts of negligence.

(g) A transitional living program may rely on a minor's written statement containing the grounds on which the minor has capacity to consent to housing or care provided through the program.

(h) To the extent of any conflict between this section and Section 32.003, Section 32.003 prevails.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 587 (S.B. 717), § 1, effective June 14, 2013.

CHAPTER 35A

Temporary Authorization for Inpatient Mental Health Services for Minor Child

Section
35A.001. Applicability.
35A.002. Temporary Authorization.
35A.003. Petition for Temporary Authorization.
35A.004. Notice; Hearing.
35A.005. Order for Temporary Authorization.

Sec. 35A.001. Applicability.

This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001(a)(1), (2), or (3), and who has had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

HISTORY: Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.002. Temporary Authorization.

A person described by Section 35A.001 may seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

HISTORY: Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.003. Petition for Temporary Authorization.

A petition for temporary authorization to consent to voluntary inpatient mental health services for a child must:

(1) be styled "ex parte" and be in the name of the child;

(2) be verified by the petitioner;

(3) state:

(A) the name, date of birth, and current physical address of the child;

(B) the name, date of birth, and current physical address of the petitioner; and

(C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;

(4) describe the status and location of any court proceeding in this or another state with respect to the child;

(5) describe the petitioner's relationship to the child;

(6) provide the dates during the preceding six months that the child has resided with the petitioner;

(7) contain a certificate of medical examination for mental illness prepared by a physician who has examined the child not earlier than the third day before the date the petition is filed and be accompanied by a sworn statement containing the physician's opinion, and the detailed reasons for that opinion, that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and

(8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

HISTORY: Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.004. Notice; Hearing.

(a) On receipt of the petition, the court shall set a hearing.

(b) A copy of the petition and notice of the hearing shall be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

HISTORY: Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

Sec. 35A.005. Order for Temporary Authorization.

(a) At the hearing on the petition, the court may hear evidence relating to the child's need for inpatient mental health services by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) The court shall dismiss the petition for temporary authorization if an objection is made by the child's parent, conservator, or guardian.

(c) The court shall grant the petition for temporary authorization only if the court finds:

(1) by a preponderance of the evidence that the child does not have available a parent, conservator, guardian, or other legal representative to give consent under Section 572.001, Health and Safety Code, for voluntary inpatient mental health services; and

(2) by clear and convincing evidence that the child is a person:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(d) Subject to Subsection (e), the order granting temporary authorization under this chapter expires on the earliest of:

(1) the date the petitioner requests that the child be discharged from the inpatient mental health facility;

(2) the date a physician determines that the criteria listed in Subsection (c)(2) no longer apply to the child; or

(3) subject to Subsection (e), the 10th day after the date the order for temporary authorization is issued under this section.

(e) The order granting temporary authorization continues in effect until the earlier occurrence of an event described by Subsection (d)(1) or (2) if the petitioner obtains an order for temporary managing conservatorship before the order expires as provided by Subsection (d)(3).

(f) A copy of an order granting temporary authorization must:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) be sent to the last known address of the child's parent, conservator, or guardian.

HISTORY: Acts 2019, 86th Leg., ch. 988 (S.B. 1238), § 1, effective September 1, 2019.

TITLE 3

JUVENILE JUSTICE CODE

Chapter

51. General Provisions

54. Judicial Proceedings

Chapter
55. Proceedings Concerning Children with Mental Illness or Intellectual Disability
56. Appeal
58. Records; Juvenile Justice Information System

CHAPTER 51

General Provisions

Section
51.10. Right to Assistance of Attorney; Compensation.
51.20. Physical or Mental Examination.
51.21. Mental Health Screening and Referral.

Sec. 51.10. Right to Assistance of Attorney; Compensation.

(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

(1) the detention hearing required by Section 54.01 of this code;

(2) the hearing to consider transfer to criminal court required by Section 54.02 of this code;

(3) the adjudication hearing required by Section 54.03 of this code;

(4) the disposition hearing required by Section 54.04 of this code;

(5) the hearing to modify disposition required by Section 54.05 of this code;

(6) hearings required by Chapter 55 of this code;

(7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and

(8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

(1) a hearing to consider transfer to criminal court as required by Section 54.02;

(2) an adjudication hearing as required by Section 54.03;

(3) a disposition hearing as required by Section 54.04;

(4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section 54.05(f); or

(5) hearings required by Chapter 55.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court shall order the retention of an attorney according to Subsection (d) or appoint an attorney according to Subsection (f).

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

(1) the child is not represented by an attorney;

(2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for support of the child is financially able to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(e) [Repealed.]

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

(j) The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Section 51.102(b)(2).

(k) [Repealed.]

(*l*) [Repealed.]

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1983, 68th Leg., ch. 44 (S.B. 422), art. 1 § 2, effective April 26, 1983; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 11, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 8, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 283 (H.B. 2319), § 4, effective September 1, 2003; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 41, effective September 1, 2015; Acts 2023, 88th Leg., ch. 256 (S.B. 1612), § 27(a)(3), effective September 1, 2023.

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 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 an 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.

(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 intellectual disability or suffers from chemical dependency, the probation department shall refer the child to the local mental health 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 intellectual disability or suffers from chemical dependency and the child is not currently receiving treatment services for the mental illness, intellectual disability, or chemical dependency, the probation department shall refer the child to the local mental health 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 authority, to a local intellectual and developmental disability authority, or to 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 4, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 828 (H.B. 1171), § 5(a), effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 6, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 7, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 225 (H.B. 144), § 1, effective September 1, 2013; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 3.01, effective September 1, 2023; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 10, effective September 1, 2023; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 1, effective September 1, 2023.

Sec. 51.21. Mental Health Screening and Referral.

(a) A probation department that administers the mental health screening instrument or clinical assessment required by Section 221.003, Human Resources Code, shall refer the child to the local mental health authority for assessment and evaluation if:

(1) the child's scores on the screening instrument or clinical assessment indicate a need for further mental health assessment and evaluation; and

(2) the department and child do not have access to an internal, contract, or private mental health professional.

(b) A probation department shall report each referral of a child to a local mental health authority made under Subsection (a) to the Texas Juvenile Justice Department in a format specified by the Texas Juvenile Justice Department.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 8, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.005, effective September 1, 2011; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 46, effective September 1, 2015.

CHAPTER 54

Judicial Proceedings

Section
54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.
54.04013. Special Commitment to Texas Juvenile Justice Department.
54.0408. Referral of Child Exiting Probation to Mental Health Authority or Intellectual and Developmental Disability Authority.

Sec. 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court.

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was:

(A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, guardians ad litem appointed under Section 51.11(d), or professional consultants in addition to the testimony of witnesses. At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or the child's parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) the sophistication and maturity of the child;

(3) the record and previous history of the child; and

(4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

(g) If the petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. Except as provided by Subsection (g-1), a child is not subject to criminal prosecution at any time for any offense arising out of a criminal transaction for which the juvenile court retains jurisdiction.

(g-1) A child may be subject to criminal prosecution for an offense committed under Chapter 19 or Section 49.08, Penal Code, if:

(1) the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction; and

(2) on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or Section 49.08, Penal Code, had not occurred.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure, except that if detention in a certified juvenile detention facility is authorized under Section 152.0015, Human Resources Code, the juvenile court may order the person to be detained in the facility pending trial or until the criminal court enters an order under Article 4.19, Code of Criminal Procedure. A transfer of custody made under this subsection is an arrest.

(h-1) If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(i) A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have committed a capital felony or an offense under Section 19.02, Penal Code;

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code; or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j). The person's parent, custodian, guardian, or guardian ad litem is not considered a party to a proceeding under Subsection (j) and it is not necessary to provide the parent, custodian, guardian, or guardian ad litem with notice.

(*l*) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j).

Except as otherwise provided by this subsection, a waiver of jurisdiction under Subsection (j) may be made without the necessity of conducting the diagnostic study or complying with the requirements of discretionary transfer proceedings under Subsection (d). If requested by the attorney for the person at least 10 days before the transfer hearing, the court shall order that the person be examined pursuant to Section 51.20(a) and that the results of the examination be provided to the attorney for the person and the attorney for the state at least five days before the transfer hearing.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection (m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by Section 54.01, except that the court shall order the respondent released unless it finds that the respondent:

(1) is likely to abscond or be removed from the jurisdiction of the court;

(2) may be dangerous to himself or herself or may threaten the safety of the public if released; or

(3) has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term of jail or prison and is likely to commit an offense if released.

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

(1) a certified juvenile detention facility as provided by Subsection (q); or

(2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

(s) If a child is transferred to criminal court under this section, only the petition for discretionary transfer, the order of transfer, and the order of commitment, if any, are a part of the district clerk's public record.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1975, 64th Leg., ch. 693 (S.B. 247), § 16, effective September 1, 1975; am. Acts 1987, 70th Leg., ch. 140 (S.B. 218), § 1 to 3, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 34, effective January 1, 1996; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 8, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1354 (S.B. 518), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1087 (S.B. 1209), § 4, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1103 (S.B. 1617), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 16, effective September 1, 2013; Acts 2021, 87th Leg., ch. 971 (S.B. 2049), § 3, effective September 1, 2021.

Sec. 54.04013. Special Commitment to Texas Juvenile Justice Department.

Notwithstanding any other provision of this code, after a disposition hearing held in accordance with Section 54.04, the juvenile court may commit a child who is found to have engaged in delinquent conduct that constitutes a felony offense to the Texas Juvenile Justice Department without a determinate sentence if the court makes a special commitment finding that the child has behavioral health or other special needs that cannot be met with the resources available in the community. The court should consider the findings of a validated risk and needs assessment and the findings of any other appropriate professional assessment available to the court.

HISTORY: Acts 2015, 84th Leg., ch. 962 (S.B. 1630), § 2, effective September 1, 2015.

Sec. 54.0408. Referral of Child Exiting Probation to Mental Health Authority or Intellectual and Developmental Disability Authority.

A juvenile probation officer shall refer a child who has been determined to have a mental illness or an intellectual disability to an appropriate local mental health authority or local intellectual and developmental disability authority at least three months before the child is to complete the child's juvenile probation term unless the child is currently receiving treatment from the local mental health authority or local intellectual and developmental disability authority of the county in which the child resides.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 14, effective September 1, 2005; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 3.02, effective September 1, 2023.

CHAPTER 55

Proceedings Concerning Children with Mental Illness or Intellectual Disability

Subchapter
A. General Provisions
B. Court-Ordered Mental Health Services for Child with Mental Illness
C. Child Unfit to Proceed As a Result of Mental Illness or Intellectual Disability
D. Lack of Responsibility for Conduct As a Result of Mental Illness or Intellectual Disability
E. Proceedings for Court-Ordered Mental Health or Residential Intellectual Disability Services

Subchapter A

General Provisions

Section
55.01. Definitions.
55.02. Mental Health and Intellectual Disability Jurisdiction.
55.03. Standards of Care.
55.04. Forensic Mental Examination.
55.05. Criteria for Court-Ordered Mental Health Services for Child.
55.06. Criteria for Court-Ordered Residential Intellectual Disability Services for Child.

Sec. 55.01. Definitions.

In this chapter:

(1) "Adaptive behavior" and "intellectual disability" have the meanings assigned by Section 591.003, Health and Safety Code.

(2) "Child with an intellectual disability" means a child determined by a physician or psychologist licensed in this state to have subaverage general intellectual functioning with deficits in adaptive behavior.

(3) "Child with mental illness" means a child determined by a physician or psychologist licensed in this state to have a mental illness.

(4) "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.

(5) "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 protect adequately against any danger the child poses to self or others.

(6) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(7) "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 to assist in the child's own defense.

(8) "Subaverage general intellectual functioning" means intelligence that is measured on standardized psychometric instruments of two or more standard deviations below the age-group mean for the instruments used.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.002, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

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 as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.003, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

Sec. 55.03. Standards of Care.

(a) Except as provided by this chapter, a child for whom inpatient or outpatient mental health services are 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 ordered by a court to a residential care facility due to an intellectual disability shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.004, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

Sec. 55.04. Forensic Mental Examination.

(a) In this section, "forensic mental examination" means an examination by a disinterested physician 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 is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for conduct due to mental illness or an intellectual disability.

(b) A juvenile court may order a forensic mental examination if 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 is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for conduct due to mental illness or an intellectual disability.

(c) To qualify for appointment as an expert under this chapter, a physician 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 date of the appointment.

(d) In addition to meeting the qualifications required by Subsection (c), to be appointed as an expert, a physician or psychologist must have completed six hours of required continuing education in courses in forensic psychiatry or psychology, as appropriate, in the 24 months preceding the appointment.

(e) A court may appoint as an expert a physician or psychologist who does not meet the requirements of Subsections (c) and (d) only if the court determines that exigent circumstances require the court to appoint an expert with specialized expertise to examine the child that is not ordinarily possessed by a physician or psychologist who meets the requirements of Subsections (c) and (d).

HISTORY: Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

Sec. 55.05. Criteria for Court-Ordered Mental Health Services for Child.

(a) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive temporary inpatient mental health services only if the court 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's self;

(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 to submit to treatment or is unwilling to submit to treatment.

(b) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive temporary outpatient mental health services only if the court finds:

(1) that appropriate mental health services are available to the child; and

(2) 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; and

(D) the child has an inability to effectively and voluntarily participate in outpatient treatment services, demonstrated by:

(i) any of the child's actions occurring within the two-year period preceding the date of 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 as to whether to submit to voluntary outpatient treatment.

(c) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive extended inpatient mental health services only if the court finds, from clear and convincing evidence, that, in addition to the findings in Subsection (a):

(1) the child's condition is expected to continue for more than 90 days; and

(2) the child has received court-ordered inpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, for at least 60 consecutive days during the preceding 12 months.

(d) A juvenile court may order a child who is subject to the jurisdiction of the juvenile court to receive extended outpatient mental health services only if, in addition to the findings in Subsection (b):

(1) the child's condition is expected to continue for more than 90 days; and

(2) the child has received:

(A) court-ordered inpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, for at least 60 consecutive days during the preceding 12 months; or

(B) court-ordered outpatient mental health services under this chapter or under Chapter 574, Health and Safety Code, during the preceding 60 days.

HISTORY: Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

Sec. 55.06. Criteria for Court-Ordered Residential Intellectual Disability Services for Child.

A child may not be court-ordered to receive services at 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;

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the child's needs; and

(5) an interdisciplinary team recommends placement in the residential care facility.

HISTORY: Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 2, effective September 1, 2023.

Subchapter B

Court-Ordered Mental Health Services for Child with Mental Illness

Section
55.11. Mental Illness Determination; Examination.
55.12. Initiation of Proceedings for Court-Ordered Mental Health Services.
55.13. Commitment Proceedings in Juvenile Court. [Renumbered]
55.14. Referral for Commitment Proceedings. [Renumbered]
55.15. Standards of Care; Expiration of Court Order for Mental Health Services.
55.16. Order for Mental Health Services; Stay of Proceedings.
55.17. Mental Health Services Not Ordered; Dissolution of Stay.
55.18. Discharge From Court-Ordered Inpatient or Outpatient Mental Health Services Before Reaching 18 Years of Age.
55.19. Discretionary Transfer to Criminal Court on 18th Birthday.

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 is a child with mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 55.04. The information obtained from the examination must include expert opinion as to:

(1) whether the child is a child with mental illness;

(2) whether the child meets the criteria for court-ordered mental health services under Section 55.05 for:

(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) if applicable, the specific criteria the child meets under Subdivision (2).

(c) After considering all relevant information, including information obtained from an examination under Section 55.04, the court shall:

(1) proceed under Section 55.12 if the court determines that evidence exists to support a finding that the child is a child with mental illness and that the child meets the criteria for court-ordered mental health services under Section 55.05; or

(2) dissolve the stay and continue the juvenile court proceedings if the court determines that evidence does not exist to support a finding that the child is a child with mental illness or that the child meets the criteria for court-ordered mental health services under Section 55.05.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 4, effective September 1, 2023.

Sec. 55.12. Initiation of 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 is a child with mental illness and that the child meets the criteria for court-ordered mental health services under Section 55.05, the court shall:

(1) initiate proceedings as provided by Section 55.65 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 55.68 to the appropriate court for the initiation of proceedings in that court to order temporary or extended mental health services for the child under this chapter and Subchapter C, Chapter 574, Health and Safety Code.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(a)); Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

Sec. 55.13. Commitment Proceedings in Juvenile Court. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 3, effective September 1, 2019; renumbered to Tex. Fam. Code § 55.65 by 2023, 88th Leg., S.B. 1585, § 19, effective September 1, 2023.

Sec. 55.14. Referral for Commitment Proceedings. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; renumbered to Tex. Fam. Code § 55.68 by 2023, 88th Leg., S.B. 1585, § 19, effective September 1, 2023.

Sec. 55.15. Standards of Care; Expiration of Court Order for Mental Health Services.

Treatment ordered under this subchapter for a child with mental illness must focus on the stabilization of the child's mental illness and on meeting 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 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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1975, 64th Leg., ch. 693 (S.B. 247), § 20, effective September 1, 1975; am. Acts 1991, 72nd Leg., ch. 76 (H.B. 902), § 9, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(c)); Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

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 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 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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(d)); Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

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 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 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

Sec. 55.18. Discharge From 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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1975, 64th Leg., ch. 693 (S.B. 247), § 21, effective September 1, 1975; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(e)); Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

Sec. 55.19. Discretionary Transfer to Criminal Court on 18th Birthday.

(a) The juvenile court 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 for whom the juvenile court or a court to which the child's case was referred under Section 55.12(2) 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 listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) A court conducting a waiver of jurisdiction and discretionary transfer hearing under this section shall conduct the hearing according to Sections 54.02(j), (k), and (l).

(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.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.02(f), (g); am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 7, effective January 1, 2004; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 5, effective September 1, 2023.

Subchapter C

Child Unfit to Proceed As a Result of Mental Illness or Intellectual Disability

Section	
55.31.	Unfitness to Proceed Determination; Examination.
55.32.	Hearing on Issue of Fitness to Proceed.
55.33.	Proceedings Following Finding of Unfitness to Proceed.
55.34.	Transportation to and from Facility.
55.35.	Information Required to Be Sent to Facility or Alternative Setting; Report to Court.
55.36.	Report That Child Is Fit to Proceed; Hearing on Objection.
55.37.	Report That Child Is Unfit to Proceed As a Result of Mental Illness; Initiation of Proceedings for Court-Ordered Mental Health Services.
55.38.	Commitment Proceedings in Juvenile Court for Mental Illness.

Section
55.39. Referral for Commitment Proceedings for Mental Illness.
55.40. Report That Child Is Unfit to Proceed As a Result of Intellectual Disability.
55.41. Commitment Proceedings in Juvenile Court for Mental Retardation.
55.42. Referral for Commitment Proceedings for Mental Retardation.
55.43. Restoration Hearing.
55.44. Discretionary Transfer to Criminal Court on 18th Birthday of Child.
55.45. Standards of Care; Notice of Release or Furlough.

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 55.04.

(d) During an examination ordered under this section, and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert:

(1) whether the child, as supported by current indications and the child's personal history:

(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; and

(3) the degree of impairment resulting from the child's 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 the child's fitness to proceed or explain why the expert is unable to state that opinion and include:

(1) the child's history and current status regarding any possible mental illness or intellectual disability;

(2) the child's developmental history as it relates to any possible mental illness or intellectual disability;

(3) the child's functional abilities related to fitness to stand trial;

(4) the relationship between deficits in the child's functional abilities related to fitness to proceed and any mental illness or intellectual disability; and

(5) if the expert believes the child is in need of remediation or restoration services, a discussion of:

(A) whether the child's abilities are likely to be remediated or restored within the period described by Section 55.33(a)(1), (2), or (3);

(B) whether the child may be adequately treated in an alternative setting;

(C) any recommended interventions to aid in the remediation or restoration of the child's fitness;

(D) whether the child meets criteria for court-ordered treatment or services under Section 55.05 or 55.06; and

(E) if applicable, the specific criteria the child meets under Paragraph (D).

(f) After considering all relevant information, including information obtained from an examination under Section 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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.04(a), (b)); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.006, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 6, effective September 1, 2023.

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.

(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 hearing separate from any other hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or 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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.04(c) to (f)); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.007, effective April 2, 2015.

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 inpatient mental health services or residential intellectual disability services criteria under Section 55.05 or 55.06, order the child placed with the Health and Human Services Commission 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 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 an intellectual disability; and

(B) the placement is agreed to in writing by the administrator of the facility; or

(3) subject to Subsection (d), 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 90 days, with the possibility of extension as ordered by the court.

(b) If a child receives treatment for mental illness or services for the child's intellectual disability on an outpatient basis in an alternative setting under Subsection (a)(3), juvenile probation departments may provide restoration classes in collaboration with the outpatient alternative setting.

(c) 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 ordered services, subject to an express appropriation of funds for the purpose.

(d) Before issuing an order described by Subsection (a)(3), the court shall consult with the local juvenile probation department, 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.008, effective April 2, 2015; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 1, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 7, effective September 1, 2023.

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.

(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).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 2, effective September 1, 2021.

Sec. 55.35. Information Required to Be Sent to Facility or Alternative Setting; Report to Court.

(a) If the juvenile court issues 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 alternative setting, as appropriate.

(b) Not later than the 75th day after the date the court issues an order under Section 55.33(a), the public or private facility or outpatient 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; 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.

(c) If the report under Subsection (b) states that the child is unfit to proceed, the report must also include an opinion and the reasons for that opinion as to whether the child meets the criteria for court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06.

(d) The report of an outpatient alternative setting collaborating with a juvenile probation department to provide restoration classes must include any information provided by the juvenile probation department regarding the child's assessment at the conclusion of the restoration classes.

(e) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.009, effective April 2, 2015; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 3, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 7, effective September 1, 2023.

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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 8, effective September 1, 2023.

Sec. 55.37. Report That Child Is Unfit to Proceed As a Result of Mental Illness; Initiation of 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 criteria for court-ordered mental health services under Section 55.05, the director of the public or private facility or outpatient alternative setting, as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described by Subchapter A, Chapter 574, Health and Safety Code. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.66 for temporary or extended mental health services, as provided by this chapter and Subchapter C, Chapter 574, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.68 to the appropriate court for the initiation of proceedings in that court for temporary or extended mental health services for the child under this chapter and Subchapter C, Chapter 574, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 9, effective September 1, 2023.

Sec. 55.38. Commitment Proceedings in Juvenile Court for Mental Illness. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 4, effective September 1, 2019; renumbered to Tex. Fam. Code § 55.66 by 2023, 88th Leg., S.B. 1585, § 20, effective September 1, 2023.

Sec. 55.39. Referral for Commitment Proceedings for Mental Illness. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

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 criteria for court-ordered residential intellectual disability services under 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 the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.67 in the juvenile court for 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 55.68 to the appropriate court for the initiation of proceedings in that court for court-ordered residential intellectual disability services for the child under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.010, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 9, effective September 1, 2023.

Sec. 55.41. Commitment Proceedings in Juvenile Court for Children with Intellectual Disability. [Renumbered]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 30, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.011, 1.012, effective April 2, 2015; renumbered to Tex. Fam. Code § 55.67 by 2023, 88th Leg., S.B. 1585, § 20, effective September 1, 2023.

Sec. 55.42. Referral for Commitment Proceedings for Children with Intellectual Disability. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.013, 1.014, effective April 2, 2015; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

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) ordered by a court to receive services at 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 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2007, 80th Leg., ch. 908, (H.B. 2884), § 13, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.015, effective April 2, 2015; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 4, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 10, effective September 1, 2023.

Sec. 55.44. Discretionary Transfer to Criminal Court on 18th Birthday of Child.

(a) The juvenile court 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 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 listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) A court conducting a waiver of jurisdiction and discretionary transfer hearing under this section shall conduct the hearing according to Sections 54.02(j), (k), and (l).

(c) If after the hearing the juvenile court waives its jurisdiction and transfers the case 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 35 (S.B. 1057), § 8, effective January 1, 2004; am. Acts 2007, 80th Leg., ch. 908, (H.B. 2884), § 14, effective September 1, 2007; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.016, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 11, effective September 1, 2023.

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 intellectual disability services for the child to be provided 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 intellectual disability services for the child or that referred the case to a court that ordered 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 services for the child or that referred the case to a court that ordered 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.

HISTORY: Enacted by Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 31, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 15, effective September 1, 2007; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.34, effective January 1, 2017; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 12, effective September 1, 2023.

Subchapter D

Lack of Responsibility for Conduct As a Result of Mental Illness or Intellectual Disability

Section
55.51. Lack of Responsibility for Conduct Determination; Examination.
55.52. Proceedings Following Finding of Lack of Responsibility for Conduct.
55.53. Transportation to and from Facility.
55.54. Information Required to Be Sent to Facility; Report to Court.
55.55. Report That Child Does Not Have Mental Illness or Intellectual Disability; Hearing on Objection.
55.56. Report That Child Has Mental Illness; Initiation of Commitment Proceedings.
55.57. Commitment Proceedings in Juvenile Court for Mental Illness.
55.58. Referral for Commitment Proceedings for Mental Illness.
55.59. Report That Child Has Intellectual Disability; Initiation of Proceedings for Court-Ordered Residential Intellectual Disability Services.
55.60. Commitment Proceedings in Juvenile Court for Children with Intellectual Disability. [Repealed]
55.61. Referral for Commitment Proceedings for Children with Intellectual Disability. [Repealed]

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 55.04. The information obtained from the examinations must include expert opinion as to:

(1) whether the child is a child with mental illness or 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 Section 55.05 or 55.06; and

(4) if applicable, the specific criteria the child meets under Subdivision (3).

(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.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 47, effective May 31, 1995; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999 (renumbered from Sec. 55.05); Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.018, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 13, effective September 1, 2023.

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 inpatient mental health services or residential intellectual disability services criteria under Section 55.05 or 55.06, order the child placed with the Health and Human Services Commission 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 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 an 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 90 days, 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 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, 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.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.019, effective April 2, 2015; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 5, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 14, effective September 1, 2023.

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).

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 6, effective September 1, 2021.

Sec. 55.54. Information Required to Be Sent to Facility or Alternative Setting; Report to Court.

(a) If the juvenile court issues 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 alternative setting, as appropriate.

(b) Not later than the 75th day after the date the court issues an order under Section 55.52(a), the public or private facility or 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; and

(2) states the opinion of the director of the facility or alternative setting as to whether the child is a child with mental illness or an intellectual disability.

(c) If the report under Subsection (b) states that the child is a child with mental illness or an intellectual disability, the report must include an opinion 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.

(d) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.020, effective April 2, 2015; Acts 2021, 87th Leg., ch. 814 (H.B. 2107), § 7, effective September 1, 2021; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 14, effective September 1, 2023.

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 is a child with mental illness or an intellectual disability and whether the child meets the criteria for 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 is a child with mental illness or an intellectual disability and that the child meets the criteria for court-ordered mental health services or court-ordered intellectual disability services under Section 55.05 or 55.06.

(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 criteria for court-ordered treatment services under Section 55.05 or 55.06, 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 criteria for court-ordered treatment services under Section 55.05 or 55.06, the court shall issue an appropriate order for court-ordered mental health services or court-ordered intellectual disability services.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.021, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 15, effective September 1, 2023.

Sec. 55.56. Report That Child Has Mental Illness; Initiation of Proceedings for Court-Ordered Mental Health Services.

If a report submitted under Section 55.54(b) states that a child is a child with mental illness and that the child meets the criteria for court-ordered mental health services under Section 55.05, the director of the public or private facility or alternative setting, as appropriate, shall submit to the court two certificates of medical examination for mental illness, as described by Subchapter A, Chapter 574, Health and Safety Code. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.66 in the juvenile court for court-ordered mental health services for the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.68 to the appropriate court for the initiation of proceedings in that court for court-ordered mental health services for the child under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 16, effective September 1, 2023.

Sec. 55.57. Commitment Proceedings in Juvenile Court for Mental Illness. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 5, effective September 1, 2019; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

Sec. 55.58. Referral for Commitment Proceedings for Mental Illness. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

Sec. 55.59. Report That Child Has Intellectual Disability; Initiation of Proceedings for Court-Ordered Residential Intellectual Disability Services.

If a report submitted under Section 55.54(b) states that a child is a child with an intellectual disability and that the child meets the criteria for court-ordered residential intellectual disability services under 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 55.67 for 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 55.68 for the initiation of proceedings in that court for court-ordered residential intellectual disability services for the child under Subtitle D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.022, effective April 2, 2015; Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 17, effective September 1, 2023.

Sec. 55.60. Commitment Proceedings in Juvenile Court for Children with Intellectual Disability. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 32, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.023, 1.024, effective April 2, 2015; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

Sec. 55.61. Referral for Commitment Proceedings for Children with Intellectual Disability. [Repealed]

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.025, 1.026, effective April 2, 2015; repealed by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 21, effective September 1, 2023.

Subchapter E

Proceedings for Court-Ordered Mental Health or Residential Intellectual Disability Services

Section

55.65. Proceedings in Juvenile Court for Child with Mental Illness.
55.66. Proceedings in Juvenile Court for Child Found Unfit to Proceed or Lacking Responsibility for Conduct Due to Mental Illness.
55.67. Proceedings in Juvenile Court for Child Found Unfit to Proceed or Lacking Responsibility for Conduct Due To Intellectual Disability.
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.

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 Sections 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 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 child's proposed treatment, as required by Section 574.012, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services not later than the third day before the date set for a hearing that may result in the court ordering the child to receive court-ordered outpatient mental health services, as required by Section 574.0125, Health and Safety Code;

(4) appoint 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; 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 to the parent's, managing conservator's, 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, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 3, effective September 1, 2019; renumbered from Tex. Fam. Code § 55.13 by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 19, effective September 1, 2023.

Sec. Sec. 55.66.. Proceedings in Juvenile Court for Child 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 Sections 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 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 child's proposed treatment, as required by Section 574.012, Health and Safety Code;

(3) identify the person responsible for court-ordered outpatient mental health services at least three days before the date of a hearing that may result in the court ordering the child to receive court-ordered outpatient mental health services, as required by Section 574.0125, 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 to the parent's, managing conservator's, 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, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 4, effective September 1, 2019; renumbered from Tex. Fam. Code § 55.38 by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 20, effective September 1, 2023.

Sec. 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 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 to the parent's, managing conservator's, 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 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, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 30, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1 (S.B. 219), §§ 1.011, 1.012, effective April 2, 2015; renumbered from Tex. Fam. Code § 55.41 by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 20, effective September 1, 2023.

Sec. 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 Section 55.12(2),

55.37(2), 55.40(2), 55.56(2), or 55.59(2), the juvenile court shall:

(1) send to the clerk of the court to which the case is referred all papers, including evaluations, examination reports, court findings, orders, verdicts, judgments, and reports from facilities and alternative settings, relating to:

(A) the child's mental illness or intellectual disability;

(B) the child's unfitness to proceed, if applicable; and

(C) the finding that the child was not responsible for the child's conduct, if applicable; 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 the clerk of 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, as applicable.

(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, if the court makes findings under Section 54.01 to support further detention of the child, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 14, effective September 1, 1999; renumbered from Tex. Fam. Code § 55.14 by Acts 2023, 88th Leg., ch. 1166 (S.B. 1585), § 19, effective September 1, 2023.

CHAPTER 56

Appeal

Section
56.01. Right to Appeal.

Sec. 56.01. Right to Appeal.

(a) Except as provided by Subsection (b-1), an appeal from an order of a juvenile court is to a court of appeals and the case may be carried to the Texas Supreme Court by writ of error or upon certificate, as in civil cases generally.

(b) The requirements governing an appeal are as in civil cases generally. When an appeal is sought by filing a notice of appeal, security for costs of appeal, or an affidavit of inability to pay the costs of appeal, and the filing is made in a timely fashion after the date the disposition order is signed, the appeal must include the juvenile court adjudication and all rulings contributing to that adjudication. An appeal of the adjudication may be sought notwithstanding that the adjudication order was signed more than 30 days before the date the notice of appeal, security for costs of appeal, or affidavit of inability to pay the costs of appeal was filed.

(b-1) A motion for new trial seeking to vacate an adjudication is:

(1) timely if the motion is filed not later than the 30th day after the date on which the disposition order is signed; and

(2) governed by Rule 21, Texas Rules of Appellate Procedure.

(c) An appeal may be taken:

(1) except as provided by Subsection (n), by or on behalf of a child from an order entered under:

(A) Section 54.02 respecting transfer of the child for prosecution as an adult;

(B) Section 54.03 with regard to delinquent conduct or conduct indicating a need for supervision;

(C) Section 54.04 disposing of the case;

(D) Section 54.05 respecting modification of a previous juvenile court disposition; or

(E) Chapter 55 by a juvenile court committing a child to a facility for persons with mental illness or intellectual disabilities; or

(2) by a person from an order entered under Section 54.11(i)(2) transferring the person to the custody of the Texas Department of Criminal Justice.

(d) A child has the right to:

(1) appeal, as provided by this subchapter;

(2) representation by counsel on appeal; and

(3) appointment of an attorney for the appeal if an attorney cannot be obtained because of indigency.

(e) On entering an order that is appealable under this section, the court shall advise the child and the child's parent, guardian, or guardian ad litem of the child's rights listed under Subsection (d) of this section.

(f) If the child and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney who represented the child before the juvenile court shall file a notice of appeal with the juvenile court and inform the court whether that attorney will handle the appeal. Counsel shall be appointed under the standards provided in Section 51.10 of this code unless the right to appeal is waived in accordance with Section 51.09 of this code.

(g) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

(g-1) An appeal from an order entered under Section 54.02 respecting transfer of the child for prosecution as an adult does not stay the criminal proceedings pending the disposition of that appeal.

(h) If the order appealed from takes custody of the child from the child's parent, guardian, or custodian or waives jurisdiction under Section 54.02 and transfers the child to criminal court for prosecution, the appeal has precedence over all other cases.

(h-1) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of an order waiving jurisdiction under Section 54.02 and transferring a child to criminal court for prosecution.

(i) The appellate court may affirm, reverse, or modify the judgment or order, including an order of disposition or modified disposition, from which appeal was taken. It may reverse or modify an order of disposition or modified order of disposition while affirming the juvenile court adjudication that the child engaged in delinquent conduct or conduct indicating a need for supervision. It may remand an order that it reverses or modifies for further proceedings by the juvenile court.

(j) Neither the child nor his family shall be identified in an appellate opinion rendered in an appeal or habeas corpus proceedings related to juvenile court proceedings under this title. The appellate opinion shall be styled, "In the matter of ____," identifying the child by his initials only.

(k) The appellate court shall dismiss an appeal on the state's motion, supported by affidavit showing that the appellant has escaped from custody pending the appeal and, to the affiant's knowledge, has not voluntarily returned to the state's custody on or before the 10th day after the date of the escape. The court may not dismiss an appeal, or if the appeal has been dismissed, shall reinstate the appeal, on the filing of an affidavit of an officer or other credible person showing that the appellant voluntarily returned to custody on or before the 10th day after the date of the escape.

(*l*) Repealed by Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 27(a)(8), eff. September 1, 2023.

(m) For purposes of determining indigency of the child under this section, the court shall consider the assets and income of the child, the child's parent, and any other person responsible for the support of the child.

(n) A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

(1) the court gives the child permission to appeal; or

(2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

(o) This section does not limit a child's right to obtain a writ of habeas corpus.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 544 (S.B. 111), § 1, effective September 1, 1973; am. Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 14, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 680 (H.B. 889), § 1, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 48, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 15, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 74 (H.B. 251), § 2, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 15, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 33, effective September 1, 2001; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.059, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 642 (H.B. 1688), § 2, effective September 1, 2009; Acts 2015, 84th Leg., ch. 74 (S.B. 888), § 3, effective September 1, 2015; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 11, effective September 1, 2023; Acts 2023, 88th Leg., ch. 256 (S.B. 1612), § 27(a)(8), effective September 1, 2023.

CHAPTER 58

Records; Juvenile Justice Information System

Subchapter A

Creation and Confidentiality of Juvenile Records

Section
58.0051. Interagency Sharing of Educational Records.
58.0052. Interagency Sharing of Certain Noneducational Records.
58.007. Confidentiality of Probation Department, Prosecutor, and Court Records.

Sec. 58.0051. Interagency Sharing of Educational Records.

(a) In this section:

(1) "Educational records" means records in the possession of a primary or secondary educational institution that contain information relating to a student, including information relating to the student's:

(A) identity;

(B) special needs;

(C) educational accommodations;

(D) assessment or diagnostic test results;

(E) attendance records;

(F) disciplinary records;

(G) medical records; and

(H) psychological diagnoses.

(2) "Juvenile service provider" means a governmental entity that provides juvenile justice or prevention, medical, educational, or other support services to a juvenile. The term includes:

(A) a state or local juvenile justice agency as defined by Section 58.101;

(B) health and human services agencies, as defined by Section 521.0001, Government Code, and the Health and Human Services Commission;

(C) the Department of Family and Protective Services;

(D) the Department of Public Safety;

(E) the Texas Education Agency;

(F) an independent school district;

(G) a juvenile justice alternative education program;

(H) a charter school;

(I) a local mental health authority or local intellectual and developmental disability authority;

(J) a court with jurisdiction over juveniles;

(K) a district attorney's office;

(L) a county attorney's office; and

(M) a children's advocacy center established under Section 264.402.

(3) "Student" means a person who:

(A) is registered or in attendance at a primary or secondary educational institution; and

(B) is younger than 18 years of age.

(b) At the request of a juvenile service provider, an independent school district or a charter school shall disclose to the juvenile service provider confidential information contained in the student's educational records if the student has been:

(1) taken into custody under Section 52.01; or

(2) referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision.

(c) An independent school district or charter school that discloses confidential information to a juvenile service provider under Subsection (b) may not destroy a record of the disclosed information before the seventh anniversary of the date the information is disclosed.

(d) An independent school district or charter school shall comply with a request under Subsection (b) regardless of whether other state law makes that information confidential.

(e) A juvenile service provider that receives confidential information under this section shall:

(1) certify in writing that the juvenile service provider receiving the confidential information has agreed not to disclose it to a third party, other than another juvenile service provider; and

(2) use the confidential information only to:

(A) verify the identity of a student involved in the juvenile justice system; and

(B) provide delinquency prevention or treatment services to the student.

(f) A juvenile service provider may establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. The protocol may specify the types of information that may be shared under this section without violating federal law, including any federal funding requirements. A juvenile service provider may enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. A juvenile service provider shall comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(g) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(h) A juvenile service provider that requests information under this section shall pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F, Chapter 552, Government Code, unless:

(1) a memorandum of understanding between the requesting provider and the disclosing provider:

(A) prohibits the payment of a fee;

(B) provides for the waiver of a fee; or

(C) provides an alternate method of assessing a fee;

(2) the disclosing provider waives the payment of the fee; or

(3) disclosure of the information is required by law other than this subchapter.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 217 (H.B. 1749), § 1, effective May 24, 1999; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 16, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 493 (S.B. 1106), § 2, effective June 17, 2011; Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 1, effective September 1, 2017; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 3.03, effective September 1, 2023; 2023, 88th Leg., H.B. 4611, § 2.06, effective April 1, 2025.

Sec. 58.0052. Interagency Sharing of Certain Noneducational Records.

(a) In this section:

(1) "Juvenile justice agency" has the meaning assigned by Section 58.101.

(2) "Juvenile service provider" has the meaning assigned by Section 58.0051.

(3) "Multi-system youth" means a person who:

(A) is younger than 19 years of age; and

(B) has received services from two or more juvenile service providers.

(4) "Personal health information" means personally identifiable information regarding a multi-system youth's physical or mental health or the provision of or payment for health care services, including case management services, to a multi-system youth. The term does not include clinical psychological notes or substance abuse treatment information.

(b) Subject to Subsection (c), at the request of a juvenile service provider, another juvenile service provider shall disclose to that provider a multi-system youth's personal health information or a history of governmental services provided to the multi-system youth, including:

(1) identity records;

(2) medical and dental records;

(3) assessment or diagnostic test results;

(4) special needs;

(5) program placements;

(6) psychological diagnoses; and

(7) other related records or information.

(b-1) In addition to the information provided under Subsection (b), the Department of Family and Protective Services and the Texas Juvenile Justice Department shall coordinate and develop protocols for sharing with each other, on request, any other information relating to a multi-system youth necessary to:

(1) identify and coordinate the provision of services to the youth and prevent duplication of services;

(2) enhance rehabilitation of the youth; and

(3) improve and maintain community safety.

(b-2) At the request of the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services, a state or local juvenile justice agency shall share with the department or contractor information in the possession of the juvenile justice agency that is necessary to improve and maintain community safety or that assists the department or contractor in the continuation of services for or providing services to a multi-system youth who is or has been in the custody or control of the juvenile justice agency.

(b-3) At the request of a state or local juvenile justice agency, the Department of Family and Protective Services or a single source continuum contractor who contracts with the department to provide foster care services shall, not later than the 14th business day after the date of the request, share with the juvenile justice agency information in the possession of the department or contractor that is necessary to improve and maintain community safety or that assists the agency in the continuation of services for or providing services to a multi-system youth who:

(1) is or has been in the temporary or permanent managing conservatorship of the department;

(2) is or was the subject of a family-based safety services case with the department;

(3) has been reported as an alleged victim of abuse or neglect to the department;

(4) is the perpetrator in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred; or

(5) is a victim in a case in which the department investigation concluded that there was a reason to believe that abuse or neglect occurred.

(c) A juvenile service provider may disclose personally identifiable information under this section only for the purposes of:

(1) identifying a multi-system youth;

(2) coordinating and monitoring care for a multi-system youth; and

(3) improving the quality of juvenile services provided to a multi-system youth.

(d) To the extent that this section conflicts with another law of this state with respect to confidential information held by a governmental agency, this section controls.

(e) A juvenile service provider may establish an internal protocol for sharing information with other juvenile service providers as necessary to efficiently and promptly disclose and accept the information. The protocol may specify the types of information that may be shared under this section without violating federal law, including any federal funding requirements. A juvenile service provider may enter into a memorandum of understanding with another juvenile service provider to share information according to the juvenile service provider's protocols. A juvenile service provider shall comply with this section regardless of whether the juvenile service provider establishes an internal protocol or enters into a memorandum of understanding under this subsection unless compliance with this section violates federal law.

(f) This section does not affect the confidential status of the information being shared. The information may be released to a third party only as directed by a court order or as otherwise authorized by law. Personally identifiable information disclosed to a juvenile service provider under this section is not subject to disclosure to a third party under Chapter 552, Government Code.

(g) This section does not affect the authority of a governmental agency to disclose to a third party for research purposes information that is not personally identifiable as provided by the governmental agency's protocol.

(h) A juvenile service provider that requests information under this section shall pay a fee to the disclosing juvenile service provider in the same amounts charged for the provision of public information under Subchapter F, Chapter 552, Government Code, unless:

(1) a memorandum of understanding between the requesting provider and the disclosing provider:

(A) prohibits the payment of a fee;

(B) provides for the waiver of a fee; or

(C) provides an alternate method of assessing a fee;

(2) the disclosing provider waives the payment of the fee; or

(3) disclosure of the information is required by law other than this subchapter.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 493 (S.B. 1106), § 2, effective June 17, 2011; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 5, effective September 1, 2015; Acts 2017, 85th Leg., ch. 1021 (H.B. 1521), § 1, effective June 15, 2017; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 3, effective September 1, 2017; Acts 2017, 85th Leg., ch. 746 (S.B. 1304), § 10, effective September 1, 2017; Acts 2019, 86th Leg., ch. 131 (H.B. 1760), § 2, effective September 1, 2019.

Sec. 58.007. Confidentiality of Probation Department, Prosecutor, and Court Records.

(a) This section applies only to the inspection, copying, and maintenance of a record concerning a child and the storage of information, by electronic means or otherwise, concerning the child from which a record could be generated and does not affect the collection, dissemination, or maintenance of information as provided by Subchapter B or D-1. This section does not apply to a record relating to a child that is:

(1) required or authorized to be maintained under the laws regulating the operation of motor vehicles in this state;

(2) maintained by a municipal or justice court;

(3) subject to disclosure under Chapter 62, Code of Criminal Procedure;

(4) required to be provided to the Federal Bureau of Investigation under Section 411.052, Government Code, for use with the National Instant Criminal Background Check System; or

(5) required to be forwarded to the Department of Public Safety under Section 411.0521, Government Code.

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title may be inspected or copied only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney representing the child's parent in a proceeding under this title;

(4) an attorney representing the child;

(5) a prosecuting attorney;

(6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

(7) a public or private agency or institution providing supervision of the child by arrangement of the juvenile

court, or having custody of the child under juvenile court order; or

(8) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

(b-1) A person who is the subject of the records is entitled to access the records for the purpose of preparing and presenting a motion or application to seal the records.

(c) An individual or entity that receives confidential information under this section may not disclose the information unless otherwise authorized by law.

(d) to (f) [Repealed.]

(g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record of adjudication, certify and provide the prosecuting attorney with a copy of the record. If a record has been sealed under this chapter, the juvenile court may not provide a copy of the record to a prosecuting attorney under this subsection.

(h) The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

(1) the child's name, including other names by which the child is known;

(2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the child; and

(4) a description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense.

(i) In addition to the authority to release information under Subsection (b)(6), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

(j) [Repealed.]

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 53, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 19, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 20, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 815 (H.B. 1583), § 1, effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1415 (H.B. 2145), § 20, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 18, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 37, effective September 1, 2001; am. Acts 2007, 80th Leg., ch. 879 (H.B. 1960), § 1, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 17, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.061, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 124 (S.B. 670), § 1, effective May 24, 2013; am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 28, effective September 1, 2013; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 61, effective September 1, 2015; Acts 2017, 85th Leg., ch. 746 (S.B. 1304), §§ 11, 12, 21(4), effective September 1, 2017; Acts 2019, 86th Leg., ch. 131 (H.B. 1760), §§ 3, 12(3), effective September 1, 2019; Acts 2023, 88th Leg., ch. 341 (S.B. 728), § 3, effective September 1, 2023.

TITLE 3A

TRUANCY COURT PROCEEDINGS

CHAPTER 65

Truancy Court Proceedings

Subchapter B

Initial Procedures

Section
65.065. Child Alleged to Be Mentally Ill.

Sec. 65.065. Child Alleged to Be Mentally Ill.

(a) A party may make a motion requesting that a petition alleging a child to have engaged in truant conduct be dismissed because the child has a mental illness, as defined by Section 571.003, Health and Safety Code. In response to the motion, the truancy court shall temporarily stay the proceedings to determine whether probable cause exists to believe the child has a mental illness. In making a determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) observe the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall dismiss the petition. If the court determines that evidence does not exist to support a finding that the child has a mental illness, the court shall dissolve the stay and continue with the truancy court proceedings.

HISTORY: Acts 2015, 84th Leg., ch. 935 (H.B. 2398), § 27, effective September 1, 2015.

TITLE 5

THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE E

PROTECTION OF THE CHILD

Chapter
264. Child Welfare Services
266. Medical Care and Educational Services for Children in Conservatorship of Department of Family and Protective Services

CHAPTER 264

Child Welfare Services

Subchapter
A. General Provisions
B. Foster Care
E. Children's Advocacy Centers

Subchapter A

General Provisions

Section
264.018. Required Notifications.

Sec. 264.018. Required Notifications.

(a) In this section:

(1) "Child-placing agency" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Psychotropic medication" has the meaning assigned by Section 266.001.

(3) "Residential child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(4) "Significant change in medical condition" means the occurrence of an injury or the onset of an illness that is life-threatening or may have serious long-term health consequences. The term includes:

(A) the occurrence or onset of an injury or illness that requires hospitalization for surgery or another procedure that is not minor emergency care; and

(B) a suicide attempt.

(5) "Significant event" means:

(A) a placement change, including failure by the department to locate an appropriate placement for at least one night;

(B) a significant change in medical condition;

(C) an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication;

(D) a major change in school performance or a serious disciplinary event at school;

(E) a placement in a qualified residential treatment program as that term is defined by 42 U.S.C. Section 672(k)(4) or placement in a residential treatment center as defined by Section 263.001, including meetings or conferences to determine the appropriateness of such a placement; or

(F) any event determined to be significant under department rule.

(b) The notification requirements of this section are in addition to other notice requirements provided by law, including Sections 263.0021, 264.107(g), and 264.123.

(c) The department must provide notice under this section in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible.

(d) Not later than 24 hours after an event described by this subsection, the department shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the department of:

(1) a significant change in medical condition of the child;

(2) the enrollment or participation of the child in a drug research program under Section 266.0041; and

(3) an initial prescription of a psychotropic medication.

(d-1) Except as provided by Subsection (d-2), as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, the department shall give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the primary care physician listed in the child's health passport before the end of the second business day after the day the organization receives the notification from the department.

(d-2) In this subsection, "catchment area" has the meaning assigned by Section 264.152. In a catchment area in which community-based care has been implemented, the single source continuum contractor that has contracted with the commission to provide foster care services in that catchment area shall, as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the child's primary care physician in accordance with Subsection (d-1).

(e) Not later than 48 hours before the department changes the residential child-care facility of a child in the managing conservatorship of the department, the department shall provide notice of the change to:

(1) the child's parent;

(2) an attorney ad litem appointed for the child under Chapter 107;

(3) a guardian ad litem appointed for the child under Chapter 107;

(4) a volunteer advocate appointed for the child under Chapter 107; and

(5) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee.

(f) Except as provided by Subsection (d-1), as soon as possible but not later than the 10th day after the date the department becomes aware of a significant event affecting a child in the conservatorship of the department, the department shall provide notice of the significant event to:

(1) the child's parent;

(2) an attorney ad litem appointed for the child under Chapter 107;

(3) a guardian ad litem appointed for the child under Chapter 107;

(4) a volunteer advocate appointed for the child under Chapter 107;

(5) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;

(6) a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and

(7) any other person determined by a court to have an interest in the child's welfare.

(g) For purposes of Subsection (f), if a hearing for the child is conducted during the 10-day notice period described by that subsection, the department shall provide notice of the significant event at the hearing.

(h) The department is not required to provide notice under this section to a parent of a child in the managing conservatorship of the department if:

(1) the department cannot locate the parent;

(2) a court has restricted the parent's access to the information;

(3) the child is in the permanent managing conservatorship of the department and the parent has not participated in the child's case for at least six months despite the department's efforts to involve the parent;

(4) the parent's rights have been terminated; or

(5) the department has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning.

(i) The department is not required to provide notice of a significant event under this section to the child-placing agency responsible for the placement of a child in the managing conservatorship of the department, a foster parent, a prospective adoptive parent, a relative of the child providing care to the child, or the director of the group home or general residential operation where the child resides if that agency or individual is required under a contract or other agreement to provide notice of the significant event to the department.

(j) A person entitled to notice from the department under this section shall provide the department with current contact information, including the person's e-mail address and the telephone number at which the person may most easily be reached. The person shall update the person's contact information as soon as possible after a change to the information. The department is not required to provide notice under this section to a person who fails to provide contact information to the department. The department may rely on the most recently provided contact information in providing notice under this section.

(k) To facilitate timely notification under this section, a residential child-care facility contracting with the department for 24-hour care shall notify the department, in the time provided by the facility's contract, of a significant event for a child who is in the conservatorship of the department and residing in the facility.

(*l*) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this section using a negotiated rulemaking process under Chapter 2008, Government Code.

HISTORY: Acts 2015, 84th Leg., ch. 722 (H.B. 1309), § 1, effective June 17, 2015; enacted by Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 48, effective September 1, 2015; Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 14, effective September 1, 2017; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 33, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 7.005, effective September 1, 2019; Acts 2021, 87th Leg., ch. 616 (S.B. 1575), § 2, effective September 1, 2021; Acts 2023, 88th Leg., ch. 956 (S.B. 1930), § 9, effective September 1, 2023; 2025, 89th Leg., ch. 222 (H.B. 2809), § 2, effective September 1, 2025.

Subchapter B

Foster Care

Section
264.121. Transitional Living Services Program.

Sec. 264.121. Transitional Living Services Program.

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve transition planning and increasing the availability of transitional family group decision-making to all youth age 14 or older in the department's permanent managing conservatorship, including enrolling the youth in the Preparation for Adult Living Program before the age of 16;

(2) coordinating with the commission to obtain authority, to the extent allowed by federal law, the state Medicaid plan, the Title IV-E state plan, and any waiver or amendment to either plan, necessary to:

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Transitional Living Services Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care;

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services will include, where feasible, referrals for short-term stays for youth needing housing;

(4) addressing barriers to participation in the Preparation for Adult Living Program for a youth who has a disability by making appropriate accommodations that allow the youth to meaningfully participate in the program; and

(5) documenting in the youth's case file any accommodations made under Subdivision (4).

(a-1) The department shall require a foster care provider to provide or assist youth who are age 14 or older in obtaining experiential life-skills training to improve their transition to independent living. Experiential life-skills training must be tailored to a youth's skills and abilities and must include training in practical activities that include grocery shopping, meal preparation and cooking, performing basic household tasks, and, when appropriate, using public transportation.

(a-2) The experiential life-skills training under Subsection (a-1) must include:

(1) a financial literacy education program developed in collaboration with the Office of Consumer Credit Commissioner and the State Securities Board that:

(A) includes instruction on:

(i) obtaining and interpreting a credit score, including information about different scores produced by credit reporting agencies;

(ii) protecting, repairing, and improving a credit score;

(iii) the risks of payday loans, unsecured loans, and motor vehicle title loans;

(iv) avoiding predatory lending practices, including an explanation of interest rates and usurious interest;

(v) identifying and avoiding financial scams;

(vi) saving money and accomplishing financial goals through prudent financial management practices;

(vii) using basic banking and accounting skills, including opening and using a bank account, balancing a checkbook, and creating a balanced budget;

(viii) using debit and credit cards responsibly;

(ix) understanding a paycheck and items withheld from a paycheck;

(x) understanding the time requirements and process for filing federal taxes;

(xi) protecting financial, credit, and personally identifying information in personal and professional relationships and online;

(xii) forms of identity and credit theft; and

(xiii) using insurance to protect against the risk of financial loss; and

(B) assists a youth who has a source of income to:

(i) establish a savings plan and, if available, a savings account that the youth can independently manage; and

(ii) prepare a monthly budget that includes the following expenses:

(a) rent based on the monthly rent for an apartment advertised for lease during the preceding month;

(b) utilities based on a reasonable utility bill in the area in which the youth resides;

(c) telephone service based on a reasonable bill for telephone service in the area in which the youth resides;

(d) Internet service based on a reasonable bill for Internet service in the area in which the youth resides; and

(e) other reasonable monthly expenses; and

(2) for youth who are 17 years of age or older, lessons related to:

(A) financing a motor vehicle, including information about the types of financing available for the purchase of a motor vehicle and the risks of subprime and buy-here-pay-here motor vehicle loans;

(B) insurance, including applying for and obtaining motor vehicle insurance and residential property insurance, including tenants insurance;

(C) civic engagement, including the process for registering to vote, the places to vote, and resources for information regarding upcoming elections; and

(D) the documents the youth is required to receive under Subsection (e-1) prior to being discharged from foster care and how those documents may be used.

(a-3) The department shall conduct an independent living skills assessment for all youth in the department's conservatorship who are 16 years of age or older.

(a-4) The department shall conduct an independent living skills assessment for all youth in the department's permanent managing conservatorship who are at least 14 years of age but younger than 16 years of age.

(a-5) The department shall annually update the assessment for each youth assessed under Subsections (a-3) and (a-4) to determine the independent living skills the youth learned during the preceding year to ensure that the department's obligation to prepare the youth for independent living has been met. The department shall conduct the annual update through the youth's plan of service in coordination with the youth, the youth's caseworker, the staff of the Preparation for Adult Living Program, and the youth's caregiver.

(a-6) [Expired].

(a-7) The department shall ensure that before a youth leaves foster care, each youth who is 14 years of age or older has an e-mail address through which the youth may receive encrypted copies of personal documents and records.

(b) In this section:

(1) "Local workforce development board" means a local workforce development board created under Chapter 2308, Government Code.

(2) "Preparation for Adult Living Program" means a program administered by the department as a component of the Transitional Living Services Program and includes independent living skills assessment, short-term financial assistance, basic self-help skills, and life-skills development and training regarding money management, health and wellness, job skills, planning for the future, housing and transportation, and interpersonal skills.

(3) "Transitional Living Services Program" means a program, administered by the department in accordance with department rules and state and federal law, for youth who are age 14 or older but not more than 21 years of age and are currently or were formerly in foster care, that assists youth in transitioning from foster care to independent living. The program provides transitional living services, Preparation for Adult Living Program services, and Education and Training Voucher Program services.

(c) At the time a child enters the Preparation for Adult Living Program, the department shall provide an information booklet to the child and the foster parent describing the program and the benefits available to the child, including extended Medicaid coverage until age 21, priority status with the Texas Workforce Commission, and the exemption from the payment of tuition and fees at institutions of higher education as defined by Section 61.003, Education Code. The information booklet provided to the child and the foster parent shall be provided in the primary language spoken by that individual.

(d) The department shall allow a youth who is at least 18 years of age to receive transitional living services, other than foster care benefits, while residing with a person who was previously designated as a perpetrator of abuse or neglect if the department determines that despite the person's prior history the person does not pose a threat to the health and safety of the youth.

(e) The department shall ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under Chapter 521, Transportation Code, on or before the date on which the youth turns 16 years of age. The department shall designate one or more employees in the Preparation for Adult Living Program as the contact person to assist a youth who has not been able to obtain the documents described by this subsection in a timely manner from the youth's primary caseworker. The department shall ensure that:

(1) all youth who are age 16 or older are provided with the contact information for the designated employees; and

(2) a youth who misplaces a document provided under this subsection receives assistance in obtaining a replacement document or information on how to obtain a duplicate copy, as appropriate.

(e-1) If, at the time a youth is discharged from foster care, the youth is at least 18 years of age or has had the disabilities of minority removed, the department shall provide to the youth, not later than the 30th day before the date the youth is discharged from foster care, the following information and documents unless the youth already has the information or document:

(1) the youth's birth certificate;

(2) the youth's immunization records;

(3) the information contained in the youth's health passport;

(4) a personal identification certificate under Chapter 521, Transportation Code;

(5) a social security card or a replacement social security card, if appropriate; and

(6) a Medicaid card or other proof of the youth's enrollment in Medicaid or an insurance card from a health plan that provides health coverage to foster youth.

(e-2) When providing a youth with a document required by Subsection (e-1), the department shall provide the youth with a copy and a certified copy of the document or with the original document, as applicable.

(e-3) When obtaining a copy of a birth certificate to provide to a foster youth or assisting a foster youth in obtaining a copy of a birth certificate, the department shall obtain the birth certificate from the state registrar. If the department is unable to obtain the birth certificate from the state registrar, the department may obtain the birth certificate from a local registrar or county clerk.

(e-4) The youth's caseworker shall:

(1) assist the youth with developing a plan for keeping the documents described by Subsection (e) in a safe place; and

(2) inform the youth about the documents the youth is required to receive before the date the youth is discharged from foster care.

(f) The department shall require a person with whom the department contracts for transitional living services for foster youth to provide or assist youth in obtaining:

(1) housing services;

(2) job training and employment services;

(3) college preparation services;

(4) services that will assist youth in obtaining a general education development certificate;

(5) services that will assist youth in developing skills in food preparation;

(6) nutrition education that promotes healthy food choices;

(7) a savings or checking account if the youth is at least 18 years of age and has a source of income;

(8) mental health services;

(9) financial literacy education and civic engagement lessons required under Subsection (a-2); and

(10) any other appropriate transitional living service identified by the department.

(g) For a youth taking prescription medication, the department shall ensure that the youth's transition plan includes provisions to assist the youth in managing the use of the medication and in managing the child's long-term physical and mental health needs after leaving foster care, including:

(1) provisions that inform the youth about:

(A) the use of the medication;

(B) the resources that are available to assist the youth in managing the use of the medication; and

(C) informed consent and the provision of medical care in accordance with Section 266.010(l); and

(2) for each youth who is 17 years of age or older and preparing to leave foster care, a program supervised by a health care professional to assist the youth with independently managing the youth's medication.

(h) An entity with which the department contracts for transitional living services for foster youth shall, when appropriate, partner with a community-based organization to assist the entity in providing the transitional living services.

(i) The department shall ensure that the transition plan for each youth 16 years of age or older includes provisions to assist the youth in managing the youth's housing needs after the youth leaves foster care, including provisions that:

(1) identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;

(2) if the youth's housing goals include residing with family or friends, state that the department has addressed the following with the youth:

(A) the length of time the youth expects to stay in the housing arrangement;

(B) expectations for the youth regarding paying rent and meeting other household obligations;

(C) the youth's psychological and emotional needs, as applicable; and

(D) any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;

(3) inform the youth about emergency shelters and housing resources, including supervised independent living and housing at colleges and universities, such as dormitories;

(4) require the department to review a common rental application and a common rental contract with the youth and ensure that the youth possesses all of the documentation required to obtain rental housing; and

(5) identify any individuals who are able to serve as cosigners or references on the youth's applications for housing.

(j) The department shall ensure that the transition plan for each youth 16 years of age or older includes information about securing or transferring governmental assistance the youth may qualify for, including:

(1) social security benefits;

(2) veteran or service member benefits;

(3) supplemental nutrition assistance;

(4) special supplemental nutrition assistance for women, infants, and children;

(5) temporary assistance for needy families; and

(6) housing assistance.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.51, effective September 1, 2005; Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 10, effective September 1, 2007; am. Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 17, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 57 (S.B. 983), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 407 (H.B. 1912), §§ 1, 2, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 168 (S.B. 1589), § 1, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 6, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 342 (H.B. 2111), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.194, effective April 2, 2015; Acts 2015, 84th Leg., ch. 81 (S.B. 1117), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 944 (S.B. 206), §§ 55, 56, effective September 1, 2015 (renumbered from Sec. 264.014); Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), §§ 7.004, 7.005, 21.001(18), effective September 1, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), §§ 55, 56, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 7.005, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(18), effective September 1, 2015; Acts 2017, 85th Leg., ch. 937 (S.B. 1758), § 6, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1024 (H.B. 123), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 707 (H.B. 53), § 1, effective September 1, 2019; Acts 2021, 87th Leg., ch. 793 (H.B. 700), § 1, effective September 1, 2021; 2025, 89th Leg., ch. 463 (H.B. 4655), § 1, effective September 1, 2025.

Subchapter E

Children's Advocacy Centers

Section
264.4031. Multidisciplinary Team Working Protocol.
264.405. Center Duties.

Sec. 264.4031. Multidisciplinary Team Working Protocol.

(a) A center shall adopt a multidisciplinary team working protocol. The working protocol must include:

(1) the center's mission statement;

(2) the role of each participating agency on the multidisciplinary team and the agency's commitment to the center;

(3) specific criteria for referral of cases for a multidisciplinary team response and specific criteria for the referral and provision of each service provided by the center;

(4) processes and general procedures for:

(A) the intake of cases, including direct referrals from participating agencies described by Section 264.403(a) and reports from the department that involve the suspected abuse or neglect of a child or the death of a child from abuse or neglect;

(B) the availability outside scheduled business hours of a multidisciplinary team response to cases and provision of necessary center services;

(C) information sharing to ensure the timely exchange of relevant information;

(D) forensic interviews;

(E) family and victim advocacy;

(F) medical evaluations and medical treatment;

(G) mental health evaluations and mental health treatment;

(H) multidisciplinary team case review; and

(I) case tracking; and

(5) provisions for addressing conflicts within the multidisciplinary team and for maintaining the confidentiality of information shared among members of the multidisciplinary team.

(b) The working protocol must be executed by the participating agencies required to enter into the memorandum of understanding under Section 264.403.

(c) The working protocol must be reexecuted:

(1) at least every three years;

(2) on a significant change to the working protocol; or

(3) on a change of a signatory of a participating agency.

HISTORY: Acts 2019, 86th Leg., ch. 396 (S.B. 821), § 3, effective September 1, 2019.

Sec. 264.405. Center Duties.

(a) A center shall:

(1) receive, review, and track department reports relating to the suspected abuse or neglect of a child or the death of a child from abuse or neglect to ensure a consistent, comprehensive approach to all cases that meet the criteria outlined in the multidisciplinary team working protocol adopted under Section 264.4031;

(2) coordinate the activities of participating agencies relating to abuse and neglect investigations and delivery of services to alleged abuse and neglect victims and their families;

(3) facilitate assessment of alleged abuse or neglect victims and their families to determine their need for services relating to the investigation of abuse or neglect andprovide needed services; and

(4) comply with the standards adopted under Section 264.409(c).

(b) A center shall provide:

(1) facilitation of a multidisciplinary team response to abuse or neglect allegations;

(2) a formal process that requires the multidisciplinary team to routinely discuss and share information regarding investigations, case status, and services needed by children and families;

(3) a system to monitor the progress and track the outcome of each case;

(4) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations at which a multidisciplinary team can meet to facilitate the efficient and appropriate disposition of abuse and neglect cases through the civil and criminal justice systems;

(5) culturally competent services for children and families throughout the duration of a case;

(6) victim support and advocacy services for children and families;

(7) forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(8) access to specialized medical evaluations and treatment services for victims of alleged abuse or neglect;

(9) evidence-based, trauma-focused mental health services for children and nonoffending members of the child's family; and

(10) opportunities for community involvement through a formalized volunteer program dedicated to supporting the center.

(c) The duties prescribed to a center under Subsection (a)(1) do not relieve the department or a law enforcement agency of its duty to investigate a report of abuse or neglect as required by other law.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 255 (S.B. 81), § 1, effective September 1, 1995; Acts 2019, 86th Leg., ch. 396 (S.B. 821), § 5, effective September 1, 2019.

CHAPTER 266

Medical Care and Educational Services for Children in Conservatorship of Department of Family and Protective Services

Section

266.003. Medical Services for Child Abuse and Neglect Victims.
266.0031. Committee on Pediatric Centers of Excellence Relating to Abuse and Neglect [Expired].
266.004. Consent for Medical Care.
266.0041. Enrollment and Participation in Certain Research Programs.
266.0042. Consent for Psychotropic Medication.
266.005. Finding on Health Care Consultation.
266.006. Health Passport.
266.007. Judicial Review of Medical Care.
266.008. Education Passport.
266.009. Provision of Medical Care in Emergency.
266.010. Consent to Medical Care by Foster Child at Least 16 Years of Age.
266.011. Monitoring Use of Psychotropic Drug.
266.012. Comprehensive Assessments.

Sec. 266.003. Medical Services for Child Abuse and Neglect Victims.

(a) The department shall collaborate with the commission and health care and child welfare professionals to design a comprehensive, cost-effective medical services delivery model, either directly or by contract, to meet the needs of children served by the department. The medical services delivery model must include:

(1) the designation of health care facilities with expertise in the forensic assessment, diagnosis, and treatment of child abuse and neglect as pediatric centers of excellence;

(2) a statewide telemedicine system to link department investigators and caseworkers with pediatric centers of excellence or other medical experts for consultation;

(3) identification of a medical home for each foster child on entering foster care at which the child will receive an initial comprehensive assessment as well as preventive treatments, acute medical services, and therapeutic and rehabilitative care to meet the child's ongoing physical and mental health needs throughout the duration of the child's stay in foster care;

(4) the development and implementation of health passports as described in Section 266.006;

(5) establishment and use of a management information system that allows monitoring of medical care that is provided to all children in foster care;

(6) the use of medical advisory committees and medical review teams, as appropriate, to establish treatment guidelines and criteria by which individual cases of medical care provided to children in foster care will be identified for further, in-depth review;

(7) development of the training program described by Section 266.004(h);

(8) provision for the summary of medical care described by Section 266.007; and

(9) provision for the participation of the person authorized to consent to medical care for a child in foster care in each appointment of the child with the provider of medical care.

(b) The department shall collaborate with health and human services agencies, community partners, the health care community, and federal health and social services programs to maximize services and benefits available under this section.

(c) The commissioner shall adopt rules necessary to implement this chapter.

(d) The commission is responsible for administering contracts with managed care providers for the provision of medical care to children in foster care. The department shall collaborate with the commission to ensure that medical care services provided by managed care providers match the needs of children in foster care.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 18, effective September 1, 2017.

Sec. 266.0031. Committee on Pediatric Centers of Excellence Relating to Abuse and Neglect [Expired].

Expired pursuant to Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 21, effective January 1, 2010.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1406 (S.B. 758), § 21, effective September 1, 2007.

Sec. 266.004. Consent for Medical Care.

(a) Medical care may not be provided to a child in foster care unless the person authorized by this section has provided consent.

(b) Except as provided by Section 266.010, the court may authorize the following persons to consent to medical care for a foster child:

(1) an individual designated by name in an order of the court, including the child's foster parent or the child's parent, if the parent's rights have not been terminated and the court determines that it is in the best interest of the parent's child to allow the parent to make medical decisions on behalf of the child; or

(2) the department or an agent of the department.

(c) If the person authorized by the court to consent to medical care is the department or an agent of the department, the department shall, not later than the fifth business day after the date the court provides authorization, file with the court and each party the name of the individual who will exercise the duty and responsibility of providing consent on behalf of the department. The department may designate the child's foster parent or the child's parent, if the parent's rights have not been terminated, to exercise the duty and responsibility of providing

consent on behalf of the department under this subsection. If the individual designated under this subsection changes, the department shall file notice of the change with the court and each party not later than the fifth business day after the date of the change.

(d) A physician or other provider of medical care acting in good faith may rely on the representation by a person that the person has the authority to consent to the provision of medical care to a foster child as provided by Subsection (b).

(e) The department, a person authorized to consent to medical care under Subsection (b), the child's parent if the parent's rights have not been terminated, a guardian ad litem or attorney ad litem if one has been appointed, or the person providing foster care to the child may petition the court for any order related to medical care for a foster child that the department or other person believes is in the best interest of the child. Notice of the petition must be given to each person entitled to notice under Section 263.0021(b).

(f) If a physician who has examined or treated the foster child has concerns regarding the medical care provided to the foster child, the physician may file a letter with the court stating the reasons for the physician's concerns. The court shall provide a copy of the letter to each person entitled to notice under Section 263.0021(b).

(g) On its own motion or in response to a petition under Subsection (e) or Section 266.010, the court may issue any order related to the medical care of a foster child that the court determines is in the best interest of the child.

(h) Notwithstanding Subsection (b), a person may not be authorized to consent to medical care provided to a foster child unless the person has completed a department-approved training program related to informed consent and the provision of all areas of medical care as defined by Section 266.001. This subsection does not apply to a parent whose rights have not been terminated unless the court orders the parent to complete the training.

(h-1) The training required by Subsection (h) must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications.

(h-2) Each person required to complete a training program under Subsection (h) must acknowledge in writing that the person:

(1) has received the training described by Subsection (h-1);

(2) understands the principles of informed consent for the administration of psychotropic medication; and

(3) understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consenting to the use of a psychotropic medication.

(i) The person authorized under Subsection (b) to consent to medical care of a foster child shall participate in each appointment of the child with the provider of the medical care.

(j) Nothing in this section requires the identity of a foster parent to be publicly disclosed.

(k) The department may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether the services are provided under the medical assistance program under Chapter 32, Human Resources Code, if the department otherwise has the authority under this section to consent to health care services.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 727 (H.B. 2580), § 1, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 8, effective September 1, 2013; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 65, effective September 1, 2015.

Sec. 266.0041. Enrollment and Participation in Certain Research Programs.

(a) Notwithstanding Section 266.004, a person may not authorize the enrollment of a foster child or consent to the participation of a foster child in a drug research program without a court order as provided by this section, unless the person is the foster child's parent and the person has been authorized by the court to make medical decisions for the foster child in accordance with Section 266.004.

(b) Before issuing an order authorizing the enrollment or participation of a foster child in a drug research program, the court must:

(1) appoint an independent medical advocate;

(2) review the report filed by the independent medical advocate regarding the advocate's opinion and recommendations concerning the foster child's enrollment and participation in the drug research program;

(3) consider whether the person conducting the drug research program:

(A) informed the foster child in a developmentally appropriate manner of the expected benefits of the drug research program, any potential side effects, and any available alternative treatments and received the foster child's assent to enroll the child to participate in the drug research program as required by the Code of Federal Regulations, 45 C.F.R. Section 46.408; or

(B) received informed consent in accordance with Subsection (h); and

(4) determine whether enrollment and participation in the drug research program is in the foster child's best interest and determine that the enrollment and participation in the drug research program will not interfere with the appropriate medical care of the foster child.

(c) An independent medical advocate appointed under Subsection (b) is not a party to the suit but may:

(1) conduct an investigation regarding the foster child's participation in a drug research program to the extent that the advocate considers necessary to determine:

(A) whether the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the best interest of the child for whom the advocate is appointed; and

(2) obtain and review copies of the foster child's relevant medical and psychological records and information describing the risks and benefits of the child's enrollment and participation in the drug research program.

(d) An independent medical advocate shall, within a reasonable time after the appointment, interview:

(1) the foster child in a developmentally appropriate manner, if the child is four years of age or older;

(2) the foster child's parent, if the parent is entitled to notification under Section 264.018;

(3) an advocate appointed by an institutional review board in accordance with the Code of Federal Regulations, 45 C.F.R. Section 46.409(b), if an advocate has been appointed;

(4) the medical team treating the foster child as well as the medical team conducting the drug research program; and

(5) each individual who has significant knowledge of the foster child's medical history and condition, including any foster parent of the child.

(e) After reviewing the information collected under Subsections (c) and (d), the independent medical advocate shall:

(1) submit a report to the court presenting the advocate's opinion and recommendation regarding whether:

(A) the foster child assented to or provided informed consent to the child's enrollment and participation in the drug research program; and

(B) the foster child's best interest is served by enrollment and participation in the drug research program; and

(2) at the request of the court, testify regarding the basis for the advocate's opinion and recommendation concerning the foster child's enrollment and participation in a drug research program.

(f) The court may appoint any person eligible to serve as the foster child's guardian ad litem, as defined by Section 107.001, as the independent medical advocate, including a physician or nurse or an attorney who has experience in medical and health care, except that a foster parent, employee of a substitute care provider or child placing agency providing care for the foster child, representative of the department, medical professional affiliated with the drug research program, independent medical advocate appointed by an institutional review board, or any person the court determines has a conflict of interest may not serve as the foster child's independent medical advocate.

(g) A person otherwise authorized to consent to medical care for a foster child may petition the court for an order permitting the enrollment and participation of a foster child in a drug research program under this section.

(h) Before a foster child, who is at least 16 years of age and has been determined to have the capacity to consent to medical care in accordance with Section 266.010, may be enrolled to participate in a drug research program, the person conducting the drug research program must:

(1) inform the foster child in a developmentally appropriate manner of the expected benefits of participation in the drug research program, any potential side effects, and any available alternative treatments; and

(2) receive written informed consent to enroll the foster child for participation in the drug research program.

(i) A court may render an order approving the enrollment or participation of a foster child in a drug research program involving an investigational new drug before appointing an independent medical advocate if:

(1) a physician recommends the foster child's enrollment or participation in the drug research program to provide the foster child with treatment that will prevent the death or serious injury of the child; and

(2) the court determines that the foster child needs the treatment before an independent medical advocate could complete an investigation in accordance with this section.

(j) As soon as practicable after issuing an order under Subsection (i), the court shall appoint an independent medical advocate to complete a full investigation of the foster child's enrollment and participation in the drug research program in accordance with this section.

(k) This section does not apply to:

(1) a drug research study regarding the efficacy of an approved drug that is based only on medical records, claims data, or outcome data, including outcome data gathered through interviews with a child, caregiver of a child, or a child's treating professional;

(2) a retrospective drug research study based only on medical records, claims data, or outcome data; or

(3) the treatment of a foster child with an investigational new drug that does not require the child's enrollment or participation in a drug research program.

(*l*) The department shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and the relevant committees in both houses of the legislature, a report regarding:

(1) the number of foster children who enrolled or participated in a drug research program during the previous year;

(2) the purpose of each drug research program in which a foster child was enrolled or participated; and

(3) the number of foster children for whom an order was issued under Subsection (i).

(m) A foster parent or any other person may not receive a financial incentive or any other benefit for recommending or consenting to the enrollment and participation of a foster child in a drug research program.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 506 (S.B. 450), § 2, effective September 1, 2007; Acts 2015, 84th Leg., ch. 722 (H.B. 1309), § 3, effective June 17, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 66, effective September 1, 2015.

Sec. 266.0042. Consent for Psychotropic Medication.

Consent to the administration of a psychotropic medication is valid only if:

(1) the consent is given voluntarily and without undue influence; and

(2) the person authorized by law to consent for the foster child receives verbally or in writing information that describes:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication; and

(E) the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 9, effective September 1, 2013.

Sec. 266.005. Finding on Health Care Consultation.

If a court finds that a health care professional has been consulted regarding a health care service, procedure, or treatment for a child in the conservatorship of the department and the court declines to follow the recommendation of the health care professional, the court shall make findings in the record supporting the court's order.

HISTORY: Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 38, effective September 1, 2017.

Sec. 266.006. Health Passport.

(a) The commission, in conjunction with the department, and with the assistance of physicians and other health care providers experienced in the care of foster children and children with disabilities and with the use of electronic health records, shall develop and provide a health passport for each foster child. The passport must be maintained in an electronic format and use the department's existing computer resources to the greatest extent possible.

(b) The executive commissioner, in collaboration with the commissioner, shall adopt rules specifying the information required to be included in the passport. The required information may include:

(1) the name and address of each of the child's physicians and health care providers;

(2) a record of each visit to a physician or other health care provider, including routine checkups conducted in accordance with the Texas Health Steps program;

(3) an immunization record that may be exchanged with ImmTrac;

(4) a list of the child's known health problems and allergies;

(5) information on all medications prescribed to the child in adequate detail to permit refill of prescriptions, including the disease or condition that the medication treats; and

(6) any other available health history that physicians and other health care providers who provide care for the child determine is important.

(c) The system used to access the health passport must be secure and maintain the confidentiality of the child's health records.

(d) Health passport information shall be part of the department's record for the child as long as the child remains in foster care.

(e) The commission, in collaboration with the department, shall provide training or instructional materials to foster parents, physicians, and other health care providers regarding use of the health passport.

(f) The department shall make health passport information available in printed and electronic formats to the following individuals when a child is discharged from foster care:

(1) the child's legal guardian, managing conservator, or parent; or

(2) the child, if the child is at least 18 years of age or has had the disabilities of minority removed.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 19, effective September 1, 2017.

Sec. 266.007. Judicial Review of Medical Care.

(a) At each hearing under Chapter 263, or more frequently if ordered by the court, the court shall review a summary of the medical care provided to the foster child since the last hearing. The summary must include information regarding:

(1) the nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;

(2) all medical and mental health treatment that the child is receiving and the child's progress with the treatment;

(3) any medication prescribed for the child, the condition, diagnosis, and symptoms for which the medication was prescribed, and the child's progress with the medication;

(4) for a child receiving a psychotropic medication:

(A) any psychosocial therapies, behavior strategies, or other non-pharmacological interventions that have been provided to the child; and

(B) the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by Section 266.011;

(5) the degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;

(6) any adverse reaction to or side effects of any medical treatment provided to the child;

(7) any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis;

(8) any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet; and

(9) other information required by department rule or by the court.

(b) At or before each hearing under Chapter 263, the department shall provide the summary of medical care described by Subsection (a) to:

(1) the court;

(2) the person authorized to consent to medical treatment for the child;

(3) the guardian ad litem or attorney ad litem, if one has been appointed by the court;

(4) the child's parent, if the parent's rights have not been terminated; and

(5) any other person determined by the department or the court to be necessary or appropriate for review of the provision of medical care to foster children.

(c) At each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court

the child's views on the medical care being provided to the child.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 12, effective September 1, 2013.

Sec. 266.008. Education Passport.

(a) The department shall develop an education passport for each foster child. The department shall determine the format of the passport. The passport may be maintained in an electronic format. The passport must contain educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other educational information the department determines is important.

(b) The department shall maintain the passport as part of the department's records for the child as long as the child remains in foster care.

(c) The department shall make the passport available to:

(1) any person authorized by law to make educational decisions for the foster child;

(2) the person authorized to consent to medical care for the foster child; and

(3) a provider of medical care to the foster child if access to the foster child's educational information is necessary to the provision of medical care and is not prohibited by law.

(d) The department shall collaborate with the Texas Education Agency to develop policies and procedures to ensure that the needs of foster children are met in every school district.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 688 (H.B. 2619), § 8, effective September 1, 2013; Acts 2017, 85th Leg., ch. 316 (H.B. 5), § 20, effective September 1, 2017.

Sec. 266.009. Provision of Medical Care in Emergency.

(a) Consent or court authorization for the medical care of a foster child otherwise required by this chapter is not required in an emergency during which it is immediately necessary to provide medical care to the foster child to prevent the imminent probability of death or substantial bodily harm to the child or others, including circumstances in which:

(1) the child is overtly or continually threatening or attempting to commit suicide or cause serious bodily harm to the child or others; or

(2) the child is exhibiting the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the child's health in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of any bodily organ or part.

(b) The physician providing the medical care or designee shall notify the person authorized to consent to medical care for a foster child about the decision to provide medical care without consent or court authorization in an emergency not later than the second business day after the date of the provision of medical care under this section. This notification must be documented in the foster child's health passport.

(c) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005.

Sec. 266.010. Consent to Medical Care by Foster Child at Least 16 Years of Age.

(a) A foster child who is at least 16 years of age may consent to the provision of medical care, except as provided by Chapter 33, if the court with continuing jurisdiction determines that the child has the capacity to consent to medical care. If the child provides consent by signing a consent form, the form must be written in language the child can understand.

(b) A court with continuing jurisdiction may make the determination regarding the foster child's capacity to consent to medical care during a hearing under Chapter 263 or may hold a hearing to make the determination on its own motion. The court may issue an order authorizing the child to consent to all or some of the medical care as defined by Section 266.001. In addition, a foster child who is at least 16 years of age, or the foster child's attorney ad litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.5031.

(c) If the court determines that a foster child lacks the capacity to consent to medical care, the person authorized by the court under Section 266.004 shall continue to provide consent for the medical care of the foster child.

(d) If a foster child who is at least 16 years of age and who has been determined to have the capacity to consent to medical care refuses to consent to medical care and the department or private agency providing substitute care or case management services to the child believes that the medical care is appropriate, the department or the private agency may file a motion with the court requesting an order authorizing the provision of the medical care.

(e) The motion under Subsection (d) must include:

(1) the child's stated reasons for refusing the medical care; and

(2) a statement prepared and signed by the treating physician that the medical care is the proper course of treatment for the foster child.

(f) If a motion is filed under Subsection (d), the court shall appoint an attorney ad litem for the foster child if one has not already been appointed. The foster child's attorney ad litem shall:

(1) discuss the situation with the child;

(2) discuss the suitability of the medical care with the treating physician;

(3) review the child's medical and mental health records; and

(4) advocate to the court on behalf of the child's expressed preferences regarding the medical care.

(g) The court shall issue an order authorizing the provision of the medical care in accordance with a motion under Subsection (d) to the foster child only if the court finds, by clear and convincing evidence, after the hearing that the medical care is in the best interest of the foster child and:

(1) the foster child lacks the capacity to make a decision regarding the medical care;

(2) the failure to provide the medical care will result in an observable and material impairment to the growth, development, or functioning of the foster child; or

(3) the foster child is at risk of suffering substantial bodily harm or of inflicting substantial bodily harm to others.

(h) In making a decision under this section regarding whether a foster child has the capacity to consent to medical care, the court shall consider:

(1) the maturity of the child;

(2) whether the child is sufficiently well informed to make a decision regarding the medical care; and

(3) the child's intellectual functioning.

(i) In determining whether the medical care is in the best interest of the foster child, the court shall consider:

(1) the foster child's expressed preference regarding the medical care, including perceived risks and benefits of the medical care;

(2) likely consequences to the foster child if the child does not receive the medical care;

(3) the foster child's prognosis, if the child does receive the medical care; and

(4) whether there are alternative, less intrusive treatments that are likely to reach the same result as provision of the medical care.

(j) This section does not apply to emergency medical care. An emergency relating to a foster child who is at least 16 years of age, other than a child in an inpatient mental health facility, is governed by Section 266.009.

(k) This section does not apply to the administration of medication under Subchapter G, Chapter 574, Health and Safety Code, to a foster child who is at least 16 years of age and who is placed in an inpatient mental health facility.

(*l*) Before a foster child reaches the age of 16, the department or the private agency providing substitute care or case management services to the foster child shall advise the foster child of the right to a hearing under this section to determine whether the foster child may consent to medical care. The department or the private agency providing substitute care or case management services shall provide the foster child with training on informed consent and the provision of medical care as part of the Preparation for Adult Living Program.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 1.65(a), effective September 1, 2005; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 67, effective September 1, 2015.

Sec. 266.011. Monitoring Use of Psychotropic Drug.

The person authorized to consent to medical treatment for a foster child prescribed a psychotropic medication shall ensure that the child has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

(1) appropriately monitor the side effects of the medication; and

(2) determine whether:

(A) the medication is helping the child achieve the treatment goals; and

(B) continued use of the medication is appropriate.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 204 (H.B. 915), § 13, effective September 1, 2013.

Sec. 266.012. Comprehensive Assessments.

(a) Not later than the 45th day after the date a child enters the conservatorship of the department, the child shall receive:

(1) a developmentally appropriate comprehensive assessment that includes:

(A) a screening for trauma; and

(B) interviews with individuals who have knowledge of the child's needs; and

(2) a screening for risk of commercial sexual exploitation using a validated, evidenced-informed tool selected by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, if:

(A) validation guidelines based on the child's age indicate the screening is appropriate; or

(B) concerns of commercial sexual exploitation exist.

(b) The department shall develop guidelines regarding the contents of an assessment report.

(c) A single source continuum contractor under Subchapter B-1, Chapter 264, providing therapeutic foster care services to a child shall ensure that the child receives a comprehensive assessment under this section at least once every 90 days.

HISTORY: Acts 2015, 84th Leg., ch. 11 (S.B. 125), § 1, effective September 1, 2015; Acts 2017, 85th Leg., ch. 319 (S.B. 11), § 22, effective September 1, 2017; 2025, 89th Leg., H.B. 451, § 1, effective September 1, 2025.

GOVERNMENT CODE

Title
2. Judicial Branch
3. Legislative Branch
4. Executive Branch
7. Intergovernmental Relations

TITLE 2

JUDICIAL BRANCH

Subtitle
A. Courts
D. Judicial Personnel and Officials
F. Court Administration
K. Specialty Courts
L. Court Professions Regulation

SUBTITLE A

COURTS

Chapter
21. General Provisions
22. Appellate Courts
25. Statutory County Courts
26. Constitutional County Courts

CHAPTER 21

General Provisions

Section
21.009. Definitions.

Sec. 21.009. Definitions.

In this title:

(1) "County court" means the court created in each county by Article V, Section 15, of the Texas Constitution.

(2) "Statutory county court" means a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law, but does not include statutory probate courts as defined by Chapter 22, Estates Code.

(3) "County judge" means the judge of the county court.

(4) "Statutory probate court" has the meaning assigned by Chapter 22, Estates Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.02, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 16.01(18), effective August 28, 1989 (renumbered from Sec. 21.008); am. Acts 1991, 72nd Leg., ch. 394 (S.B. 542), § 1, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 1, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 1, effective September 1, 1999; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.021, effective September 1, 2017.

CHAPTER 22

Appellate Courts

Subchapter
A. Supreme Court
B. Court of Criminal Appeals

Subchapter A

Supreme Court

Section
22.0135. Judicial Guidance Related to Child Protective Services Cases and Juvenile Cases.
22.017. Grants by Commissions Established by Supreme Court.

Sec. 22.0135. Judicial Guidance Related to Child Protective Services Cases and Juvenile Cases.

(a) The supreme court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, annually shall provide guidance to judges who preside over child protective services cases or juvenile cases to establish greater uniformity across the state for:

(1) in child protective services cases, issues related to:

(A) placement of children with severe mental health issues;

(B) changes in placement; and

(C) final termination of parental rights; and

(2) in juvenile cases, issues related to:

(A) placement of children with severe mental health issues;

(B) the release of children detained in juvenile detention facilities;

(C) certification of juveniles to stand trial as adults;

(D) a child's appearance before a court in a judicial proceeding, including the use of a restraint on the child and the clothing worn by the child during the proceeding; and

(E) commitment of children to the Texas Juvenile Justice Department.

(b) The supreme court shall adopt the rules necessary to accomplish the purposes of this section.

HISTORY: Acts 2019, 86th Leg., ch. 844 (H.B. 2737), § 1, effective September 1, 2019.

Sec. 22.017. Grants by Commissions Established by Supreme Court.

(a) In this section:

(1) "Children's commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(2) "Mental health commission" means the Texas Judicial Commission on Mental Health established by the supreme court.

(b) The children's commission shall develop and administer a program to provide grants from available funds for initiatives that will:

(1) improve well-being, safety, and permanency outcomes in child protection cases; or

(2) enhance due process for the parties or the timeliness of resolution in cases involving the welfare of a child.

(c) The children's commission may develop and administer a program to provide grants from available funds for:

(1) initiatives designed to prevent or minimize the involvement of children in the juvenile justice system or promote the rehabilitation of children involved in the juvenile justice system; and

(2) any other initiatives identified by the children's commission or the supreme court to improve the administration of justice for children.

(d) To be eligible for a grant administered by the children's commission under this section, a prospective recipient must:

(1) use the grant money to:

(A) improve well-being, safety, or permanency outcomes in child protection cases;

(B) enhance due process for the parties or the timeliness of resolution in cases involving the welfare of a child;

(C) prevent or minimize the involvement of children in the juvenile justice system or promote the rehabilitation of children involved in the juvenile justice system; or

(D) accomplish any other initiatives identified by the children's commission or the supreme court to improve the administration of justice for children; and

(2) apply for the grant in accordance with procedures developed by the children's commission and comply with any other requirements of the supreme court.

(e) The mental health commission may develop and administer a program to provide grants from available funds for initiatives that will improve the administration of justice for individuals with mental health needs or an intellectual or developmental disability.

(f) To be eligible for a grant administered by the mental health commission under this section, a prospective recipient must:

(1) use the grant money to improve the administration of justice for individuals with mental health needs or an intellectual or developmental disability; and

(2) apply for the grant in accordance with procedures developed by the mental health commission and comply with any other requirements of the supreme court.

(g) If the children's commission or the mental health commission awards a grant under this section, the commission administering the grant shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

(h) The children's commission and the mental health commission may accept gifts, grants, and donations for purposes of this section.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 8.02, effective January 1, 2012; Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 12.01, effective September 1, 2019.

Subchapter B

Court of Criminal Appeals

Section
22.1106. Judicial Instruction Related to Court-Ordered Outpatient Mental Health Services.

Sec. 22.1106. Judicial Instruction Related to Court-Ordered Outpatient Mental Health Services.

The court of criminal appeals shall ensure that judicial training related to court-ordered outpatient mental health services is provided at least once every year. The instruction may be provided at the annual Judicial Education Conference.

HISTORY: Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 6, effective September 1, 2019.

CHAPTER 25

Statutory County Courts

Subchapter
A. General Provisions
B. General Provisions Relating to Statutory Probate Courts

Subchapter A

General Provisions

Section
25.0002. Definitions.
25.0003. Jurisdiction.
25.0012. Exchange of Judges in Certain County Courts at Law and County Criminal Courts.

Sec. 25.0002. Definitions.

In this chapter:

(1) "Criminal law cases and proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) "Family law cases and proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code.

(3) "Juvenile law cases and proceedings" includes all cases and proceedings brought under Title 3, Family Code.

(4) "Mental health cases and proceedings" includes all cases and proceedings brought under Chapter 462, Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.01, effective January 1, 2012.

Sec. 25.0003. Jurisdiction.

(a) A statutory county court has jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.

(b) A statutory county court does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court of each county.

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concur-

rent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $325,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

(d) Except as provided by Subsection (e), a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts.

(e) In a county that has a statutory probate court, a statutory probate court is the only county court created by statute with probate jurisdiction.

(f) A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Estates Code.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 746 (H.B. 66), §§ 2, 3, effective October 1, 1991; am. Acts 1999, 76th Leg., ch. 431 (S.B. 1150), § 2, effective September 1, 1999; am. Acts 2005, 79th Leg., ch. 265 (H.B. 7), § 6.002, effective September 1, 2005; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.02, effective January 1, 2012; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.022, effective September 1, 2017; Acts 2019, 86th Leg., ch. 696 (S.B. 2342), § 2, effective September 1, 2020; Acts 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 2.02, effective December 4, 2025.

Sec. 25.0012. Exchange of Judges in Certain County Courts at Law and County Criminal Courts.

In any county with a population of more than 300,000, the judge of a county criminal court and the judge of a county court at law may hold court for or with one another. The county criminal court has the necessary civil jurisdiction to hold court for the county court at law.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987.

Subchapter B

General Provisions Relating to Statutory Probate Courts

Section
25.0022. Administration of Statutory Probate Courts.

Sec. 25.0022. Administration of Statutory Probate Courts.

(a) "Statutory probate court" has the meaning assigned by Chapter 22, Estates Code.

(b) The judges of the statutory probate courts shall elect from their number a presiding judge of the statutory probate courts. The presiding judge serves a four-year term from the date of qualification as the presiding judge.

(c) The presiding judge may perform the acts necessary to carry out this section and to improve the management of the statutory probate courts and the administration of justice.

(d) The presiding judge shall:

(1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;

(2) advise local statutory probate court judges on case flow management practices and auxiliary court services;

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

(5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;

(7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;

(8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions;

(9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court or a former or retired justice of an appellate court to hear a case under Section 25.002201(a) or 25.00255, as applicable; and

(10) require the local administrative judge for statutory probate courts in a county to ensure that all statutory probate courts in the county comply with Chapter 37.

(e) In addition to all other compensation, expenses, and perquisites authorized by law, the presiding judge shall be paid for performing the duties of a presiding judge an annual salary equal to the maximum salary authorized by Section 74.051(b) for a presiding judge of an administrative judicial region. The presiding judge is entitled to receive reasonable expenses incurred in administering those duties. The state shall pay $5,000 of the salary in equal monthly installments from amounts deposited in the judicial fund and appropriated for that purpose, and the remainder of the salary and expenses is paid by the counties that have statutory probate courts, apportioned according to the number of statutory probate courts in the county.

(f) Each county pays annually to the presiding judge, from fees allocated to the judicial education and support fund under Section 135.102, Local Government Code, the amount of the salary apportioned as provided by this section and the other expenses authorized by this section. The presiding judge shall place each county's payment of salary and other expenses in an administrative fund, from which the salary and other expenses are paid. The salary shall be paid in equal monthly installments.

(g) The assistant presiding judge may assign probate judges as provided by this section and perform the office of presiding judge:

(1) on the death or resignation of the presiding judge and until a successor presiding judge is elected; or

(2) when the presiding judge is unable to perform the duties of the office because of absence, disqualification, disabling illness, or other incapacity.

(h) Subject to Section 25.002201, a judge or a former or retired judge of a statutory probate court or a former or retired justice of an appellate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1) a statutory probate judge requests assignment of another judge to the judge's court;

(2) a statutory probate judge is absent, disabled, or disqualified for any reason;

(3) a statutory probate judge is present or is trying cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;

(4) the office of a statutory probate judge is vacant;

(5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to hear a probate matter in a county court or statutory county court;

(6) the statutory probate judge is recused or disqualified as described by Section 25.002201(a);

(7) a county court judge requests the assignment of a statutory probate judge to hear a probate matter in the county court; or

(8) a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court.

(i) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 32.001, 32.002, 32.003, 32.005, 32.006, 32.007, 34.001, 1022.001, 1022.002, 1022.003, 1022.005, 1022.006, and 1022.007, Estates Code, to statutory probate court judges by general law.

(j) Except as otherwise provided by this section, the salary, compensation, and expenses of a judge assigned under this section are paid in accordance with state law.

(k) The daily compensation of a former or retired judge or justice for purposes of this section is set at an amount equal to the daily compensation of a judge of a statutory probate court in the county in which the former or retired judge or justice is assigned. A former or retired judge or justice assigned to a county that does not have a statutory probate court shall be paid an amount equal to the daily compensation of a judge of a statutory probate court in the county where the assigned judge or justice was last elected.

(*l*) An assigned judge is entitled to receive reasonable and necessary expenses for travel, lodging, and food. The assigned judge shall furnish the presiding judge, for certification, an accounting of those expenses with a statement of the number of days the judge served.

(m) The presiding judge shall certify to the county judge in the county in which the assigned judge served:

(1) the expenses approved under Subsection (l); and

(2) a determination of the assigned judge's salary.

(n) A judge who has jurisdiction over a suit pending in one county may, unless a party objects, conduct any of the judicial proceedings except the trial on the merits in a different county.

(o) The county in which the assigned judge served shall pay out of the general fund of the county:

(1) expenses certified under Subsection (m) to the assigned judge; and

(2) the salary certified under Subsection (m) to the county in which the assigned judge serves, or, if the assigned judge is a former or retired judge or justice, to the assigned judge.

(p) In addition to all compensation and expenses authorized by this section and other law, a judge who is assigned to a court outside the county of the judge's residence is entitled to receive $25 for each day or fraction of a day served. The county in which the judge served shall pay the additional compensation from the county's general fund on certification by the presiding judge.

(q) When required to attend an annual or special meeting prescribed by this section, a judge is entitled to receive, in addition to all other compensation allowed by law, actual and necessary travel expenses incurred going to and returning from the place of the meeting and actual and necessary expenses while attending the meeting. On certification by the presiding judge, the judge's county of residence shall pay the expenses from the county's general fund.

(r) Chapter 74 and Subchapter I, Chapter 75, do not apply to the assignment under this section of statutory probate court judges.

(s) The presiding judge may appoint any special or standing committees of statutory probate court judges necessary or desirable for court management and administration.

(t) To be eligible for assignment under this section, a former or retired judge of a statutory probate court or a former or retired justice of an appellate court must:

(1) not have been removed from office;

(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge or justice has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge or justice:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge or justice of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge or justice as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge or justice did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(3) annually demonstrate that the judge or justice has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;

(4) have served as an active judge or justice for at least 72 months in a district, statutory probate, statutory county, or appellate court; and

(5) have developed substantial experience in the judge's or justice's area of specialty.

(u) In addition to the eligibility requirements under Subsection (t), to be eligible for assignment under this section in the judge's or justice's county of residence, a former or retired judge of a statutory probate court or a former or retired justice of an appellate court must certify to the presiding judge a willingness not to:

(1) appear and plead as an attorney in any court in the judge's county of residence for a period of two years; and

(2) accept appointment as a guardian ad litem, guardian of the estate of an incapacitated person, or guardian of the person of an incapacitated person in any court in the judge's or justice's county of residence for a period of two years.

(v) A judge who is assigned under this section to a court in a county other than the county in which the judge serves is not an employee of the other county.

(w) A former or retired judge or justice who is assigned under this section is not an employee of the county in which the assigned court is located.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 4.01, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 2 (S.B. 221), § 8.03(a), effective August 28, 1989; am. Acts 1989, 71st Leg., ch. 1101 (S.B. 1076), § 1, effective August 28, 1989; am. Acts 1993, 73rd Leg., ch. 691 (H.B. 1444), § 1, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 298 (H.B. 673), §§ 1, 7, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1064 (S.B. 1563), § 1, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1435 (H.B. 3086), § 1, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 65 (H.B. 538), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 440 (S.B. 941), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 468 (H.B. 534), § 1, effective September 1, 2001; am. Acts 2001, 77th Leg., ch. 820 (H.B. 900), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 1276 (H.B. 3507), § 9.002, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 718 (H.B. 2359), § 2, effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1263 (H.B. 764), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1351 (S.B. 408), § 12(d), effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1085 (S.B. 1196), § 40, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 1338 (S.B. 1198), § 1.41, effective September 1, 2011; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 4.08, effective January 1, 2012; Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 32, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1223 (S.B. 1876), § 2, effective September 1, 2015; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.024, effective September 1, 2017; Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 14.01, effective September 1, 2019; Acts 2021, 87th Leg., ch. 472 (S.B. 41), § 2.05, effective January 1, 2022; Acts 2023, 88th Leg., ch. 383 (H.B. 103), § 5, effective September 1, 2023; Acts 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 2.06, effective September 17, 2025.

CHAPTER 26

Constitutional County Courts

Subchapter
B. Appointment of Visiting Judge
D. Jurisdiction and Powers

Subchapter B

Appointment of Visiting Judge

Section
26.012. Assignment of Visiting Judge for Probate, Guardianship, and Mental Health Matters.

Sec. 26.012. Assignment of Visiting Judge for Probate, Guardianship, and Mental Health Matters.

(a) If the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, a visiting judge shall be assigned in accordance with Section 25.0022(h).

(b) Notwithstanding Section 25.0022(t)(4), a visiting judge may be assigned under this section if the judge has served as an active judge for at least 48 months in a statutory probate court.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 480 (S.B. 1228), § 1, effective September 1, 1985; am. Acts 1999, 76th Leg., ch. 1388 (H.B. 1606), § 5, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 820 (H.B. 900), § 2, effective September 1, 2001; Acts 2015, 84th Leg., ch. 1031 (H.B. 1438), § 35, effective September 1, 2015; Acts 2023, 88th Leg., ch. 383 (H.B. 103), § 1, effective September 1, 2023.

Subchapter D

Jurisdiction and Powers

Section
26.052. Probate and Mental Health Code Cases.

Sec. 26.052. Probate and Mental Health Code Cases.

(a) In a county in which the county court and any county court created by statute have jurisdiction in both probate matters and proceedings under Subtitle C, Title 7, Health and Safety Code, during each year for which a statement has been filed as provided by Subsection (b), those cases and proceedings must be filed in a county court created by statute with jurisdiction of those cases and proceedings.

(b) A county judge may file, not later than January 15 of each year, a statement with the county clerk electing not to hear probate matters and proceedings under Subtitle C, Title 7, Health and Safety Code.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 746 (H.B. 66), § 65, effective October 1, 1991; am. Acts 1993, 73rd Leg., ch. 107 (H.B. 947), § 4.01, effective August 30, 1993.

SUBTITLE D

JUDICIAL PERSONNEL AND OFFICIALS

Chapter
54A. Associate Judges
56. Judicial and Court Personnel Training Fund

CHAPTER 54A

Associate Judges

Subchapter
C. Statutory Probate Court Associate Judges

Subchapter C

Statutory Probate Court Associate Judges

Section
54A.201. Definition.

Section
54A.202. Applicability.
54A.209. Powers of Associate Judge.
54A.214. Order of Court.
54A.216. De Novo Hearing Before Referring Court.

Sec. 54A.201. Definition.

In this subchapter, "statutory probate court" has the meaning assigned by Chapter 22, Estates Code.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.601); Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.030, effective September 1, 2017.

Sec. 54A.202. Applicability.

This subchapter applies to a statutory probate court.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012.

Sec. 54A.209. Powers of Associate Judge.

(a) Except as limited by an order of referral, an associate judge may:

(1) conduct a hearing;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue a summons for the appearance of witnesses;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on pretrial motions;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate all proceedings in a hearing before the associate judge;

(13) take action as necessary and proper for the efficient performance of the duties required by the order of referral;

(14) order the attachment of a witness or party who fails to obey a subpoena;

(15) order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54A.214;

(16) without prejudice to the right to a de novo hearing under Section 54A.216, render and sign:

(A) a final order agreed to in writing as to both form and substance by all parties;

(B) a final default order;

(C) a temporary order;

(D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;

(E) an order specifying that the court clerk shall issue:

(i) letters testamentary or of administration; or

(ii) letters of guardianship; or

(F) an order for inpatient or outpatient mental health, intellectual disability, or chemical dependency services or an order authorizing psychoactive medications; and

(17) sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

(c) An order described by Subsection (a)(16) that is rendered and signed by an associate judge constitutes an order of the referring court. The judge of the referring court shall sign the order not later than the 30th day after the date the associate judge signs the order.

(d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(16)(D) revokes that waiver.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 3, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 5, effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.610); Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.01, effective September 1, 2023.

Sec. 54A.214. Order of Court.

(a) Pending a de novo hearing before the referring court, the decisions and recommendations of the associate judge or a proposed order or judgment of the associate judge has the full force and effect, and is enforceable as, an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) Except as provided by Section 54A.209(c), if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.216, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 5, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 10, effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.616).

Sec. 54A.216. De Novo Hearing Before Referring Court.

(a) A party may request a de novo hearing before the

referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 54A.212.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Notice of a request for a de novo hearing before the referring court must be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date of filing of the initial request.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court.

(g) Before the start of a hearing conducted by an associate judge, the parties may waive the right of a de novo hearing before the referring court. The waiver may be in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 1503 (S.B. 294), § 1, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1066 (H.B. 1539), § 6, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 1206 (S.B. 683), § 12, effective September 1, 2009; am. Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 6.02, effective January 1, 2012 (renumbered from Sec. 54.618).

CHAPTER 56

Judicial and Court Personnel Training Fund

Section
56.001. Judicial and Court Personnel Training Fund.
56.003. Use of Funds.

Sec. 56.001. Judicial and Court Personnel Training Fund.

(a) The judicial and court personnel training fund is an account in the general revenue fund. Money in the judicial and court personnel training fund may be appropriated only to the court of criminal appeals for the uses authorized in Section 56.003.

(b) On requisition of the court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.78(a), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 347 (S.B. 1085), § 5, effective October 1, 1989; am. Acts 1993, 73rd Leg., ch. 896 (S.B. 947), §§ 1, 2, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 30.187, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 390 (S.B. 1187), § 2, effective August 31, 1999; am. Acts 2003, 78th Leg., ch. 209 (H.B. 2424), § 85(a)(10), effective January 1, 2004; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 6.01, effective September 28, 2011.

Sec. 56.003. Use of Funds.

(a) Unless the legislature specifically appropriates or provides additional money for purposes of this subsection, the court of criminal appeals may not use more than three percent of the money appropriated in any one fiscal year to hire staff and provide for the proper administration of this chapter.

(b) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, county courts performing judicial functions, full-time associate judges and masters appointed pursuant to Chapter 201, Family Code, and full-time and part-time masters, magistrates, referees, and associate judges appointed pursuant to Chapter 54 or 54A as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by the court of criminal appeals under Section 74.025 and of their court personnel.

(e) The court of criminal appeals shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of those funds must ensure that sufficient funds are available for each judge to meet the minimum educational requirements set by the court of criminal appeals under Section 74.025 before any funds are awarded to a judge for education that exceeds those requirements.

(f) The court of criminal appeals shall grant legal funds to statewide professional associations of prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace, and other entities. The association's or entity's purposes must include providing continuing legal education, technical assistance, and other support programs.

(g) The court of criminal appeals shall grant legal funds to statewide professional associations and other entities

that provide innocence training programs related to defendants' claims of factual innocence following conviction to law enforcement officers, law students, and other participants.

(h) The court of criminal appeals shall grant legal funds to statewide professional associations and other entities that provide training to individuals responsible for providing court security.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 148 (S.B. 895), § 2.78(a), effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 896 (S.B. 947), § 3, effective September 1, 1993; am. Acts 1999, 76th Leg., ch. 390 (S.B. 1187), § 3, effective August 31, 1999; am. Acts 2003, 78th Leg., ch. 654 (H.B. 2157), § 1, effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 149 (S.B. 496), § 1, effective September 1, 2007; Acts 2017, 85th Leg., ch. 190 (S.B. 42), § 6, effective September 1, 2017; Acts 2019, 86th Leg., ch. 162 (H.B. 598), § 1, effective September 1, 2019.

SUBTITLE F

COURT ADMINISTRATION

Chapter
76. Community Supervision and Corrections Departments
79. Texas Indigent Defense Commission

CHAPTER 76

Community Supervision and Corrections Departments

Section
76.002. Establishment of Departments.
76.003. Community Justice Council.
76.011. Operation of Certain Services and Programs.

Sec. 76.002. Establishment of Departments.

(a) The district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district shall:

(1) establish a community supervision and corrections department; and

(2) review the department's budget and strategic plan following the division's approval of the budget and plan.

(b) [Repealed by Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 12, effective May 30, 2005.]

(c) Except as provided by Subsection (d), one department serves all courts and counties in a judicial district if:

(1) two or more judicial districts serve a county; or

(2) a district includes more than one county.

(d) The board may adopt rules to allow more than one department to serve a judicial district that includes more than one county if providing more than one department will promote administrative convenience or economy or improve services.

(e) The board shall adopt rules allowing departments to contract with one another for services or facilities or to contract as provided by Subsection (f).

(f) In lieu of establishing a department as required by Subsection (a), programs and services may be provided under this chapter in a judicial district through a contract with a department established for another judicial district.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), §§ 1, 12, effective May 30, 2005; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 1, effective June 17, 2011; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 1, effective September 1, 2015; 2025, 89th Leg., ch. 774 (S.B. 663), § 1, effective September 1, 2025.

Sec. 76.003. Community Justice Council.

(a) A community justice council may be established by the commissioners court of a county, unless a board or council that was in existence on September 1, 1991, is performing duties substantially similar to those imposed on a community justice council under this section. The council shall provide continuing policy guidance and direction for criminal justice planning, programs, and initiatives.

(b) A council may consist of the following persons or their designees:

(1) a sheriff of a county served by the department, chosen by the sheriffs of the counties to be served by the department;

(2) a county commissioner or a county judge from a county served by the department, chosen by the county commissioners and county judges of the counties served by the department;

(3) a city council member of the most populous municipality in a county served by the department, chosen by the members of the city councils of cities served by the department;

(4) not more than two state legislators elected from a county served by the department, or in a county with a population of one million or more to be served by the department, not more than one state senator and one state representative elected from the county, chosen by the state legislators elected from the county or counties served by the department;

(5) the presiding judge from a judicial district served by the department, chosen by the district judges from the judicial districts served by the department;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county served by the department, chosen by the judges of statutory county courts with criminal jurisdiction in the counties served by the department;

(7) a county attorney with criminal jurisdiction from a county served by the department, chosen by the county attorneys with criminal jurisdiction from the counties served by the department;

(8) a district attorney or criminal district attorney from a judicial district served by the department, chosen by the district attorneys or criminal district attorneys from the judicial districts served by the department;

(9) an elected member of the board of trustees of an independent school district in a county served by the department, chosen by the members of the boards of trustees of independent school districts located in counties served by the department; and

(10) the department director.

(c) The community justice council shall appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but must include:

(1) the county or regional director of the Health and Human Services Commission, or the division of the commission performing the functions previously performed by the Texas Department of Human Services, with responsibility for the area served by the department;

(2) the chief of police of the most populous municipality served by the department;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area served by the department;

(4) the superintendent of the most populous school district served by the department;

(5) the supervisor of the Department of Public Safety region closest to the department, or the supervisor's designee;

(6) the county or regional director of the Health and Human Services Commission, or the division of the commission performing the functions previously performed by the Texas Department of Mental Health and Mental Retardation, with responsibility for the area served by the department;

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area served by the department;

(8) the department director;

(9) the local or regional representative of the parole division of the Texas Department of Criminal Justice with responsibility for the area served by the department;

(10) the representative of the Texas Workforce Commission with responsibility for the area served by the department;

(11) the representative of the Health and Human Services Commission, or the division of the commission performing the functions previously performed by the Department of Assistive and Rehabilitative Services, with responsibility for the area served by the department;

(12) a licensed attorney who practices in the area served by the department and whose practice consists primarily of criminal law;

(13) a court administrator, if one serves the area served by the department;

(14) a representative of a community service organization that provides adult treatment, educational, or vocational services to the area served by the department;

(15) a representative of an organization in the area served by the department that is actively involved in issues relating to defendants' rights, chosen by the county commissioners and county judges of the counties served by the department; and

(16) an advocate for rights of victims of crime and awareness of issues affecting victims.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), §§ 9.02(a), 9.03(a), effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 2, effective May 30, 2005; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.064, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 2, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 1, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 2, effective September 1, 2015; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.02, effective September 1, 2023.

Sec. 76.011. Operation of Certain Services and Programs.

(a) The department may operate programs for:

(1) the supervision and rehabilitation of persons in pretrial intervention programs;

(2) the supervision of persons released on bail under:

(A) Chapter 11, Code of Criminal Procedure;

(B) Chapter 17, Code of Criminal Procedure;

(C) Article 44.04, Code of Criminal Procedure; or

(D) any other law;

(3) the supervision of a person subject to, or the verification of compliance with, a court order issued under:

(A) Article 17.441, Code of Criminal Procedure, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;

(B) Chapter 123 of this code or former law, issuing an occupational driver's license;

(C) Section 49.09(h), Penal Code, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or

(D) Subchapter L, Chapter 521, Transportation Code, granting a person an occupational driver's license; and

(4) the supervision of a person not otherwise described by Subdivision (1), (2), or (3), if a court orders the person to submit to the supervision of, or to receive services from, the department.

(b) Except as otherwise provided by this subsection, programs operated by the department under Subsection (a) may include reasonable conditions related to the purpose of the program, including testing for controlled substances. If this subsection conflicts with a more specific provision of another law, the other law prevails.

(c) A person in a pretrial intervention program operated by the department under Subsection (a) may be supervised for a period not to exceed two years.

(d) The department may use money deposited in the special fund of the county treasury for the department under Article 103.004(d), Code of Criminal Procedure, only for the same purposes for which state aid may be used under this chapter.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.11, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 91 (S.B. 1006), § 1, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.001, effective September 1, 2011; am. Acts 2011, 82nd Leg., ch. 419 (S.B. 880), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.03, effective September 1, 2013.

CHAPTER 79

Texas Indigent Defense Commission

Subchapter

A. General Provisions

C. General Powers and Duties of Commission

Subchapter A

General Provisions

Section
79.001. Definitions.

Sec. 79.001. Definitions.

In this chapter:

(1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to:

(A) provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense; or

(B) serve as an attorney ad litem.

(1-a) "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of an indigent parent or child in a suit filed by the department against a parent.

(2) "Board" means the governing board of the Texas Indigent Defense Commission.

(3) "Commission" means the permanent standing committee of the council known as the Texas Indigent Defense Commission.

(4) "Contract defender program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to:

(A) a group of unspecified indigent defendants who appear before a particular court or group of courts; or

(B) indigent parents or children named in a suit filed by the department against a parent.

(5) "Council" means the Texas Judicial Council.

(6) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(7) "Defendant" means a person accused of a crime or a juvenile offense.

(7-a) "Department" means the Department of Family and Protective Services.

(8) "Executive director" means the executive director of the Texas Indigent Defense Commission.

(8-a) "Family protection services" means services provided under this chapter by an attorney, attorney ad litem, licensed investigator, social worker, forensic expert, mental health expert, or other similar expert or specialist to an indigent parent or child in:

(A) a suit filed by the department against the parent; or

(B) a department investigation of the parent.

(9) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(10) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(11) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

(12) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B, Chapter 78.

(12-a) "Office of child representation" has the meaning assigned by Section 107.254, Family Code.

(12-b) "Office of parent representation" has the meaning assigned by Section 107.255, Family Code.

(13) "Public defender's office" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 1, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1215 (S.B. 1743), § 21, effective September 1, 2015; Acts 2023, 88th Leg., ch. 965 (S.B. 2120), § 1, effective September 1, 2023.

Subchapter C

General Powers and Duties of Commission

Section
79.034. Policies and Standards.

Sec. 79.034. Policies and Standards.

(a) The commission shall develop policies and standards for providing:

(1) legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings; and

(2) family protection services to indigent parents and children.

(a-1) The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent individuals;

(2) qualification standards under which attorneys may qualify for appointment to represent:

(A) indigent defendants, including:

(i) qualifications commensurate with the seriousness of the nature of the proceeding;

(ii) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(iii) successful completion of relevant continuing legal education programs approved by the council; and

(iv) testing and certification standards; or

(B) indigent parents and children in suits filed by the department, including:

(i) qualifications appropriate for representing an indigent parent;

(ii) qualifications appropriate for representing a child;

(iii) successful completion of relevant continuing legal education programs required by law or the State Bar of Texas and approved by the council; and

(iv) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent individuals;

(4) standards for determining whether a person accused of a crime or juvenile offense or named in a suit filed by the department is indigent;

(5) policies and standards governing the organization and operation of an assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender's office consistent with recognized national policies and standards;

(7) policies and standards governing the organization and operation of an office of child representation or office of parent representation consistent with recognized national policies and standards;

(8) standards for providing indigent defense services or family protection services under a contract defender program consistent with recognized national policies and standards;

(9) standards governing the reasonable compensation of counsel appointed to represent indigent individuals;

(10) standards governing the availability and reasonable compensation of providers of indigent defense support services or family protection services for counsel appointed to represent indigent individuals;

(11) standards governing the operation of a legal clinic or program that provides legal services to indigent individuals and is sponsored by a law school approved by the supreme court;

(12) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code;

(13) policies and standards governing the appointment of attorneys to represent indigent parents and children in proceedings with the department under Title 5, Family Code;

(14) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(15) other policies and standards for providing indigent defense services and family protection services as determined by the commission to be appropriate.

(b) The commission shall submit its proposed policies and standards developed under Subsection (a) to the board for adoption. The board shall adopt the proposed policies and standards as appropriate.

(c) Any qualification standards adopted by the board under Subsection (b) that relate to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the commission as not satisfying performance or qualification standards adopted by the board under Subsection (b) may not accept an appointment in a capital case.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 984 (H.B. 1754), § 1, effective September 1, 2011; Acts 2023, 88th Leg., ch. 965 (S.B. 2120), § 3, effective September 1, 2023.

SUBTITLE K

SPECIALTY COURTS

Chapter
121. General Provisions
124. Veterans Treatment Court Program
125. Mental Health Court Programs
129. Public Safety Employees Treatment Court Program

CHAPTER 121

General Provisions

Section
121.001. Definition.
121.002. Oversight.
121.003. Appointment of Presiding Judge or Magistrate for Regional Specialty Court Program.
121.004. Jurisdiction and Authority of Judge or Magistrate in Regional Specialty Court Program.

Sec. 121.001. Definition.

In this subtitle, "specialty court" means a court established under this subtitle or former law.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.01, effective September 1, 2013.

Sec. 121.002. Oversight.

(a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of specialty court programs.

(b) For the purpose of determining the eligibility of a specialty court program to receive state or federal grant funds administered by a state agency, the governor or a legislative committee to which duties are assigned under Subsection (a) may request the state auditor to perform a management, operations, or financial or accounting audit of the program.

(c) Notwithstanding any other law, a specialty court program may not operate until the judge, magistrate, or coordinator:

(1) provides to the Office of Court Administration of the Texas Judicial System:

(A) written notice of the program;

(B) any resolution or other official declaration under which the program was established; and

(C) a copy of the program policy manual, participant handbook, or other adopted documentation describing the operational plan of the program; and

(2) receives from the office written verification of the program's compliance with Subdivision (1).

(d) A specialty court program shall:

(1) comply with all programmatic best practices recommended by the Specialty Courts Advisory Council under Section 772.0061(b)(2) and approved by the Texas Judicial Council; and

(2) report to the criminal justice division of the governor's office and the Texas Judicial Council any information required by the division or council regarding the performance of the program.

(e) A specialty court program that fails to comply with Subsections (c) and (d) is not eligible to receive any state or federal grant funds administered by any state agency.

(f) [As added by Acts 2019, 86th Leg., ch. 606 (S.B. 891)] The Office of Court Administration of the Texas Judicial System shall:

(1) on request provide technical assistance to the specialty court programs;

(2) coordinate with an entity funded by the criminal justice division of the governor's office that provides services to specialty court programs;

(3) monitor the specialty court programs for compliance with programmatic best practices as required by Subsection (d)(1); and

(4) notify the criminal justice division of the governor's office if a specialty court program fails to comply with programmatic best practices as required by Subsection (d)(1).

(f) [As added by Acts 2019, 86th Leg., ch. 865 (H.B. 2955)] The Office of Court Administration of the Texas Judicial System shall:

(1) on request provide technical assistance to the specialty court programs;

(2) coordinate with an entity funded by the criminal justice division of the governor's office that provides services to specialty court programs;

(3) monitor compliance of the specialty court programs with the programmatic best practices as required by Subsection (d)(1); and

(4) notify the criminal justice division about each specialty court program that is not in compliance with the programmatic best practices as required by Subsection (d)(1).

(g) The Office of Court Administration of the Texas Judicial System shall coordinate with and provide information to the criminal justice division of the governor's office on request of the division.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.01, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 5, effective September 1, 2015; Acts 2019, 86th Leg., ch. 606 (S.B. 891), § 9.05, effective September 1, 2019; Acts 2019, 86th Leg., ch. 865 (H.B. 2955), § 1, effective September 1, 2019; Acts 2025, 89th Leg., 2nd C.S., ch. 7 (H.B. 16), § 7.20, effective December 4, 2025.

Sec. 121.003. Appointment of Presiding Judge or Magistrate for Regional Specialty Court Program.

A judge or magistrate of a district court or statutory county court who is authorized by law to hear criminal cases may be appointed to preside over a regional specialty court program recognized under this subtitle only if:

(1) the local administrative district and statutory county court judges of each county participating in the program approve the appointment by majority vote or another approval method selected by the judges; and

(2) the presiding judges of each of the administrative judicial regions in which the participating counties are located sign an order granting the appointment.

HISTORY: Acts 2021, 87th Leg., ch. 934 (H.B. 3774), § 12.01, effective September 1, 2021.

Sec. 121.004. Jurisdiction and Authority of Judge or Magistrate in Regional Specialty Court Program.

(a) A judge or magistrate appointed to preside over a regional specialty court program may hear any misdemeanor or felony case properly transferred to the program by an originating trial court participating in the program, regardless of whether the originating trial court and specialty court program are in the same county. The appointed judge or magistrate may exercise only the authority granted under this subtitle.

(b) The judge or magistrate of a regional specialty court program may for a case properly transferred to the program:

(1) enter orders, judgments, and decrees for the case;

(2) sign orders of detention, order community service, or impose other reasonable and necessary sanctions;

(3) send recommendations for dismissal and expunction to the originating trial court for a defendant who successfully completes the program; and

(4) return the case and documentation required by this subtitle to the originating trial court for final disposition on a defendant's successful completion of or removal from the program.

(c) A visiting judge assigned to preside over a regional specialty court program has the same authority as the judge or magistrate appointed to preside over the program.

HISTORY: Acts 2021, 87th Leg., ch. 934 (H.B. 3774), § 12.01, effective September 1, 2021.

CHAPTER 124

Veterans Treatment Court Program

Section
124.001. Veterans Treatment Court Program Defined; Procedures for Certain Defendants.
124.002. Authority to Establish Program; Eligibility.
124.003. Duties of Veterans Treatment Court Program.
124.004. Establishment of Regional Program.
124.005. Reimbursement Fees.
124.006. Courtesy Supervision.
124.007. Report.

HISTORY: Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 1, effective September 1, 2015.

Sec. 124.001. Veterans Treatment Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, "veterans treatment court program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5) careful monitoring of treatment and services provided to program participants;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations;

(10) development of partnerships with public agencies and community organizations, including the United States Department of Veterans Affairs; and

(11) inclusion of a participant's family members who agree to be involved in the treatment and services provided to the participant under the program.

(b) If a defendant who was arrested for or charged with, but not convicted of or placed on deferred adjudication community supervision for, an offense successfully completes a veterans treatment court program, after notice to the attorney representing the state and a hearing in the veterans treatment court at which that court determines that a dismissal is in the best interest of justice, the veterans treatment court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Article 55A.253, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1) if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Article 55A.203(a), Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Article 55A.203(a), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.001); Acts 2015, 84th Leg., ch. 585 (H.B. 3729), § 1, effective June 16, 2015; Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 2, effective September 1, 2015; Acts 2017, 85th Leg., ch. 693 (H.B. 322), § 4, effective September 1, 2017; Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 8.007, effective September 1, 2019; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.076, effective January 1, 2025.

Sec. 124.002. Authority to Establish Program; Eligibility.

(a) The commissioners court of a county may establish a veterans treatment court program for persons arrested for, charged with, convicted of, or placed on deferred adjudication community supervision for any misdemeanor or felony offense. A defendant is eligible to participate in a veterans treatment court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending or in which the defendant was convicted or placed on deferred adjudication community supervision, as applicable, finds that the defendant is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard, who:

(1) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, or was a victim of military sexual trauma if the injury, illness, disorder, or trauma:

(A) occurred during or resulted from the defendant's military service; and

(B) affected the defendant's criminal conduct at issue in the case; or

(2) is a defendant whose participation in a veterans treatment court program, considering the circumstances of the defendant's conduct, personal and social background, and criminal history, is likely to achieve the objective of ensuring public safety through rehabilitation of the veteran in the manner provided by Section 1.02(1), Penal Code.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the veterans treatment court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the applicable criminal court in any form the court determines to be appropriate, including military service and medical records, previous determinations of a disability by a veteran's organization or by the United States Department of Veterans Affairs, testimony or affidavits of other veterans or service members, and prior determinations of eligibility for benefits by any state or county veterans office. The court's findings must accompany any docketed case.

(d) In this section, "military sexual trauma" means any sexual assault or sexual harassment that occurs while the victim is a member of the United States armed forces performing the person's regular duties.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.002); Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 3, effective September 1, 2015; Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 2, effective September 1, 2017.

Sec. 124.003. Duties of Veterans Treatment Court Program.

(a) A veterans treatment court program established under this chapter must:

(1) if there has not yet been a disposition in the criminal case, ensure that a defendant eligible for participation in the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow a participant arrested for or charged with an offense to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(4) ensure that the jurisdiction of the veterans treatment court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.

(b) A veterans treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the program.

(b-1) A veterans treatment court program may allow a participant to comply with the participant's court-ordered individualized treatment plan or to fulfill certain other court obligations through the use of videoconferencing software or other Internet-based communications.

(c) This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.003); Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), §§ 4, 5, effective September 1, 2015; Acts 2017, 85th Leg., ch. 889 (H.B. 3069), § 3, effective September 1, 2017; Acts 2021, 87th Leg., ch. 138 (S.B. 1093), § 1, effective May 28, 2021; Acts 2021, 87th Leg., ch. 934 (H.B. 3774), § 12.02, effective September 1, 2021.

Sec. 124.004. Establishment of Regional Program.

(a) The commissioners courts of two or more counties may elect to establish a regional veterans treatment court program under this chapter for the participating counties.

(b) [Repealed.]

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.004); Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 6, effective September 1, 2015; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(30), effective January 1, 2020.

Sec. 124.005. Reimbursement Fees.

(a) A veterans treatment court program established under this chapter may collect from a participant in the program:

(1) a reasonable reimbursement fee for the program not to exceed $1,000; and

(2) a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

(1) based on the participant's ability to pay; and

(2) used only for purposes specific to the program.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 840 (S.B. 1940), § 4, effective June 19, 2009; Enacted by Acts 2009, 81st Leg., ch. 1103 (H.B. 4833), § 17, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.05, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 617.006); Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 7, effective September 1, 2015; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.47, effective January 1, 2020.

Sec. 124.006. Courtesy Supervision.

(a) A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both veterans treatment court programs and the defendant.

(b) A defendant who consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the veterans treatment court program that accepts the transfer.

(c) If a defendant whose supervision is transferred under this section does not successfully complete the program, the veterans treatment court program supervising the defendant shall return the responsibility for the defendant's supervision to the veterans treatment court program that initiated the transfer.

(d) If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

HISTORY: Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 8, effective September 1, 2015; 2021, 87th Leg., S.B. 1093, § 2, effective May 28, 2021; 2021, 87th Leg., H.B. 3774, § 12.03, effective September 1, 2021.

Sec. 124.007. Report.

Not later than December 1 of each year, the Texas Veterans Commission shall report the following information for the preceding state fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature:

(1) the number of defendants who:

(A) participated in each veterans treatment court program;

(B) successfully completed each program; and

(C) did not successfully complete each program; and

(2) the amount of grant funding received by each program.

HISTORY: Acts 2019, 86th Leg., ch. 526 (S.B. 1180), § 1, effective September 1, 2019.

CHAPTER 125

Mental Health Court Programs

Section
125.001. Mental Health Court Program Defined; Procedures for Certain Defendants.
125.005. Program in Certain Counties Mandatory.

Sec. 125.001. Mental Health Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, "mental health court program"

means a program that has the following essential characteristics:

(1) the integration of mental illness treatment services and intellectual disability services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to mental illness treatment services and intellectual disability services;

(5) ongoing judicial interaction with program participants;

(6) diversion of defendants who potentially have a mental illness or an intellectual disability to needed services as an alternative to subjecting those defendants to the criminal justice system;

(7) monitoring and evaluation of program goals and effectiveness;

(8) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(9) development of partnerships with public agencies and community organizations, including local intellectual and developmental disability authorities.

(b) If a defendant successfully completes a mental health court program, after notice to the attorney representing the state and a hearing in the mental health court at which that court determines that a dismissal is in the best interest of justice, the mental health court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Article 55A.253, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1) if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Article 55A.203(b), Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Article 55A.203(b), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1120 (H.B. 2609), § 1, effective September 1, 2003; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.06, effective September 1, 2013 (renumbered from Tex. Health & Safety Code Sec. 616.001); Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 24, effective June 14, 2019; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.077, effective January 1, 2025.

Sec. 125.005. Program in Certain Counties Mandatory.

(a) The commissioners court of a county with a population of more than 200,000 shall:

(1) establish a mental health court program under Section 125.002; and

(2) direct the judge, magistrate, or coordinator to comply with Section 121.002(c)(1).

(b) A county required under this section to establish a mental health court program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a mental health court program under this section only if:

(1) the county receives federal or state funding specifically for that purpose in an amount sufficient to pay the fund costs of the mental health court program; and

(2) the judge, magistrate, or coordinator receives the verification described by Section 121.002(c)(2).

(d) A county that is required under this section to establish a mental health court program and fails to establish or to maintain that program is ineligible to receive grant funding from this state or any state agency.

HISTORY: Acts 2019, 86th Leg., ch. 1212 (S.B. 562), § 25, effective June 14, 2019.

CHAPTER 129.

Public Safety Employees Treatment Court Program

Section

129.001. Definition.
129.002. Public Safety Employees Treatment Court Program Defined; Procedures for Certain Defendants.
129.003. Authority to Establish Program; Eligibility.
129.004. Duties of Public Safety Employees Treatment Court Program.
129.005. Establishment of Regional Program.
129.006. Reimbursement Fees.
129.007. Courtesy Supervision.

HISTORY: 2017, 85th Leg., H.B. 3391, § 1, effective September 1, 2017.

Sec. 129.001. Definition.

In this chapter, "public safety employee" means a peace officer, firefighter, detention officer, county jailer, emergency medical services employee, or emergency service dispatcher of this state or a political subdivision of this state.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017; Acts 2021, 87th Leg., ch. 127 (H.B. 788), § 1, effective September 1, 2021.

Sec. 129.002. Public Safety Employees Treatment Court Program Defined; Procedures for Certain Defendants.

(a) In this chapter, "public safety employees treatment court program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5) careful monitoring of treatment and services provided to program participants;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations;

(10) development of partnerships with public agencies and community organizations; and

(11) inclusion of a participant's family members who agree to be involved in the treatment and services provided to the participant under the program.

(b) If a defendant successfully completes a public safety employees treatment court program, after notice to the attorney representing the state and a hearing in the public safety employees treatment court at which that court determines that a dismissal is in the best interest of justice, the court in which the criminal case is pending shall dismiss the case against the defendant.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.003. Authority to Establish Program; Eligibility.

(a) The commissioners court of a county may establish a public safety employees treatment court program for persons arrested for or charged with any misdemeanor or felony offense. A defendant is eligible to participate in a public safety employees treatment court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant is a current or former public safety employee who:

(1) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that:

(A) occurred during or resulted from the defendant's duties as a public safety employee; and

(B) affected the defendant's criminal conduct at issue in the case; or

(2) is a defendant whose participation in a public safety employees treatment court program, considering the circumstances of the defendant's conduct, personal and social background, and criminal history, is likely to achieve the objective of ensuring public safety through rehabilitation of the public safety employee in the manner provided by Section 1.02(1), Penal Code.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the public safety employees treatment court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the court in which the criminal case is pending in any form the court determines to be appropriate, including medical records or testimony or affidavits of other public safety employees. The court's findings must accompany any docketed case.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.004. Duties of Public Safety Employees Treatment Court Program.

(a) A public safety employees treatment court program established under this chapter must:

(1) ensure that a defendant eligible for participation in the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow a participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(4) ensure that the jurisdiction of the public safety employees treatment court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.

(b) A public safety employees treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside.

(c) A public safety employees treatment court program may allow a participant to comply with the participant's court-ordered individualized treatment plan or to fulfill certain other court obligations through the use of videoconferencing software or other Internet-based communications.

(d) This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

Sec. 129.005. Establishment of Regional Program.

(a) The commissioners courts of two or more counties may elect to establish a regional public safety employees treatment court program under this chapter for the participating counties.

(b) [Repealed.]

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 4.40(31), effective January 1, 2020.

Sec. 129.006. Reimbursement Fees.

(a) A public safety employees treatment court program established under this chapter may collect from a participant in the program:

(1) a reasonable reimbursement fee for the program not to exceed $1,000; and

(2) a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. The fees must be:

(1) based on the participant's ability to pay; and

(2) used only for purposes specific to the program.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1352 (S.B. 346), § 2.49, effective January 1, 2020.

Sec. 129.007. Courtesy Supervision.

(a) A public safety employees treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another public safety employees treatment court program that is located in the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both public safety employees treatment court programs and the defendant.

(b) A defendant who consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the public safety employees treatment court program that accepts the transfer.

(c) If a defendant whose supervision is transferred under this section does not successfully complete the program, the public safety employees treatment court program supervising the defendant shall return the responsibility for the defendant's supervision to the public safety employees treatment court program that initiated the transfer.

(d) If a defendant is charged with an offense in a county that does not operate a public safety employees treatment court program, the court in which the criminal case is pending may place the defendant in a public safety employees treatment court program located in the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a public safety employees treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

HISTORY: Acts 2017, 85th Leg., ch. 369 (H.B. 3391), § 1, effective September 1, 2017.

SUBTITLE L

COURT PROFESSIONS REGULATION

CHAPTER 155

Duties Respecting Guardianship

Subchapter
A. General Provisions
C. Standards for and Certification of Certain Guardians

HISTORY: Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 8, effective September 1, 2017.

Subchapter A

General Provisions

Section
155.001. Definitions.

Sec. 155.001. Definitions.

In this chapter:

(1) "Advisory board" means the Guardianship Certification Advisory Board.

(2) "Corporate fiduciary" has the meaning assigned by Section 1002.007, Estates Code.

(3) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(4) "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(5) "Incapacitated person" has the meaning assigned by Section 1002.017, Estates Code.

(6) "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(6-a) Notwithstanding Section 151.001, "registration" means registration of a guardianship under this chapter.

(7) "Ward" has the meaning assigned by Section 22.033, Estates Code.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.24, effective September 1, 2005; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 1.05, effective September 1, 2014 (renumbered from Sec. 111.001); am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(21), effective September 1, 2015 (renumbered from Sec. Title 2, Subtitle K); Acts 2017, 85th Leg., ch. 313 (S.B. 1096), § 9, effective September 1, 2017; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 22.031, effective September 1, 2017; Acts 2017, 85th Leg., ch. 516 (S.B. 43), § 23, effective September 1, 2017.

Subchapter C

Standards for and Certification of Certain Guardians

Section
155.102. Training.

Sec. 155.102. Certification Required for Certain Guardians.

(a) To provide guardianship services in this state, the following individuals must hold a certificate issued under this section:

(1) an individual who is a private professional guardian;

(2) an individual who will provide those services to a ward of a private professional guardian on the guardian's behalf; and

(3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Dis-

ability Services on the program's or department's behalf.

(a-1) An individual who directly supervises an individual who will provide guardianship services in this state to a ward of a guardianship program must hold a certificate issued under this section.

(b) An applicant for a certificate under this section must:

(1) apply to the commission on a form prescribed by the commission; and

(2) submit with the application a nonrefundable application fee in an amount determined by the commission, subject to the approval of the supreme court.

(c) An individual who directly supervises an individual who will provide guardianship services in this state to a ward of a guardianship program must hold a certificate issued under this section.

(1) ensure compliance with the standards adopted under Section 155.101;

(2) provide that the commission establish qualifications for obtaining and maintaining certification;

(3) provide that the commission issue certificates under this section;

(4) provide that a certificate expires on the last day of the month in which the second anniversary of the date the certificate was issued occurs unless renewed on or before that day;

(5) prescribe procedures for accepting complaints and conducting investigations of alleged violations of the minimum standards adopted under Section 155.101 or other terms of the certification by certificate holders; and

(6) prescribe procedures by which the commission, after notice and hearing, may suspend or revoke the certificate of a holder who fails to substantially comply with appropriate standards or other terms of the certification.

(d) If the requirements for issuing a certificate under this section or reissuing a certificate under Section 153.060 include passage of an examination covering guardianship education requirements:

(1) the commission shall develop and the director shall administer the examination; or

(2) the commission shall direct the director to contract with another person or entity the commission determines has the expertise and resources to develop and administer the examination.

(e) In lieu of the certification requirements imposed under this section, the commission may issue a certificate to an individual to engage in business as a guardian or to provide guardianship services in this state if the individual:

(1) submits an application to the commission in the form prescribed by the commission;

(2) pays a fee in a reasonable amount determined by the commission, subject to the approval of the supreme court;

(3) is certified, registered, or licensed as a guardian by a national organization or association the commission determines has requirements at least as stringent as those prescribed by the commission under this subchapter; and

(4) is in good standing with the organization or association with whom the person is licensed, certified, or registered.

(f) An employee of the Department of Aging and Disability Services who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from payment of an application fee required by this section.

(g) An application fee or other fee collected under this section shall be deposited to the credit of the guardianship certification account in the general revenue fund and may be appropriated only to the office for the administration and enforcement of this chapter.

HISTORY: Enacted by Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 3.24, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 599 (S.B. 220), § 1, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 42 (S.B. 966), § 1.05, effective September 1, 2014 (renumbered from Sec. 111.042); am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(21), effective September 1, 2015 (renumbered from Sec. Title 2, Subtitle K); Acts 2017, 85th Leg., ch. 715 (S.B. 36), § 3, effective September 1, 2017; Acts 2017, 85th Leg., ch. 516 (S.B. 43), § 24, effective September 1, 2017.

TITLE 3

LEGISLATIVE BRANCH

SUBTITLE Z

MISCELLANEOUS PROVISIONS

CHAPTER 392

Person First Respectful Language Initiative

Section

392.001. Findings and Intent.
392.002. Use of Person First Respectful Language Required.

Sec. 392.001. Findings and Intent.

The legislature finds that language used in reference to persons with disabilities shapes and reflects society's attitudes toward persons with disabilities. Certain terms and phrases are demeaning and create an invisible barrier to inclusion as equal community members. It is the intent of the legislature to establish preferred terms and phrases for new and revised laws by requiring the use of language that places the person before the disability.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 1, effective September 1, 2011.

Sec. 392.002. Use of Person First Respectful Language Required.

(a) The legislature and the Texas Legislative Council are directed to avoid using the following terms and phrases in any new statute or resolution and to change those terms and phrases used in any existing statute or resolution as sections including those terms and phrases are otherwise amended by law:

(1) disabled;

(2) developmentally disabled;

(3) mentally disabled;

(4) mentally ill;

(5) mentally retarded;
(6) handicapped;
(7) cripple; and
(8) crippled.

(b) In enacting or revising statutes or resolutions, the legislature and the Texas Legislative Council are directed to replace, as appropriate, terms and phrases listed by Subsection (a) with the following preferred phrases or appropriate variations of those phrases:

(1) "persons with disabilities";
(2) "persons with developmental disabilities";
(3) "persons with mental illness"; and
(4) "persons with intellectual disabilities."

(b-1) In addition to the terms and phrases listed in Subsection (a), the legislature and the Texas Legislative Council are directed to avoid using in any new statute or resolution "hearing impaired," "auditory impairment," and "speech impaired" in reference to a deaf or hard of hearing person, and the legislature and the Texas Legislative Council are directed to replace, when enacting or revising a statute or resolution, those phrases with "deaf" or "hard of hearing," as appropriate.

(c) A statute or resolution is not invalid solely because it does not employ this section's preferred phrases.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 272 (H.B. 1481), § 1, effective September 1, 2011; Acts 2019, 86th Leg., ch. 233 (S.B. 281), § 1, effective September 1, 2019.

TITLE 4

EXECUTIVE BRANCH

Subtitle
C. State Military Forces and Veterans
G. Corrections
I. Health and Human Services

SUBTITLE C

STATE MILITARY FORCES AND VETERANS

CHAPTER 434

Veteran Assistance Agencies

Subchapter
A. Texas Veterans Commission
H. Mental Health Program for Veterans
I. Community Collaboration Initiative

Subchapter A

Texas Veterans Commission

Section
434.024. Information Regarding Veteran's Employment Preference Policies. [Renumbered]

Sec. 434.024. Information Regarding Veteran's Employment Preference Policies. [Renumbered]

HISTORY: Acts 2017, 85th Leg., ch. 387 (S.B. 588), § 1, effective September 1, 2017; renumbered to Tex. Gov't Code § 434.025 by Acts 2019, 86th Leg., ch. 467 (H.B. 4170), § 21.001(22), effective September 1, 2019.

Subchapter H

Mental Health Program for Veterans

Section
434.351. Definitions.
434.352. Duties.
434.3525. Mental Health Program Director Eligibility.
434.353. Training and Certification.

HISTORY: 2025, 89th Leg., H.B. 114, § 1.01, effective September 1, 2025.

Sec. 434.351. Definitions.

In this subchapter:

(1) "Commission" means the Texas Veterans Commission.

(2) "Peer" means a person who is a veteran or a veteran's family member.

(2-a) "Peer service coordinator" means a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

(3) "Veteran" means a person who has served in:

(A) the army, navy, air force, coast guard, or marine corps of the United States;

(B) the state military forces as defined by Section 431.001; or

(C) an auxiliary service of one of those branches of the armed forces.

(4) [Repealed.]

HISTORY: Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; Acts 2017, 85th Leg., ch. 512 (S.B. 27), §§ 2, 8(1), effective September 1, 2017.

Sec. 434.352. Duties.

(a) [Repealed.]

(b) For the mental health program for veterans, the commission shall:

(1) provide training to peer service coordinators and peers in accordance with Section 434.353;

(2) provide technical assistance to peer service coordinators and peers;

(3) identify, train, and communicate with community-based licensed mental health professionals, community-based organizations, and faith-based organizations;

(4) coordinate services for justice involved veterans;

(5) coordinate local delivery to veterans and immediate family members of veterans of mental health first aid for veterans training; and

(6) employ and train mental health professionals to assist the Health and Human Services Commission in the administration of the program.

(c) Subject to Section 434.3525, the executive director of the commission shall appoint a program director to administer the mental health program for veterans.

(d) The commission shall provide appropriate facilities in support of the mental health program for veterans to the extent funding is available for that purpose.

(e) A state agency may not award a grant to an entity for the provision of mental health services to veterans or

veterans' families unless the entity demonstrates the entity:

(1) has previously received and successfully executed a grant from the state agency; or

(2) provides training on military informed care or military cultural competency to entity personnel who provide mental health services to veterans or veterans' families or requires those personnel to complete military competency training provided by any of the following:

(A) the commission;

(B) the Health and Human Services Commission;

(C) the Military Veteran Peer Network;

(D) the Substance Abuse and Mental Health Services Administration within the United States Department of Health and Human Services;

(E) the United States Department of Defense;

(F) the United States Department of Veterans Affairs; or

(G) a nonprofit organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code, with experience in providing training or technical assistance to entities that provide mental health services to veterans or veterans' families.

(f) The commission and the Department of State Health Services shall jointly verify that each state agency authorized to award a grant subject to the requirements of Subsection (e) has adopted policies to ensure compliance with Subsection (e).

HISTORY: Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 3, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1327 (H.B. 4429), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 593 (S.B. 601), § 7, effective September 1, 2019; 2021, 87th Leg., H.B. 3821, § 1, effective September 1, 2021; 2023, 88th Leg., H.B. 1457, § 1, effective September 1, 2023; 2025, 89th Leg., Ch. 713 (H.B. 114), §§ 1.03, 4.01, effective September 1, 2025.

Sec. 434.3525. Mental Health Program Director Eligibility.

To be eligible for appointment under Section 434.352(c), an individual must:

(1) have at least a master's degree in a recognized mental health field;

(2) be licensed in this state to practice a mental health profession;

(3) have multiple years of postgraduate experience in a human services setting, such as a community mental health center, chemical dependency rehabilitation center, or residential treatment facility; and

(4) have experience in providing trauma-informed care, with preference given to a candidate with at least two years of that experience.

HISTORY: Acts 2019, 86th Leg., ch. 593 (S.B. 601), § 8, effective September 1, 2019.

Sec. 434.353. Training and Certification.

(a) The commission shall develop and implement methods for providing peer service coordinator certification training to peer service coordinators, including providing training for initial certification and recertification and providing continuing education.

(b) The commission shall manage and coordinate the peer training program to include initial training, advanced training, certification, and continuing education for peers associated with the mental health program for veterans.

HISTORY: Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015; Acts 2017, 85th Leg., ch. 512 (S.B. 27), § 4, effective September 1, 2017.

Subchapter I

Community Collaboration Initiative

Section
434.401. Community Collaboration.

Sec. 434.401. Community Collaboration.

(a) The commission and the Department of State Health Services shall include as a part of the mental health program for veterans described by Section 434.352(a) an initiative to encourage local communities to conduct cross-sector collaboration to synchronize locally accessible resources available for veterans and military service members.

(b) The initiative must be designed to encourage local communities to form a committee that is tasked with developing a plan to identify and support the needs of veterans and military service members residing in their community. The commission may designate general areas of focus for the initiative.

HISTORY: Acts 2015, 84th Leg., ch. 324 (H.B. 19), § 2, effective June 4, 2015.

SUBTITLE G

CORRECTIONS

Chapter
493. Texas Department of Criminal Justice: Organization
495. Contracts for Correctional Facilities and Services
499. Population Management; Special Programs
501. Inmate Welfare
507. State Jail Management
508. Parole and Mandatory Supervision
509. Community Justice Assistance Division
511. Commission On Jail Standards [Expires September 1, 2035]

CHAPTER 493

Texas Department of Criminal Justice: Organization

Section
493.031. Case Management Committees.
493.032. Correctional Officer Training Related to Pregnant Inmates.
493.032. Availability of Peer Support Services. [Renumbered]
493.0325. Correctional Officer Training on De-Escalation, Crisis Intervention, and Behavioral Health.
493.034. Educational and Vocational Training Pilot Program.

Sec. 493.031. Case Management Committees.

(a) Each facility under the oversight of the correctional institutions division shall establish a case management committee to assess each inmate in the facility and ensure the inmate is receiving appropriate services or participating in appropriate programs. The case management committee shall:

(1) review each individualized treatment plan adopted under Section 508.152 for an inmate in the facility and, as applicable, discuss with the inmate a possible treatment plan, including participation in any program or service that may be available through the department, the Windham School District, or any volunteer organization; and

(2) meet with each inmate in the facility at the time of the inmate's initial placement in the facility and at any time in which the committee seeks to reclassify the inmate based on the inmate's refusal to participate in a program or service recommended by the committee.

(b) A case management committee must include the members of the unit classification committee. In addition to those members, a case management committee may include any of the following members, based on availability and inmate needs:

(1) an employee whose primary duty involves providing rehabilitation and reintegration programs or services;

(2) an employee whose primary duty involves providing vocational training or educational services to inmates;

(3) an employee whose primary duty involves providing medical care or mental health care treatment to inmates; or

(4) a representative of a faith-based or volunteer organization.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 2, effective September 1, 2013.

Sec. 493.032. Correctional Officer Training Related to Pregnant Inmates.

(a) The department shall provide training relating to medical and mental health care issues applicable to pregnant inmates to:

(1) each correctional officer employed by the department at a facility in which female inmates are confined; and

(2) any other department employee whose duties involve contact with pregnant inmates.

(b) The training must include information regarding:

(1) appropriate care for pregnant inmates; and

(2) the impact on a pregnant inmate and the inmate's unborn child of:

(A) the use of restraints;

(B) placement in administrative segregation; and

(C) invasive searches.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 1, effective September 1, 2019.

Sec. 493.032. Availability of Peer Support Services. [Renumbered]

HISTORY: Acts 2019, 86th Leg., ch. 1163 (H.B. 3227), § 1, effective September 1, 2019; renumbered to Tex. Gov't Code § 493.033 by 2021, 87th Leg., H.B. 3607, § 21.001(30), effective September 1, 2021.

Sec. 493.0325. Correctional Officer Training on De-Escalation, Crisis Intervention, and Behavioral Health.

(a) This section applies to:

(1) a correctional officer employed by the department; and

(2) a department employee responsible for the direct supervision of correctional officers described by Subdivision (1).

(b) To facilitate interaction with inmates, the department shall provide employees described by Subsection (a) training on:

(1) de-escalation and crisis intervention techniques; and

(2) behavioral health.

(c) The training described by Subsection (b)(1) must include information regarding:

(1) effective communication;

(2) employing alternatives to physical restraints, including the availability and proper use of tools such as shields, chemical dispensing devices, and less-lethal force weapons;

(3) techniques for limiting the use of force resulting in bodily injury;

(4) proper utilization of necessary resources, including lighting;

(5) safety techniques during cell extractions;

(6) fundamental lifesaving procedures; and

(7) necessary personnel involvement.

(d) The training described by Subsection (b)(2) must include information regarding:

(1) effective communication and intervention;

(2) increased awareness of persons with behavioral health concerns, substance use disorders, or intellectual and developmental disabilities;

(3) crisis recognition, prevention, and response;

(4) suicide risk and prevention; and

(5) access to employee assistance programs available to correctional officers.

(e) The training required by this section must be included in the department's preservice training for correctional officers and completed annually by employees described by Subsection (a).

HISTORY: 2025, 89th Leg., ch. 1022 (S.B. 2405), § 2, effective September 1, 2025.

Sec. 493.034. Educational and Vocational Training Pilot Program.

(a) The department shall establish a pilot program to provide educational and vocational training, employment, and reentry services to:

(1) defendants placed on community supervision under Article 42A.562, Code of Criminal Procedure; and

(2) inmates released on parole who are required to participate in the program as a condition of parole imposed under Section 508.1455.

(b) The department, in consultation with interested parties, shall determine the eligibility criteria for a defendant or inmate to participate in the pilot program, includ-

ing requiring the defendant or inmate to arrange for suitable housing while participating in the program.

(c) The department, in consultation with interested parties, shall identify at least two and not more than four sites in this state in which the pilot program will operate. In identifying the sites, the department shall consider locating the program in various regions throughout the state, including locations having a variety of population sizes, provided that the department shall select sites based on where the program will have the greatest likelihood of success and regardless of geographic region or population size. The department shall also give consideration to whether a risk and needs assessment is generally conducted before sentencing defendants in a particular location and to the degree to which local judges show support for the establishment of the program in a particular location.

(d) The department shall issue a request for proposals from public or private entities to provide services through the pilot program. The department shall select one or more qualified applicants to provide services through the program to eligible defendants and inmates.

(e) The pilot program consists of approximately 180 days of employment-related services and support and must include:

(1) an initial period during which the defendant or inmate will:

(A) receive training and education related to the defendant's or inmate's vocational goals; and

(B) be employed by the provider;

(2) job placement services designed to provide employment for the defendant or inmate after the period described by Subdivision (1);

(3) assistance in obtaining a high school diploma or industry certification for applicable defendants and inmates;

(4) life-skills training, including information about budgeting and money management; and

(5) counseling and mental health services.

(f) The department shall limit the number of defendants and inmates who may participate in the pilot program to not more than 45 individuals per quarter per program location.

(g) The department shall pay providers not less than $40 per day for each participant.

HISTORY: Acts 2017, 85th Leg., ch. 1060 (H.B. 3130), § 2, effective September 1, 2017; renumbered from Tex. Gov't Code § 507.007 by Acts 2021, 87th Leg., ch. 1014 (H.B. 2352), § 3, effective September 1, 2021.

CHAPTER 495

Contracts for Correctional Facilities and Services

Subchapter B

Miscellaneous Contracts for Correctional Facilities and Services

Section
495.023. Contracts for Diagnostic and Evaluation Services.

Sec. 495.023. Contracts for Diagnostic and Evaluation Services.

(a) The institutional division shall request proposals and may award one contract to a private vendor or community supervision and corrections department to screen and diagnose, either before or after adjudications of guilt, persons who may be transferred to the division. The term of the contract may not be for more than two years. The institutional division shall award the contract if the division determines that:

(1) the person proposing to enter into the contract can provide psychiatric, psychological, or social evaluations of persons who are to be transferred to the division;

(2) the services provided will reduce the chances of misdiagnosis of persons with mental illness or persons with intellectual disabilities who are to be transferred to the division, expedite the diagnostic process, and offer savings to the division;

(3) the quality of services offered equals or exceeds the quality of the same services provided by the division; and

(4) the state will assume no additional liability by entering into a contract for the services.

(b) If the institutional division enters into the contract and during or at the end of the contract period determines that the diagnostic services performed under the contract are of a sufficient quality and are cost effective, the division shall submit requests for additional proposals for contracts and award one or more contracts in the same manner as provided by Subsection (a).

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 494.023); Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.09, effective September 1, 2023.

CHAPTER 499

Population Management; Special Programs

Subchapter E

Unit and System Capacity

Section
499.102. Staff Determinations and Recommendations.

Sec. 499.102. Staff Determinations and Recommendations.

(a) The staff of the department, on its own initiative or as directed by the governor or the board, may recommend to the administration of the institutional division that the maximum capacity for a unit be increased if the staff determines through written findings that the division can increase the maximum capacity and provide:

(1) proper inmate classification and housing within the unit that is consistent with the classification system;

(2) housing flexibility to allow necessary repairs and routine and preventive maintenance to be performed without compromising the classification system;

(3) adequate space in dayrooms;

(4) all meals within a reasonable time, allowing each inmate a reasonable time within which to eat;

(5) operable hygiene facilities that ensure the availability of a sufficient number of fixtures to serve the inmate population;

(6) adequate laundry services;

(7) sufficient staff to:

(A) meet operational and security needs;

(B) meet health care needs, including the needs of inmates requiring psychiatric care, inmates with an intellectual disability, and inmates with a physical disability;

(C) provide a safe environment for inmates and staff; and

(D) provide adequate internal affairs investigation and review;

(8) medical, dental, and psychiatric care adequate to ensure:

(A) minimal delays in delivery of service from the time sick call requests are made until the service is performed;

(B) access to regional medical facilities;

(C) access to the institutional division hospital at Galveston or contract facilities performing the same services;

(D) access to specialty clinics; and

(E) a sufficient number of psychiatric inpatient beds and sheltered beds for inmates with an intellectual disability;

(9) a fair disciplinary system that ensures due process and is adequate to ensure safety and order in the unit;

(10) work, vocational, academic, and on-the-job training programs that afford all eligible inmates with an opportunity to learn job skills or work habits that can be applied on release, appropriately staffed and of sufficient quality;

(11) a sufficient number and quality of nonprogrammatic and recreational activities for all eligible inmates who choose to participate;

(12) adequate assistance from persons trained in the law or a law library with a collection containing necessary materials and space adequate for inmates to use the law library for study related to legal matters;

(13) adequate space and staffing to permit contact and noncontact visitation of all eligible inmates;

(14) adequate maintenance programs to repair and prevent breakdowns caused by increased use of facilities and fixtures; and

(15) space and staff sufficient to provide all the services and facilities required by this section.

(b) The staff of the department shall request of the Legislative Budget Board an estimate of the initial cost of implementing the increase in capacity and the increase in operating costs of the unit for the five years immediately following the increase in capacity. The Legislative Budget Board shall provide the staff with the estimates, and the staff shall attach a copy of the estimates to the recommendations.

(c) The staff of the department may not take more than 90 days from the date the process is initiated to make recommendations on an increase in the maximum capacity for a unit under this section.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 655 (H.B. 124), § 2, effective June 16, 1991; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.061, effective September 1, 1995; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.10, effective September 1, 2023; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 42, effective September 1, 2025.

CHAPTER 501

Inmate Welfare

Subchapter

A. General Welfare Provisions

B. General Medical and Mental Health Care Provisions

C. Continuity of Care Programs; Reentry Program

D. Inmate Housing

Subchapter A

General Welfare Provisions

Section

501.006. Emergency Absence.

501.0215. Educational Programming for Pregnant Inmates.

501.023. Information Concerning Foster Care History.

501.024. Verification of Inmate Veteran Status.

501.025. Veterans Services Coordinator.

Sec. 501.006. Emergency Absence.

(a) The institutional division may grant an emergency absence under escort to an inmate so that the inmate may:

(1) obtain a medical diagnosis or medical treatment;

(2) obtain treatment and supervision at a facility operated by the Health and Human Services Commission; or

(3) attend a funeral or visit a critically ill relative.

(b) The institutional division shall adopt policies for the administration of the emergency absence under escort program.

(c) An inmate absent under this section is considered to be in the custody of the institutional division, and the inmate must be under physical guard while absent.

(d) The institutional division may not grant a furlough to an inmate convicted of an offense under Section 42.072, Penal Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.006); am. Acts 1993, 73rd Leg., ch. 10 (S.B. 25), § 7, effective March 19, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 14.36, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.074, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 657 (S.B. 126), § 7, effective June 14, 1995; am. Acts 1997, 75th Leg., ch. 1 (S.B. 97), § 9, effective January 28, 1997; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.11, effective September 1, 2023.

Sec. 501.0215. Educational Programming for Pregnant Inmates.

The department shall develop and provide to each pregnant inmate educational programming relating to pregnancy and parenting. The programming must include instruction regarding:

(1) appropriate prenatal care and hygiene;

(2) the effects of prenatal exposure to alcohol and drugs on a developing fetus;

(3) parenting skills; and

(4) medical and mental health issues applicable to children.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 3, effective September 1, 2019.

Sec. 501.023. Information Concerning Foster Care History.

(a) The department, during the diagnostic process, shall assess each inmate with respect to whether the inmate has at any time been in the conservatorship of a state agency responsible for providing child protective services.

(b) Not later than December 31 of each year, the department shall submit a report to the governor, the lieutenant governor, and each member of the legislature and shall make the report available to the public on the department's Internet website. The report must summarize statistical information concerning the total number of inmates who have at any time been in the conservatorship of a state agency responsible for providing child protective services, including, disaggregated by age, the number of inmates who have not previously served a term of imprisonment.

HISTORY: Acts 2019, 86th Leg., ch. 761 (H.B. 1191), § 1, effective September 1, 2019.

Sec. 501.024. Verification of Inmate Veteran Status.

(a) The department, during the diagnostic process, shall record information relating to an inmate's military history in the inmate's admission sheet and intake screening form, or any other similar document.

(b) The department shall:

(1) in consultation with the Texas Veterans Commission, investigate and verify the veteran status of each inmate by using the best available federal data; and

(2) use the data described by Subdivision (1) to assist inmates who are veterans in applying for federal benefits or compensation for which the inmates may be eligible under a program administered by the United States Department of Veterans Affairs, including mailing any related paperwork, application, or other correspondence on behalf of and at no charge to the inmate.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 261 (H.B. 634), § 1, effective June 14, 2013; Acts 2015, 84th Leg., ch. 281 (H.B. 875), § 1, effective September 1, 2015; am. Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 21.001(24), effective September 1, 2015 (renumbered from Sec. 501.023); 2025, 89th Leg., S.B. 2938, § 2, effective September 1, 2025.

Sec. 501.025. Veterans Services Coordinator.

(a) The department shall establish a veterans services coordinator to coordinate responses to the needs of veterans under the supervision of the department, including veterans who are released on parole or mandatory supervision. The veterans services coordinator, with the cooperation of the community justice assistance division, shall provide information to community supervision and corrections departments to help those departments coordinate responses to the needs of veterans placed on community supervision. The veterans services coordinator shall coordinate veterans' services for all of the department's divisions.

(b) The veterans services coordinator, in collaboration with the attorney general's office, shall provide each incarcerated veteran a child support modification application.

HISTORY: Acts 2017, 85th Leg., ch. 987 (H.B. 865), § 1, effective September 1, 2017.

Subchapter B

General Medical and Mental Health Care Provisions

Section

501.051. Medical Facilities at University of Texas Medical Branch.

501.0515. Procedures for Transportation of Female Inmates for Medical Care.

501.052. Medical Residencies.

501.053. Reports of Physician Misconduct.

501.054. AIDS and HIV Education; Testing.

501.055. Report of Inmate Death. [Effective until April 1, 2027]

501.055. Report of Inmate Death. [Effective April 1, 2027]

501.0551. Anatomical Gifts.

501.056. Contract for Care of Inmates with Mental Illness or Intellectual Disability.

501.057. Civil Commitment Before Parole.

501.058. Compensation of Psychiatrists.

501.059. Screening for and Education Concerning Fetal Alcohol Exposure During Pregnancy.

501.060. Tuberculosis Screening.

501.061. Orchiectomy for Certain Sex Offenders.

501.062. Study of Rate of Recidivism Among Sex Offenders.

501.063. Inmate Fee for Health Care.

501.064. Availability of Correctional Health Care Information to Inmates.

501.065. Consent to Medical, Dental, Psychological, and Surgical Treatment.

501.066. Restraint of Pregnant Inmate or Defendant.

501.0665. Certain Invasive Searches Prohibited.

501.0666. Nutrition Requirements for Pregnant Inmates.

501.0667. Inmate Postpartum Recovery Requirements.

501.0668. Duties Following Miscarriage or Physical or Sexual Assault of Pregnant Inmate.

501.067. Availability of Certain Medication.

501.0675. Provision of Feminine Hygiene Products.

501.068. Developmentally Disabled Offender Program. [Renumbered]

501.068. Mental Health Assessment for Certain Inmates.

501.069. Offenders with Intellectual or Developmental Disabilities.

501.070. Trauma History Screening.

501.071. Access to Telemedicine and Telehealth Services and On-Site Medical Care.

Sec. 501.051. Medical Facilities at University of Texas Medical Branch.

(a) The medical facility constructed by the institutional division at The University of Texas Medical Branch at Galveston shall be used as a teaching facility and be

limited to patients who are teaching patients, as long as the medical facility is used for the treatment of department patients. The Board of Regents of The University of Texas System shall maintain and operate the facility and provide professional staff services necessary for the care of patients in the facility, except that the department shall provide security at the facility. The facility shall provide the same level of care as is provided for patients in other facilities of The University of Texas Medical Branch at Galveston.

(b) If the medical facility ceases to be used for department patients, the facility shall revert to the medical branch for its use and be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

(c) The medical facility shall be operated with funds appropriated for that purpose.

(d) The department shall establish and maintain an overnight holding facility for inmate outpatients at The University of Texas Medical Branch at Galveston.

(e) The department and The University of Texas Medical Branch at Galveston shall by rule adopt a memorandum of understanding that establishes the responsibilities of the department and the medical branch in maintaining the department's medical facility, providing security, and providing medical care. The memorandum must also establish a joint peer review committee and a joint utilization review committee. Each committee shall be composed of medical personnel employed by the department and by the medical branch. The joint peer review committee shall review all case files to determine whether the quality of medical care provided is adequate, according to accepted medical standards. The joint utilization review committee shall review all case files to determine whether treatment given is medically necessary under the circumstances of each case, taking into account accepted medical standards. The department shall coordinate the development of the memorandum of understanding.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.051); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.086, effective September 1, 1995.

Sec. 501.0515. Procedures for Transportation of Female Inmates for Medical Care.

The department shall establish procedures to be used during the regularly scheduled transportation of female inmates for nonemergency medical care to The University of Texas Medical Branch at Galveston or another medical facility that provides medical services for inmates. The procedures must ensure that:

(1) any searches conducted are performed in an area and manner that conforms with the requirements of the Prison Rape Elimination Act of 2003 (34 U.S.C. Section 30301 et seq.) and any regulation adopted under that Act;

(2) buses used to transport female inmates are equipped with bathrooms and have an adequate supply of toilet paper and feminine hygiene products as defined by Section 501.0675 for the inmates being transported;

(3) female inmates receive sufficient food and nutrition in accordance with medical or nutritional standards as determined by the department; and

(4) facilities used to house female inmates overnight while being transported have an adequate number of beds for the inmates being transported.

HISTORY: Acts 2023, 88th Leg., ch. 1162 (S.B. 1146), § 1, effective September 1, 2023.

Sec. 501.052. Medical Residencies.

The department may establish a residency program or a rotation program to employ or train physicians to treat inmates in the department.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.052); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.087, effective September 1, 1995.

Sec. 501.053. Reports of Physician Misconduct.

(a) If the department receives an allegation that a physician employed or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code, the department shall report the information to the Texas State Board of Medical Examiners in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide the Texas State Board of Medical Examiners with a copy of any report or finding relating to an investigation of an allegation reported to the board.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.053); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 11.088, effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.763, effective September 1, 2001.

Sec. 501.054. AIDS and HIV Education; Testing.

(a) In this section, "AIDS," "HIV," and "test result" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) The department, in consultation with the Texas Department of Health, shall establish education programs to educate inmates and employees of the department about AIDS and HIV. In establishing the programs for inmates, the department shall design a program that deals with issues related to AIDS and HIV that are relevant to inmates while confined and a program that deals with issues related to AIDS and HIV that will be relevant to inmates after the inmates are released. The department shall design the programs to take into account relevant cultural and other differences among inmates. The department shall require each inmate in a facility operated by the department to participate in education programs established under this subsection.

(c) The department shall require each employee of the department to participate in programs established under this section at least once during each calendar year.

(d) The department shall ensure that education programs for employees include information and training relating to infection control procedures. The department shall also ensure that employees have infection control supplies and equipment readily available.

(e) The department, in consultation with the Texas Department of Health, shall periodically revise education programs established under this section so that the programs reflect the latest medical information available on AIDS and HIV.

(f) The department shall adopt a policy for handling persons with AIDS or HIV infection who are in the custody of the department or under the department's supervision. The policy must be substantially similar to a model policy developed by the Texas Department of Health under Subchapter G, Chapter 85, Health and Safety Code.

(g) The department shall maintain the confidentiality of test results of an inmate indicating HIV infection at all times, including after the inmate's discharge, release from a state jail, or release on parole or mandatory supervision. The department may not honor the request of an agency of the state or any person who requests a test result as a condition of housing or supervising the inmate while the inmate is on community supervision or parole or mandatory supervision, unless honoring the request would improve the ability of the inmate to obtain essential health and social services.

(h) The department shall report to the legislature not later than December 1 of each even-numbered year concerning the implementation of this section and the participation of inmates and employees of the department in education programs established under this section.

(i) The department may test an inmate confined in a facility operated by the correctional institutions division for human immunodeficiency virus at any time, but must test:

(1) during the diagnostic process, an inmate for whom the department does not have a record of a positive test result; and

(2) an inmate who is eligible for release before the inmate is released from the division.

(j) If the department determines that an inmate has a positive test result, the department may segregate the inmate from other inmates. The department shall report the results of a positive test to the Department of State Health Services for the purposes of notification and reporting as described by Sections 81.050—81.052, Health and Safety Code.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.054); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.089, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 1184 (H.B. 43), § 1, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 255 (S.B. 453), § 1, effective May 26, 2007; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 53, effective September 1, 2025.

Sec. 501.055. Report of Inmate Death. [Effective until April 1, 2027]

(a) If an inmate dies while in the custody of the department, an employee of the facility who is in charge of the inmate shall immediately notify the nearest justice of the peace serving in the county in which the inmate died and the office of inspector general. The justice shall personally inspect the body and make an inquiry as to the cause of death. The justice shall make written copies of evidence taken during the inquest, and give one copy to the director and one copy to a district judge serving in the county in which the inmate died. The judge shall provide the copy to the grand jury and, if the judge determines the evidence indicates wrongdoing, instruct the grand jury to thoroughly investigate the cause of death.

(b) Subsection (a) does not apply if the inmate:

(1) dies of natural causes while attended by a physician or a registered nurse; or

(2) is lawfully executed.

(c) If an inmate dies as described by Subsection (b)(1), the department or an authorized official of the department shall immediately attempt to notify the next of kin of the inmate that the inmate has died, state the time of the inmate's death, and inform the next of kin that unless the next of kin objects to the department within eight hours of the stated time of death, an autopsy will be conducted on the inmate.

(d) If the next of kin consents to the autopsy or does not within eight hours of the time of death file an objection with the department about the autopsy, the department or an authorized official of the department shall order an autopsy to be conducted on the inmate. The order of an autopsy under this subsection constitutes consent to an autopsy for the purposes of Article 49.32, Code of Criminal Procedure.

(e) For purposes of this section, an "inmate in the custody of the department" is a convicted felon who:

(1) is confined in a secure correctional facility operated by or under contract with the department; or

(2) has been admitted for treatment into a hospital while remaining in the custody of the department.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.055); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.090, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1422 (H.B. 2827), § 2, effective June 20, 1997; am. Acts 2011, 82nd Leg., ch. 950 (H.B. 1009), § 3, effective January 1, 2012; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 54, effective September 1, 2025.

Sec. 501.055. Report of Inmate Death. [Effective April 1, 2027]

(a) If an inmate dies while in the custody of the department, an employee of the facility who is in charge of the inmate shall immediately notify the nearest justice of the peace serving in the county in which the inmate died and the office of internal affairs for the department. The justice shall personally inspect the body and make an inquiry as to the cause of death. The justice shall make written copies of evidence taken during the inquest, and give one copy to the director and one copy to a district judge serving in the county in which the inmate died. The judge shall provide the copy to the grand jury and, if the judge determines the evidence indicates wrongdoing, instruct the grand jury to thoroughly investigate the cause of death.

(b) Subsection (a) does not apply if the inmate:

(1) dies of natural causes while attended by a physician or a registered nurse; or

(2) is lawfully executed.

(c) If an inmate dies as described by Subsection (b)(1), the department or an authorized official of the department

shall immediately attempt to notify the next of kin of the inmate that the inmate has died, state the time of the inmate's death, and inform the next of kin that unless the next of kin objects to the department within eight hours of the stated time of death, an autopsy will be conducted on the inmate.

(d) If the next of kin consents to the autopsy or does not within eight hours of the time of death file an objection with the department about the autopsy, the department or an authorized official of the department shall order an autopsy to be conducted on the inmate. The order of an autopsy under this subsection constitutes consent to an autopsy for the purposes of Article 49A.202, Code of Criminal Procedure.

(e) For purposes of this section, an "inmate in the custody of the department" is a convicted felon who:

(1) is confined in a secure correctional facility operated by or under contract with the department; or

(2) has been admitted for treatment into a hospital while remaining in the custody of the department.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.055); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.090, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1422 (H.B. 2827), § 2, effective June 20, 1997; am. Acts 2011, 82nd Leg., ch. 950 (H.B. 1009), § 3, effective January 1, 2012; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 54, effective September 1, 2025; 2025, 89th Leg., ch. 202 (H.B. 1610), article 2, § 2.07, effective April 1, 2027.

Sec. 501.0551. Anatomical Gifts.

(a) The department, during the diagnostic process, shall provide each inmate with a form on which the inmate may indicate whether the inmate wishes to be an eye, tissue, or organ donor if the inmate dies while in the custody of the department.

(b) If an inmate indicates on the form that the inmate wishes to be a donor, the effect is the same as if the inmate executed a statement of gift under Section 521.401, Transportation Code.

(c) The department shall adopt procedures to provide inmates with the form described by Subsection (a).

(d) [Expired pursuant to Acts 1997, 75th Leg., ch. 1422 (H.B. 2827), § 3, effective September 1, 2002.]

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1422 (H.B. 2827), § 3, effective June 20, 1997.

Sec. 501.056. Contract for Care of Inmates with Mental Illness or Intellectual Disability.

The department shall contract with the Health and Human Services Commission for provision of commission facilities, treatment, and habilitation for inmates with mental illness or an intellectual disability in the custody of the department. The contract must provide:

(1) detailed characteristics of the inmate population with mental illness and the inmate population with intellectual disabilities to be affected under the contract;

(2) for the respective responsibilities of the commission and the department with regard to the care and supervision of the affected inmates; and

(3) that the department remains responsible for security.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.056); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.091, effective September 1, 1995; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.12, effective September 1, 2023.

Sec. 501.057. Civil Commitment Before Parole.

(a) The department shall establish a system to identify inmates with mental illness who are nearing eligibility for release on parole.

(b) Not later than the 30th day before the initial parole eligibility date of an inmate identified as having a mental illness, an institutional division psychiatrist shall examine the inmate. The psychiatrist shall file a sworn application for court-ordered temporary mental health services under Chapter 574, Health and Safety Code, if the psychiatrist determines that the inmate has a mental illness and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) The psychiatrist shall include with the application a sworn certificate of medical examination for mental illness in the form prescribed by Section 574.011, Health and Safety Code.

(d) The institutional division is liable for costs incurred for a hearing under Chapter 574, Health and Safety Code, that follows an application filed by a division psychiatrist under this section.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.057); am. Acts 1995, 74th Leg., ch. 321 (H.B. 2162), § 1.092, effective September 1, 1995; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 7, effective September 1, 2019; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 55, effective September 1, 2025.

Sec. 501.058. Compensation of Psychiatrists.

The amount of compensation paid by the institutional division to psychiatrists employed by the division should be similar to the amount of compensation authorized for the Health and Human Services Commission to pay to psychiatrists.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 16 (S.B. 232), § 10.01(a), effective August 26, 1991 (renumbered from Sec. 500.058); Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.13, effective September 1, 2023.

Sec. 501.059. Screening for and Education Concerning Fetal Alcohol Exposure During Pregnancy.

(a) The department shall establish a screening program to identify female inmates who are:

(1) between the ages of 18 and 44;

(2) sentenced to a term of confinement not to exceed two years; and

(3) at risk for having a pregnancy with alcohol-related complications, including giving birth to a child with alcohol-related birth defects.

(b) The screening program established under Subsection (a) must:

(1) evaluate the family planning practices of each female inmate described by Subsection (a) in relation to the inmate's consumption of alcohol and risk of having a pregnancy with alcohol-related complications;

(2) include an objective screening tool to be used by department employees administering the screening program; and

(3) occur during the diagnostic process or at another time determined by the department.

(c) The department shall provide:

(1) a brief substance abuse intervention to all female inmates identified by the screening program as being at risk for having a pregnancy with alcohol-related complications; and

(2) an educational brochure describing the risks and dangers of consuming alcohol during pregnancy to all female inmates.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 24, effective June 15, 2007.

Sec. 501.060. Tuberculosis Screening.

(a) The board will establish requirements for tuberculosis screening of department employees and volunteers in a manner similar to that established for jail employees and volunteers as outlined in Subchapter B, Chapter 89, Health and Safety Code.

(b) The institutional division shall provide tuberculosis screening for a person if:

(1) the person is an employee of:

(A) the institutional division;

(B) the correctional managed care plan operated by The University of Texas Medical Branch at Galveston; or

(C) the Texas Tech University Health Science Center Correctional Managed Care Plan; and

(2) the person requests the screening.

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 786 (S.B. 57), § 2, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(17), effective September 1, 1995 (renumbered from Sec. 501.059); am. Acts 1995, 74th Leg., ch. 385 (H.B. 1696), § 1, effective August 28, 1995 (renumbered from Sec. 501.059).

Sec. 501.061. Orchiectomy for Certain Sex Offenders.

(a) A physician employed or retained by the department may perform an orchiectomy on an inmate only if:

(1) the inmate has been convicted of an offense under Section 21.02, 21.11, 22.011(a)(2), or 22.021(a)(2)(B), Penal Code, and has previously been convicted under one or more of those sections;

(2) the inmate is 21 years of age or older;

(3) the inmate requests the procedure in writing;

(4) the inmate signs a statement admitting the inmate committed the offense described by Subsection (a)(1) for which the inmate has been convicted;

(5) a psychiatrist and a psychologist who are appointed by the department and have experience in the treatment of sex offenders:

(A) evaluate the inmate and determine that the inmate is a suitable candidate for the procedure; and

(B) counsel the inmate before the inmate undergoes the procedure;

(6) the physician obtains the inmate's informed, written consent to undergo the procedure;

(7) the inmate has not previously requested that the department perform the procedure and subsequently withdrawn the request; and

(8) the inmate consults with a monitor as provided by Subsection (f).

(b) The inmate may change his decision to undergo an orchiectomy at any time before the physician performs the procedure. An inmate who withdraws his request to undergo an orchiectomy is ineligible to have the procedure performed by the department.

(c) Either the psychiatrist or psychologist appointed by the department under this section must be a member of the staff of a medical facility under contract with the department or the institutional division to treat inmates in the division.

(d) A physician who performs an orchiectomy on an inmate under this section is not liable for an act or omission relating to the procedure unless the act or omission constitutes negligence.

(e) The name of an inmate who requests an orchiectomy under this section is confidential, and the department may use the inmate's name only for purposes of notifying and providing information to the inmate's spouse if the inmate is married.

(f) The executive director of the Texas State Board of Medical Examiners shall appoint, in consultation with two or more executive directors of college or university institutes or centers for the study of medical ethics or medical humanities, a monitor to assist an inmate in his decision to have an orchiectomy. The monitor must have experience in the mental health field, in law, and in ethics. The monitor shall consult with the inmate to:

(1) ensure adequate information regarding the orchiectomy has been provided to the inmate by medical professionals providing treatment or advice to the inmate;

(2) provide information regarding the orchiectomy to the inmate if the monitor believes the inmate is not adequately informed about the orchiectomy;

(3) determine whether the inmate is free from coercion in his decision regarding the orchiectomy; and

(4) advise the inmate to withdraw his request for an orchiectomy if the monitor determines the inmate is being coerced to have an orchiectomy.

(g) A monitor appointed under Subsection (f) is not liable for damages arising from an act or omission under Subsection (f) unless the act or omission was intentional or grossly negligent.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 144 (S.B. 123), § 1, effective May 20, 1997; am. Acts 2007, 80th Leg., ch. 593 (H.B. 8), § 3.37, effective September 1, 2007.

Sec. 501.062. Study of Rate of Recidivism Among Sex Offenders.

(a) The department shall conduct a long-term study, for at least 10 years after the date an orchiectomy is performed under Section 501.061, to measure the rate of recidivism among inmates who undergo the procedure.

(b) During the study period under Subsection (a), with respect to each inmate who undergoes an orchiectomy

under Section 501.061 and who volunteers to undergo the evaluations described by this subsection, the department shall provide for:

(1) a psychiatric or psychological evaluation of the inmate; and

(2) periodic monitoring and medical evaluation of the presence of the hormone testosterone in the inmate's body.

(c) [Repealed.]

(d) The department may contract with a public or private entity to conduct the study required under this section.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 144 (S.B. 123), § 1, effective May 20, 1997; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 105(9), effective September 1, 2025.

Sec. 501.063. Inmate Fee for Health Care.

(a) (1) An inmate confined in a facility operated by or under contract with the department, other than a halfway house, who initiates a visit to a health care provider shall pay a health care services fee to the department in the amount of $13.55 per visit, except that an inmate may not be required to pay more than $100 during a state fiscal year.

(2) [Repealed.]

(3) The inmate shall pay the fee out of the inmate's trust fund. If the balance in the fund is insufficient to cover the fee, 50 percent of each deposit to the fund shall be applied toward the balance owed until the total amount owed is paid.

(b) The department shall adopt policies to ensure that before any deductions are made from an inmate's trust fund under this section, the inmate is informed that the health care services fee will be deducted from the inmate's trust fund as required by Subsection (a).

(c) The department may not deny an inmate access to health care as a result of the inmate's failure or inability to pay a fee under this section.

(d) The department shall deposit money received under this section in an account in the general revenue fund that may be used only to pay the cost of correctional health care. At the beginning of each fiscal year, the comptroller shall transfer any surplus from the preceding fiscal year to the state treasury to the credit of the general revenue fund.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 257 (S.B. 203), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 19.01(45), effective September 1, 1999 (renumbered from Sec. 501.061); am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 65.02, effective September 28, 2011; Acts 2019, 86th Leg., ch. 1046 (H.B. 812), §§ 1, 2, effective September 1, 2019.

Sec. 501.064. Availability of Correctional Health Care Information to Inmates.

The department shall ensure that the following information is available to any inmate confined in a facility operated by or under contract with the department:

(1) a description of the level, type, and variety of health care services available to inmates;

(2) the formulary used by correctional health care personnel in prescribing medication to inmates;

(3) correctional managed care policies and procedures; and

(4) the process for the filing of inmate grievances concerning health care services provided to inmates.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 24, effective June 15, 2007.

Sec. 501.065. Consent to Medical, Dental, Psychological, and Surgical Treatment.

An inmate who is younger than 18 years of age and is confined in a facility operated by or under contract with the department may, in accordance with procedures established by the department, consent to medical, dental, psychological, and surgical treatment for the inmate by a licensed health care practitioner, or a person under the direction of a licensed health care practitioner, unless the treatment would constitute a prohibited practice under Section 164.052(a)(19), Occupations Code.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1227 (H.B. 2389), § 1, effective June 15, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 27.001(34), effective September 1, 2009 (renumbered from Sec. 501.059).

Sec. 501.066. Restraint of Pregnant Inmate or Defendant.

(a) The department may not place restraints around the ankles, legs, or waist of a pregnant woman in the custody of the department at any time after the woman's pregnancy has been confirmed by a medical professional, unless the director, the director's designee, or a medical professional determines that the use of restraints is necessary based on a reasonable belief that the woman will harm herself, her unborn child or infant, or any other person or will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1184 (H.B. 3653), § 1, effective September 1, 2009; Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 4, effective September 1, 2019.

Sec. 501.0665. Certain Invasive Searches Prohibited.

(a) Except as provided by Subsection (b), any invasive body cavity search of a pregnant inmate shall be conducted by a medical professional.

(b) A correctional officer may conduct an invasive body cavity search of a pregnant inmate only if the officer has a reasonable belief that the inmate is concealing contraband. An officer who conducts a search described by this section shall submit a written report to the warden not later than 72 hours after the search. The report must:

(1) explain the reasons for the search; and

(2) identify any contraband recovered in the search.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.0666. Nutrition Requirements for Pregnant Inmates.

The department shall ensure that pregnant inmates are provided sufficient food and dietary supplements, includ-

ing prenatal vitamins, as ordered by an appropriate medical professional.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.0667. Inmate Postpartum Recovery Requirements.

(a) The department shall ensure that, for a period of 72 hours after the birth of an infant by an inmate:

(1) the infant is allowed to remain with the inmate, unless a medical professional determines doing so would pose a health or safety risk to the inmate or infant; and

(2) the inmate has access to any nutritional or hygiene-related products necessary to care for the infant, including diapers.

(b) The department shall make the items described by Subsection (a)(2) available free of charge to an indigent inmate.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.0668. Duties Following Miscarriage or Physical or Sexual Assault of Pregnant Inmate.

(a) In this section:

(1) "Physical assault" means any conduct that constitutes an offense under Section 22.01 or 22.02, Penal Code.

(2) "Sexual assault" means any conduct that constitutes an offense under Section 22.011 or 22.021, Penal Code.

(b) As soon as practicable after receiving a report of a miscarriage or physical or sexual assault of a pregnant inmate, the department shall ensure that an obstetrician or gynecologist and a mental health professional promptly:

(1) review the health care services provided to the inmate; and

(2) order additional health care services, including obstetrical and gynecological services and mental health services, as appropriate.

HISTORY: Acts 2021, 87th Leg., ch. 424 (H.B. 1307), § 1, effective September 1, 2021.

Sec. 501.067. Availability of Certain Medication.

(a) In this section, "over-the-counter medication" means medication that may legally be sold and purchased without a prescription.

(b) The department shall make over-the-counter medication available for purchase by inmates in each inmate commissary operated by or under contract with the department.

(c) The department may not deny an inmate access to over-the-counter medications as a result of the inmate's inability to pay for the medication. The department shall pay for the cost of over-the-counter medication for inmates who are unable to pay for the medication out of the profits of inmate commissaries operated by or under contract with the department.

(d) The department may adopt policies concerning the sale and purchase of over-the-counter medication under this section as necessary to ensure the safety and security of inmates in the custody of, and employees of, the department, including policies concerning the quantities and types of over-the-counter medication that may be sold and purchased under this section.

HISTORY: Enacted by Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 65.03, effective September 28, 2011.

Sec. 501.0675. Provision of Feminine Hygiene Products.

(a) In this section, "feminine hygiene product" means:

(1) a regular or large size tampon with applicator;

(2) a regular or large size sanitary napkin or menstrual pad with wings;

(3) a regular size panty liner; or

(4) any other similar item sold for the principal purpose of feminine hygiene in connection with the menstrual cycle.

(b) On request of a female inmate, the department shall provide free of charge to the inmate up to 10 feminine hygiene products per day that comply with applicable federal standards for comfort, effectiveness, and safety.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.068. Developmentally Disabled Offender Program. [Renumbered]

HISTORY: Acts 2015, 84th Leg., ch. 406 (H.B. 2189), § 2, effective September 1, 2015; renumbered to § 501.069 by Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(15), effective September 1, 2017.

Sec. 501.068. Mental Health Assessment for Certain Inmates.

(a) Before the department may confine an inmate in administrative segregation, an appropriate medical or mental health care professional must perform a mental health assessment of the inmate.

(b) The department may not confine an inmate in administrative segregation if the assessment performed under Subsection (a) indicates that type of confinement is not appropriate for the inmate's medical or mental health.

HISTORY: Acts 2015, 84th Leg., ch. 705 (H.B. 1083), § 1, effective September 1, 2015.

Sec. 501.069. Offenders with Intellectual or Developmental Disabilities.

(a) In this section, "offender" has the meaning assigned by Section 501.091.

(b) The department shall establish and maintain a program for offenders:

(1) who are suspected of or identified as having an intellectual disability or borderline intellectual functioning; and

(2) whose adaptive functioning is significantly impaired.

(c) The program must provide an offender described by Subsection (b) with:

(1) a safe environment while confined; and

(2) specialized programs, treatments, and activities designed by the department to assist the offender in

effectively managing, treating, or accommodating the offender's intellectual disability or borderline intellectual functioning.

(d) The department may accept gifts, awards, or grants for the purpose of providing the services described by Subsection (b).

HISTORY: Acts 2015, 84th Leg., ch. 406 (H.B. 2189), § 2, effective September 1, 2015; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 24.001(15), effective September 1, 2017; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 56, effective September 1, 2025.

Sec. 501.070. Trauma History Screening.

The department shall:

(1) screen each female inmate during the diagnostic process to determine whether the inmate has experienced adverse childhood experiences or other significant trauma; and

(2) refer the inmate as needed to the appropriate medical or mental health care professional for treatment.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 5, effective September 1, 2019.

Sec. 501.071. Access to Telemedicine and Telehealth Services and On-Site Medical Care.

The department, in conjunction with The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center, shall establish procedures to increase opportunities and expand access to telemedicine medical services and telehealth services, as those terms are defined by Section 111.001, Occupations Code, and on-site medical care for inmates, including on-site mobile care units that provide diagnostic imaging, physical therapy, and other appropriate mobile health services.

HISTORY: Acts 2023, 88th Leg., ch. 1162 (S.B. 1146), § 1, effective September 1, 2023.

Subchapter C

Continuity of Care Programs; Reentry Program

Section	
501.091.	Definitions.
501.092.	Comprehensive Reentry and Reintegration Plan for Offenders.
501.0921.	Risk and Needs Assessment Instrument.
501.097.	Reintegration Services.
501.0971.	Provision of Reentry and Reintegration Information to Inmates.
501.098.	Reentry Task Force.
501.103.	Annual Report.

Sec. 501.091. Definitions.

In this subchapter:

(1) "Correctional facility" means a facility operated by or under contract with the department.

(2) "Offender" means an inmate or state jail defendant confined in a correctional facility.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective September 1, 2009.

Sec. 501.092. Comprehensive Reentry and Reintegration Plan for Offenders.

(a) The department shall develop and adopt a comprehensive plan to reduce recidivism and ensure the successful reentry and reintegration of offenders into the community following an offender's release or discharge from a correctional facility.

(b) The reentry and reintegration plan adopted under this section must:

(1) incorporate the use of the risk and needs assessment instrument adopted under Section 501.0921;

(2) provide for programs that address the assessed needs of offenders;

(3) provide for a comprehensive network of transition programs to address the needs of offenders released or discharged from a correctional facility;

(4) identify and define the transition services that are to be provided by the department and which offenders are eligible for those services;

(5) coordinate the provision of reentry and reintegration services provided to offenders through state-funded and volunteer programs across divisions of the department to:

(A) target eligible offenders efficiently; and

(B) ensure maximum use of existing facilities, personnel, equipment, supplies, and other resources;

(6) provide for collecting and maintaining data regarding the number of offenders who received reentry and reintegration services and the number of offenders who were eligible for but did not receive those services, including offenders who did not participate in those services;

(7) provide for evaluating the effectiveness of the reentry and reintegration services provided to offenders by collecting, maintaining, and reporting outcome information, including recidivism data as applicable;

(8) identify providers of existing local programs and transitional services with whom the department may contract under Section 495.028 to implement the reentry and reintegration plan; and

(9) subject to Subsection (f), provide for the sharing of information between local coordinators, persons with whom the department contracts under Section 495.028, and other providers of services as necessary to adequately assess and address the needs of each offender.

(c) The department, in consultation with the Board of Pardons and Paroles and the Windham School District, shall establish the role of each entity in providing reentry and reintegration services. The reentry and reintegration plan adopted under this section must include, with respect to the department, the Board of Pardons and Paroles, and the Windham School District:

(1) the reentry and reintegration responsibilities and goals of each entity, including the duties of each entity to administer the risk and needs assessment instrument adopted under Section 501.0921;

(2) the strategies for achieving the goals identified by each entity; and

(3) specific timelines for each entity to implement the components of the reentry and reintegration plan for which the entity is responsible.

(d) The department shall regularly evaluate the reentry and reintegration plan adopted under this section. Not less than once in each three-year period following the adoption of the plan, the department shall update the plan.

(e) The department shall provide a copy of the initial reentry and reintegration plan adopted under this section and each evaluation and revision of the plan to the board, the Windham School District, and the Board of Pardons and Paroles.

(f) An offender's personal health information may be disclosed under Subsection (b)(9) only if:

(1) the offender consents to the disclosure; and

(2) the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or other state or federal law.

(g) The programs provided under Subsections (b)(2) and (3) must:

(1) be implemented by highly skilled staff who are experienced in working with inmate reentry and reintegration programs;

(2) provide offenders with:

(A) individualized case management and a full continuum of care;

(B) life-skills training, including information about budgeting, money management, nutrition, and exercise;

(C) education and, if an offender has a learning disability, special education;

(D) employment training;

(E) appropriate treatment programs, including substance abuse and mental health treatment programs; and

(F) parenting and relationship building classes; and

(3) be designed to build for former offenders post-release and post-discharge support from the community into which an offender is released or discharged, including support from agencies and organizations within that community.

(h) In developing the reentry and reintegration plan adopted under this section, the department shall ensure that the reentry program for long-term inmates under Section 501.096 and the reintegration services provided under Section 501.097 are incorporated into the plan.

(i) Not later than December 1 of each even-numbered year, the department shall deliver a report of the results of evaluations conducted under Subsection (b)(7) to the lieutenant governor, the speaker of the house of representatives, and each standing committee of the senate and house of representatives having primary jurisdiction over the department.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 3, effective September 1, 2013; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 57, effective September 1, 2025.

Sec. 501.0921. Risk and Needs Assessment Instrument.

(a) The department shall adopt a standardized instrument to assess, based on criminogenic factors, the risks and needs of each offender within the adult criminal justice system.

(b) The department shall make the risk and needs assessment instrument available for use by each community supervision and corrections department established under Chapter 76.

(c) The department and the Windham School District shall jointly determine the duties of each entity with respect to implementing the risk and needs assessment instrument in order to efficiently use existing assessment processes.

(d) **[Expired.]**

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 4, effective September 1, 2013.

Sec. 501.097. Reintegration Services.

(a) The department and the Texas Workforce Commission shall by rule adopt a memorandum of understanding that establishes their respective responsibilities for providing inmates who are released into the community on parole or other conditional release with a network of centers designed to provide education, employment, and other support services based on a "one stop for service" approach.

(b) An agency of the state not listed in this section that determines that it may provide reintegration services to inmates similar to those described by Subsection (a) may participate in the development of the memorandum, if the department and the Texas Workforce Commission approve the agency's participation.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1360 (H.B. 819), § 6, effective September 1, 1997.

Sec. 501.0971. Provision of Reentry and Reintegration Information to Inmates.

(a) The department shall identify organizations that provide reentry and reintegration resource guides and shall collaborate with those organizations to prepare a resource guide that is to be made available to all inmates. At a minimum, the department shall collaborate with:

(1) nonprofit entities that specialize in criminal justice issues;

(2) faith-based organizations; and

(3) organizations that:

(A) offer pro bono legal services to inmates; or

(B) are composed of the families and friends of inmates.

(b) The department shall make the resource guide available in the Windham School District libraries and in each of the following areas of a correctional facility:

(1) peer educator classrooms;

(2) chapels;

(3) reintegration specialist offices; and

(4) any area or classroom that is used by the department for the purpose of providing information about reentry to inmates.

(c) The department shall make available a sufficient number of copies of the resource guide to ensure that each inmate is able to access the resource guide in a timely manner.

(d) The department shall identify organizations described by Subsection (a) that provide information described by Subsection (e) and shall collaborate with those organizations to compile county-specific information packets for inmates. The department shall, within the 180-day period preceding the date an inmate will discharge the inmate's sentence or is released on parole, mandatory supervision, or conditional pardon, provide the inmate

with a county-specific information packet for the county that the inmate designates as the inmate's intended residence.

(e) At the minimum, a county-specific packet described by Subsection (d) must include, for the applicable county:

(1) contact information, including telephone numbers, e-mail addresses, physical locations, and mailing addresses, as applicable, of:

(A) workforce offices, housing options, places of worship, support groups, peer-to-peer counseling groups, and other relevant organizations or agencies as determined by the department and the collaborating organization;

(B) agencies and organizations that offer emergency assistance, such as food and clothing banks, temporary bus passes, low-cost medical assistance, and overnight and temporary housing; and

(C) agencies and organizations that offer mental health counseling; and

(2) information necessary for the inmate to apply for governmental assistance or benefits, including Medicaid, social security benefits, or nutritional assistance programs under Chapter 33, Human Resources Code.

HISTORY: Acts 2015, 84th Leg., ch. 112 (S.B. 578), § 1, effective September 1, 2015.

Sec. 501.098. Reentry Task Force.

(a) The department shall establish a reentry task force and shall coordinate the work of the task force with the Office of Court Administration. The executive director shall ensure that the task force includes representatives of the following entities:

(1) the Texas Juvenile Justice Department;

(2) the Texas Workforce Commission;

(3) the Department of Public Safety;

(4) the Texas Department of Housing and Community Affairs;

(5) the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(6) the Health and Human Services Commission;

(7) the Texas Judicial Council;

(8) the Board of Pardons and Paroles;

(9) the Windham School District;

(10) the Texas Commission on Jail Standards;

(11) the Department of State Health Services;

(12) the Texas Court of Criminal Appeals;

(13) the County Judges and Commissioners Association of Texas;

(14) the Sheriffs' Association of Texas;

(15) the Texas District and County Attorneys Association; and

(16) the Texas Conference of Urban Counties.

(b) The executive director shall appoint a representative from each of the following entities to serve on the reentry task force:

(1) a community supervision and corrections department established under Chapter 76;

(2) an organization that advocates on behalf of offenders;

(3) a local reentry planning entity; and

(4) a statewide organization that advocates for or provides reentry or reintegration services to offenders following their release or discharge from a correctional facility.

(c) To the extent feasible, the executive director shall ensure that the membership of the reentry task force reflects the geographic diversity of this state and includes members of both rural and urban communities.

(d) The executive director may appoint additional members as the executive director determines necessary.

(e) The reentry task force shall:

(1) identify gaps in services for offenders following their release or discharge to rural or urban communities in the areas of employment, housing, substance abuse treatment, medical care, and any other areas in which the offenders need special services; and

(2) coordinate with providers of existing local reentry and reintegration programs, including programs operated by a municipality or county, to make recommendations regarding the provision of comprehensive services to offenders following their release or discharge to rural or urban communities.

(f) In performing its duties under Subsection (e), the reentry task force shall:

(1) identify:

(A) specific goals of the task force;

(B) specific deliverables of the task force, including the method or format in which recommendations under Subsection (e)(2) will be made available; and

(C) the intended audience or recipients of the items described by Paragraph (B);

(2) specify the responsibilities of each entity represented on the task force regarding the goals of the task force; and

(3) specify a timeline for achieving the task force's goals and producing the items described by Subdivision (1)(B).

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 643 (H.B. 1711), § 2, effective June 19, 2009; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 5, effective September 1, 2013.

Sec. 501.103. Annual Report.

(a) Not later than December 31 of each year, the department's reentry and integration division and parole division shall jointly prepare and submit an annual report to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the standing committees of the house and senate primarily responsible for criminal justice issues and corrections issues; and

(5) the reentry task force.

(b) The report must include the following information about parole during the year in which the report is submitted:

(1) the number of referrals of releasees for employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs;

(2) the outcome of each referral;

(3) the identified areas in which referrals are not possible due to unavailable resources or providers;

(4) community resources available to releasees, including faith-based and volunteer organizations; and

(5) parole officer training.

(c) The report must include the following information about reentry and reintegration during the year in which the report is submitted:

(1) the outcomes of programs and services that are available to releasees based on follow-up inquiries evaluating clients' progress after release;

(2) the common reentry barriers identified during releasees' individual assessments, including in areas of employment, housing, medical care, treatment for substance abuse or mental illness, education, or other basic needs;

(3) the common reentry benefits and services that reentry coordinators help releasees obtain or apply for;

(4) available community resources, including faith-based and volunteer organizations; and

(5) reentry coordinator training.

(d) The report required by Subsection (a) must be made available to the public.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1032 (H.B. 2719), § 2, effective September 1, 2013.

Subchapter D

Inmate Housing

Section

501.113. Triple-Celling Prohibited; Single-Celling Required for Certain Inmates.
501.114. Housing Requirements Applicable to Pregnant Inmates.

Sec. 501.113. Triple-Celling Prohibited; Single-Celling Required for Certain Inmates.

(a) The institutional division may not house more than two inmates in a cell designed for occupancy by one inmate or two inmates.

(b) The institutional division shall house the following classes of inmates in single occupancy cells:

(1) inmates confined in death row segregation;

(2) inmates confined in administrative segregation;

(3) inmates assessed as having intellectual disabilities and whose habilitation plans recommend housing in a single occupancy cell;

(4) inmates with a diagnosed psychiatric illness being treated on an inpatient or outpatient basis whose individual treatment plans recommend housing in single occupancy cells; and

(5) inmates whose medical treatment plans recommend housing in a single occupancy cell.

HISTORY: Enacted by Acts 1991, 72nd Leg., ch. 655 (H.B. 124), § 3, effective June 16, 1991; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.15, effective September 1, 2023.

Sec. 501.114. Housing Requirements Applicable to Pregnant Inmates.

(a) The department may not place in administrative segregation an inmate who is pregnant or who gave birth during the preceding 30 days unless the director or director's designee determines that the placement is necessary based on a reasonable belief that the inmate will harm herself, her unborn child or infant, or any other person or will attempt escape.

(b) The department may not assign a pregnant inmate to any bed that is elevated more than three feet above the floor.

HISTORY: Acts 2019, 86th Leg., ch. 123 (H.B. 650), § 6, effective September 1, 2019.

CHAPTER 507

State Jail Management

Subchapter

A. State Jail Felony Facilities
B. Miscellaneous Provisions

HISTORY: 2025, 89th Leg., S.B. 2405, § 63, effective September 1, 2025.

Subchapter A

State Jail Felony Facilities

Section

507.007. Educational and Vocational Training Pilot Program. [Renumbered]

Sec. 507.007. Educational and Vocational Training Pilot Program. [Renumbered]

HISTORY: Acts 2017, 85th Leg., ch. 1060 (H.B. 3130), § 2, effective September 1, 2017; renumbered to Tex. Gov’t Code § 493.034 by 2021, 87th Leg., H.B. 2352, § 3, effective September 1, 2021.

Subchapter B

Miscellaneous Provisions

Section

507.031. Furlough Program.
507.034. Veterans Reentry Dorm Program.

Sec. 507.031. Furlough Program.

(a) The director of a state jail felony facility may grant a furlough to a defendant so that the defendant may:

(1) obtain a medical diagnosis or medical treatment;

(2) obtain treatment and supervision at a facility operated by the Health and Human Services Commission;

(3) attend a funeral or visit a critically ill relative; or

(4) participate in a programmatic activity sanctioned by the department.

(b) The department shall adopt policies for the administration of the furlough program.

(c) A defendant furloughed under this section is considered to be in the custody of the department, even if the defendant is not under physical guard while furloughed.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 321, § 1.099, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(43), effective September 1, 1997 (renumbered from Sec. 507.028); Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.16, effective September 1, 2023; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 73, effective September 1, 2025.

Sec. 507.034. Veterans Reentry Dorm Program.

(a) The department, in coordination with the Texas Veterans Commission, shall establish and administer a

voluntary rehabilitation and transition program for defendants confined in state jail felony facilities:

(1) who are veterans of the United States armed forces, including veterans of the reserves, national guard, or state guard; and

(2) who suffer from a brain injury, a mental illness, a mental disorder, including post-traumatic stress disorder, or substance abuse, or were victims of military sexual trauma, as defined by Section 124.002, that:

(A) occurred during or resulted from their military service; and

(B) may have contributed to their criminal activity.

(b) The program established under this section must:

(1) provide for investigating and verifying the veteran status of each defendant confined in a state jail felony facility by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service;

(2) be available to male defendants and, if resources are available, female defendants;

(3) include provisions regarding interviewing and selecting defendants for participation in the program;

(4) allow a defendant to decline participation in the program or to withdraw from the program at any time;

(5) house defendants participating in the program in housing that is designed to mimic the squadron structure familiar to veterans;

(6) coordinate and provide available services and programming approved by the department, including:

(A) individual and group peer support programing, as appropriate;

(B) access to military trauma-informed licensed mental health professional counseling, as appropriate;

(C) evidence-based rehabilitation programming; and

(D) reemployment services; and

(7) to the extent feasible, not later than the 60th day before the date a defendant participating in the program is scheduled for release or discharge from the department:

(A) match the defendant with community-based veteran peer support services to assist the defendant in transitioning into the community; and

(B) transfer the defendant to a state jail felony facility located near the defendant's home community, or the community in which the defendant intends to reside after the defendant's release or discharge, to begin establishing transition relationships with community-based veteran peer support service providers and family members.

HISTORY: Acts 2017, 85th Leg., ch. 987 (H.B. 865), § 2, effective September 1, 2017.

CHAPTER 508

Parole and Mandatory Supervision

Subchapter
E. Parole and Mandatory Supervision; Release Procedures
G. Discretionary Conditions of Parole or Mandatory Supervision
J. Miscellaneous

Subchapter E

Parole and Mandatory Supervision; Release Procedures

Section
508.1445. Annual Report on Guidelines Required.
508.146. Medically Recommended Intensive Supervision.
508.152. Individual Treatment Plan.

Sec. 508.1445. Annual Report on Guidelines Required.

(a) The board annually shall submit a report to the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees in the senate and house of representatives primarily responsible for criminal justice regarding the board's application of the parole guidelines adopted under Section 508.144.

(b) The report must include:

(1) a brief explanation of the parole guidelines, including how the board:

(A) defines the risk factors and offense severity levels; and

(B) determines the range of recommended parole approval rates for each guideline score;

(2) a comparison of the range of recommended parole approval rates under the parole guidelines to the actual approval rates for individual parole panel members, regional offices, and the state as a whole; and

(3) a description of instances in which the actual parole approval rates do not meet the range of recommended parole approval rates under the parole guidelines, an explanation of the variations, and a list of actions that the board has taken or will take to meet the guidelines.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1308 (S.B. 909), § 40, effective June 15, 2007; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 16, effective September 1, 2013; 2025, 89th Leg., ch. 780 (S.B. 860), § 3, effective June 20, 2025.

Sec. 508.146. Medically Recommended Intensive Supervision.

(a) Subject to Subsection (b), an inmate, other than an inmate who is serving a sentence of death or life without parole or an inmate who is not a citizen of the United States, as defined by federal law, may be released on medically recommended intensive supervision on a date designated by a parole panel described by Subsection (e) if:

(1) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the Correctional Managed Health Care Committee, identifies the inmate as:

(A) being elderly, regardless of whether the inmate has a condition described in Paragraphs (B)-(H);

(B) being terminally ill;

(C) having a mental illness;

(D) having an intellectual disability or a physical disability;

(E) having a condition requiring long-term care;

(F) being in a persistent vegetative state;

(G) having an organic brain syndrome with significant to total mobility impairment; or

(H) having another eligible medical condition as prescribed by board rule;

(2) the parole panel determines that, based on the inmate's condition and a medical evaluation, the inmate does not constitute a threat to public safety; and

(3) the inmate's medically recommended intensive supervision plan under Subsection (a-1) is approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(a-1) The Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the division, shall prepare for an inmate who is approved for release under Subsection (a) a medically recommended intensive supervision plan that requires the inmate to submit to electronic monitoring, places the inmate on super-intensive supervision, or otherwise ensures appropriate supervision of the inmate.

(b) In addition to the requirements of Subsection (a), the following inmates may be released on medically recommended intensive supervision under that subsection only if the inmates are identified under Subsection (a)(1) as:

(1) having a condition described by Subsection (a)(1)(B) or (E), if the inmate has an instant offense that is described in Article 42A.054, Code of Criminal Procedure; or

(2) being in or having a condition described by Subsection (a)(1)(F) or (G), if the inmate has a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure.

(c) The parole panel shall require as a condition of release under Subsection (a) that the releasee remain under the care of a physician and in a medically suitable placement. At least once each calendar quarter, the Texas Correctional Office on Offenders with Medical or Mental Impairments shall report to the parole panel on the releasee's medical and placement status. On the basis of the report, the parole panel may modify conditions of release and impose any condition on the releasee that a panel could impose on a releasee released under Section 508.145, including a condition that the releasee reside in a halfway house or community residential facility.

(d) The Texas Correctional Office on Offenders with Medical or Mental Impairments may request proposals from public or private vendors to provide under contract services for inmates released on medically recommended intensive supervision. A request for proposals under this subsection may require that the services be provided in a medical care facility located in an urban area. For the purposes of this subsection, "urban area" means the area in this state within a metropolitan statistical area, according to the standards of the United States Bureau of the Census.

(e) Parole panels composed of board members and parole commissioners appointed to the panel by the presiding officer may make determinations regarding the release of inmates on medically recommended intensive supervision under Subsection (a) or of inmates released pending deportation under Subsection (f). If the Texas Correctional Office on Offenders with Medical or Mental Impairments identifies an inmate as a candidate for release under the guidelines established by Subsection (a)(1), (b), or (f)(1), as applicable, the office shall present to a parole panel described by this subsection relevant information concerning the inmate and the inmate's potential for release under this section.

(f) An inmate who is not a citizen of the United States, as defined by federal law, who is not under a sentence of death or life without parole, and who does not have a reportable conviction or adjudication under Chapter 62, Code of Criminal Procedure, or an instant offense described in Article 42A.054, Code of Criminal Procedure, may be released to immigration authorities pending deportation on a date designated by a parole panel described by Subsection (e) if:

(1) the Texas Correctional Office on Offenders with Medical or Mental Impairments, in cooperation with the Correctional Managed Health Care Committee, identifies the inmate as being in or having a condition described by Subsection (a)(1); and

(2) the parole panel determines that on release the inmate would be deported to another country and that the inmate does not constitute a threat to public safety in the other country or this country and is unlikely to reenter this country illegally.

(g) The board shall adopt rules to administer this section. The rules must:

(1) specify the procedures for evaluating the prognosis of inmates who are eligible for medically recommended intensive supervision under Subsection (a) because of a qualifying medical condition;

(2) specify the factors, other than an inmate's condition, that are relevant or statutorily required to release an inmate on medically recommended intensive supervision; and

(3) define what constitutes a threat to public safety for purposes of Subsections (a)(2) and (f) and specify the factors that a parole panel described by Subsection (e) must consider when determining whether an inmate constitutes a threat to public safety.

(h) The procedures described by Subsection (g)(1) must:

(1) require a review of the inmate's condition by at least one health care practitioner; and

(2) require each health care practitioner who reviews an inmate's condition as described by Subdivision (1) to provide the parole panel described by Subsection (e), before the panel makes a final determination under this section, a written report on the inmate's condition that:

(A) is in plain language that is understandable by a nonmedical professional;

(B) specifically describes how the inmate's condition and treatment for the condition will affect the inmate's cognitive and physical abilities and limitations; and

(C) contains other information as required by the board.

(i) The board may consult with other relevant entities for purposes of establishing information required in the report under Subsection (h)(2)(C) including:

(1) the Correctional Managed Health Care Committee;

(2) the division;

(3) the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(4) the Texas Tech University Health Sciences Center; and

(5) The University of Texas Medical Branch at Galveston.

(j) Information regarding the identity of a health care practitioner providing a report described by Subsection (h)(2), other than information relating to the practitioner's specialization, is excepted from required disclosure under Chapter 552. The board may release the information or redact or otherwise withhold the information from disclosure under Chapter 552.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1435 (H.B. 772), § 1, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 252 (H.B. 1670), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 856 (S.B. 591), § 21, effective September 1, 2003; am. Acts 2005, 79th Leg., ch. 787 (S.B. 60), § 5, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 1247 (H.B. 2611), § 1, effective September 1, 2007; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.52, effective January 1, 2017; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 85, effective September 1, 2025.

Sec. 508.152. Individual Treatment Plan.

(a) Not later than the 120th day after the date an inmate is admitted to the institutional division, the department shall obtain all pertinent information relating to the inmate, including:

(1) the court judgment;

(2) any sentencing report;

(3) the circumstances of the inmate's offense;

(4) the inmate's previous social history and criminal record;

(5) the inmate's physical and mental health record;

(6) a record of the inmate's conduct, employment history, and attitude in the institutional division; and

(7) any written comments or information provided by local trial officials or victims of the offense.

(b) The department shall:

(1) establish for the inmate an individual treatment plan; and

(2) submit the plan to the board at the time of the board's consideration of the inmate's case for release.

(b-1) The department shall include in an inmate's individual treatment plan:

(1) a record of the inmate's institutional progress that includes the inmate's participation in any program, including an intensive volunteer program as defined by the department;

(2) the results of any assessment of the inmate, including any assessment made using the risk and needs assessment instrument adopted under Section 501.0921 and any vocational, educational, or substance abuse assessment;

(3) the dates on which the inmate must participate in any subsequent assessment; and

(4) all of the treatment and programming needs of the inmate, prioritized based on the inmate's assessed needs.

(b-2) At least once in every 12-month period, the department shall review each inmate's individual treatment plan to assess the inmate's institutional progress and revise or update the plan as necessary. The department shall make reasonable efforts to provide an inmate the opportunity to complete any classes or programs included in the inmate's individual treatment plan, other than classes or programs that are to be completed immediately before the inmate's release on parole, in a timely manner so that the inmate's release on parole is not delayed due to any uncompleted classes or programs.

(b-3) For purposes of Subsection (b-1)(1), an inmate's individual treatment plan must include a comprehensive list, in plain language, of the inmate's program participation that:

(1) includes:

(A) state-funded programs;

(B) intensive volunteer programs; and

(C) program enrollment and completion dates; and

(2) distinguishes between evidence-based programs and correctional elective programs and activities that are non-evidence based or non-evidence informed.

(c) The board shall conduct an initial review of an eligible inmate not later than the 180th day after the date of the inmate's admission to the institutional division. The board shall identify any classes or programs that the board intends to require the inmate to complete before releasing the inmate on parole. The department shall provide the inmate with a list of those classes or programs.

(d) Before the inmate is approved for release on parole, the inmate must agree to participate in the programs and activities described by the individual treatment plan.

(e) The institutional division shall:

(1) work closely with the board to monitor the progress of the inmate in the institutional division; and

(2) report the progress to the board before the inmate's release.

(f) An attorney representing the state in the prosecution of an inmate serving a sentence for an offense described by Section 508.187(a) shall provide written comments to the department on the circumstances related to the commission of the offense and other information determined by the attorney to be relevant to any subsequent parole decisions regarding the inmate.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 978 (H.B. 223), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), §§ 17, 18, effective September 1, 2013; Acts 2017, 85th Leg., ch. 505 (H.B. 2888), § 1, effective September 1, 2017; 2025, 89th Leg., ch. 1022 (S.B. 2405), § 86, effective September 1, 2025.

Subchapter G

Discretionary Conditions of Parole or Mandatory Supervision

Section
508.223. Psychological Counseling.

Sec. 508.223. Psychological Counseling.

A parole panel may require as a condition of parole or mandatory supervision that a releasee serving a sentence for an offense under Section 42.072, Penal Code, attend psychological counseling sessions of a type and for a

duration as specified by the parole panel, if the parole panel determines in consultation with a local mental health services provider that appropriate mental health services are available through the Department of State Health Services in accordance with Section 534.053, Health and Safety Code, or through another mental health services provider.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 10.28, effective September 1, 1999; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.17, effective September 1, 2023.

Subchapter J

Miscellaneous

Section
508.316. Special Programs.

Sec. 508.316. Special Programs.

(a) The department may contract for services for releasees if funds are appropriated to the department for the services, including services for releasees who have a history of:

(1) mental impairment or intellectual disability;

(2) substance abuse; or

(3) sexual offenses.

(b) The department shall seek funding for a contract under this section as a priority item.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.01, effective September 1, 1997; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 5.18, effective September 1, 2023.

CHAPTER 509

Community Justice Assistance Division

Section
509.001. Definitions.
509.002. Purpose.
509.003. Standards and Procedures.
509.004. Records, Reports, and Information Systems.
509.0041. Use of Risk and Needs Assessment Instrument.
509.006. Community Corrections Facilities.
509.007. Strategic Plan.
509.0071. Commitment Reduction Plan.
509.011. Payment of State Aid.
509.016. Prison Diversion Progressive Sanctions Program.

Sec. 509.001. Definitions.

In this chapter:

(1) "Community corrections facility" means a physical structure, established by the judges described by Section 76.002 after authorization of the establishment of the structure has been included in a department's strategic plan, that is operated by the department or operated for the department by an entity under contract with the department, for the purpose of treating persons who have been placed on community supervision or who are participating in a pretrial intervention program operated under Section 76.011 or a drug court program established under Chapter 123 or former law and providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime. The term includes:

(A) a restitution center;

(B) a court residential treatment facility;

(C) a substance abuse treatment facility;

(D) a custody facility or boot camp;

(E) a facility for an offender with a mental impairment, as defined by Section 614.001, Health and Safety Code; and

(F) an intermediate sanction facility.

(2) "Department" means a community supervision and corrections department established under Chapter 76.

(3) "Division" means the community justice assistance division.

(4) "State aid" means funds appropriated by the legislature to the division to provide financial assistance to:

(A) the judges described by Section 76.002 for:

(i) a department established by the judges;

(ii) the development and improvement of community supervision services and community-based correctional programs;

(iii) the establishment and operation of community corrections facilities; and

(iv) assistance in conforming with standards and policies of the division and the board; and

(B) state agencies, counties, municipalities, and nonprofit organizations for the implementation and administration of community-based sanctions and programs.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.23(a), effective September 1, 1997; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 9, effective May 30, 2005; am. Acts 2005, 79th Leg., ch. 1139 (H.B. 2791), § 3, effective June 18, 2005; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 2.11, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 6, effective September 1, 2015; Acts 2017, 85th Leg., ch. 977 (H.B. 351), § 5(c), effective September 1, 2017.

Sec. 509.002. Purpose.

The purpose of this chapter is to:

(1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective sanctions for criminal defendants;

(2) provide increased opportunities for criminal defendants to make restitution to victims of crime through financial reimbursement or community service;

(3) provide increased use of community penalties designed specifically to meet local needs; and

(4) promote efficiency and economy in the delivery of community-based correctional programs consistent with the objectives defined by Section 1.02, Penal Code.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995.

Sec. 509.003. Standards and Procedures.

(a) The division shall propose and the board shall adopt reasonable rules establishing:

(1) minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of departments;

(2) a list and description of core services that should be provided by each department;

(3) methods for measuring the success of community supervision and corrections programs, including methods for measuring rates of diversion, program completion, and recidivism;

(4) a format for strategic plans; and

(5) minimum standards for the operation of substance abuse facilities and programs funded through the division.

(b) In establishing standards relating to the operation of departments, the division shall consider guidelines developed and presented by the advisory committee on community supervision and corrections department management to the judicial advisory council established under Section 493.003(b).

(c) A substance abuse facility or program operating under the standards is not required to be licensed or otherwise approved by any other state or local agency.

(d) The division shall develop a screening and evaluation procedure for use in accordance with Section 76.017. The division shall determine if a single screening and evaluation procedure may be used in each program. If the division determines that a single procedure is not feasible, the division shall identify and approve procedures that may be used.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.24(a), effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1269 (H.B. 3244), § 5, effective September 1, 1997; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 7, effective September 1, 2015.

Sec. 509.004. Records, Reports, and Information Systems.

(a) The division shall require each department to:

(1) keep financial and statistical records determined necessary by the division;

(2) submit the department's budget and strategic plan and all supporting information requested by the division;

(3) present data requested by the division as necessary to determine the amount of state aid for which the department is eligible;

(4) submit periodic financial audits and statistical reports to the division; and

(5) submit to the Department of Public Safety the full name, address, date of birth, social security number, and driver's license number of each person restricted to the operation of a motor vehicle equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the restricted operator.

(b) The division shall develop an automated tracking system that:

(1) is capable of receiving tracking data from community supervision and corrections departments' caseload management and accounting systems;

(2) is capable of tracking the defendant and the sentencing event at which the defendant was placed on community supervision by name, arrest charge code, and incident number;

(3) provides the division with the statistical data it needs to support budget requests and satisfy requests for information; and

(4) is compatible with the requirements of Chapter 66, Code of Criminal Procedure, and the information systems used by the institutional division and the parole division of the Texas Department of Criminal Justice.

(c) The division shall prepare a report that contains a summary of the programs and services provided by departments, as described in each strategic plan submitted to the division under Section 509.007.

(d) As soon as is practicable after the completion of the report, the division shall submit the report prepared under Subsection (c) to the Texas Board of Criminal Justice and the executive director of the Texas Department of Criminal Justice.

(e) Not later than the date on which the Texas Department of Criminal Justice is required to submit the department's legislative appropriations request to the Legislative Budget Board, the division shall submit the report prepared under Subsection (c) to the Legislative Budget Board.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.25(a), effective September 1, 1997; am. Acts 2001, 77th Leg., ch. 1007 (H.B. 1075), § 1, effective June 15, 2001; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 5, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 4, effective September 1, 2011; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 8, effective September 1, 2015; Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 4.13, effective January 1, 2019; Acts 2025, 89th Leg., ch. 1022 (S.B. 2405), § 90, effective September 1, 2025; Acts 2025, 89th Leg., ch. 774 (S.B. 663), § 3, effective September 1, 2025.

Sec. 509.0041. Use of Risk and Needs Assessment Instrument.

The division shall require each department to use the risk and needs assessment instrument adopted by the Texas Department of Criminal Justice under Section 501.0921 to assess each defendant at the time of the defendant's initial placement on community supervision and at other times as required by the comprehensive reentry and reintegration plan adopted under Section 501.092.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 20, effective September 1, 2013.

Sec. 509.006. Community Corrections Facilities.

(a) To establish and maintain community corrections facilities, the division may:

(1) fund division-managed facilities;

(2) fund contracts for facilities that are managed by departments, counties, or vendors;

(3) provide funds to departments for the renovation of leased or donated buildings for use as facilities;

(4) accept ownership of real property pursuant to an agreement under which the division agrees to construct a facility and offer the facility for lease;

(5) allow departments, counties, or municipalities to accept and use buildings provided by units of local governments, including rural hospital districts, for use as facilities;

(6) provide funds to departments, counties, or municipalities to lease, purchase, or construct buildings or to lease or purchase land or other real property for use as facilities, lease or purchase equipment necessary for the operation of facilities, and pay other costs as necessary for the management and operation of facilities; and

(7) be a party to a contract for correctional services or approve a contract for those services if the state, on a biennial appropriations basis, commits to fund a portion of the contract.

(b) The division may require that community corrections facilities comply with state and local safety laws and may develop standards for:

(1) the physical plant and operation of community corrections facilities;

(2) programs offered by community corrections facilities;

(3) disciplinary rules for residents of community corrections facilities; and

(4) emergency furloughs for residents of community corrections facilities.

(c) Minimum standards for community corrections facilities must include requirements that a facility:

(1) provide levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time; and

(2) accept only those residents who are physically and mentally capable of participating in any program offered at the facility that requires strenuous physical activity, if participation in the program is required of all residents of the facility.

(d) Standards developed by the division that relate to state jail felony facilities must meet minimum requirements adopted by the board for the operation of state jail felony facilities. The board may adopt rules and procedures for the operation of more than one type of state jail felony facility.

(e) With the consent of the department operating or contracting for the operation of the facility, the board may designate any community corrections facility that is an intermediate sanction facility as a state jail felony facility and confine state jail felons in that facility.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995.

Sec. 509.007. Strategic Plan.

(a) The division shall require as a condition to payment of state aid to a department or county under Section 509.011 that:

(1) the department submit the department's budget for the state fiscal biennium and a strategic plan to the division; and

(2) the department's budget and plan be approved by the division.

(a-1) A department shall submit a revised strategic plan to the division each even-numbered year not later than March 1.

(a-2) A department's budget or strategic plan may be amended at any time with the approval of the division.

(b) A strategic plan required under this section must include:

(1) a statement of goals and priorities and of commitment by the department and the judges described by Section 76.002 who established the department to achieve a targeted level of alternative sanctions;

(2) a description of methods for measuring the success of programs provided by the department or provided by an entity served by the department;

(3) a summary of the programs and services the department provides or intends to provide, including a separate summary of:

(A) any services the department intends to provide in relation to a specialty court program; and

(B) any programs or other services the department intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department; and

(4) an outline of the department's projected programmatic and budgetary needs, based on the programs and services the department both provides and intends to provide.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 10, effective May 30, 2005; am. Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 6, effective June 17, 2011; am. Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 5, effective September 1, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), § 1.07, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 9, effective September 1, 2015; 2025, 89th Leg., Ch. 774 (S.B. 663), §§ 4, 5, effective September 1, 2025.

Sec. 509.0071. Commitment Reduction Plan.

(a) In addition to submitting a strategic plan to the division under Section 509.007, a department or a regional partnership of departments may submit a commitment reduction plan to the division not later than the 60th day after the date on which the time for gubernatorial action on the state budget has expired under Section 14, Article IV, Texas Constitution.

(b) A commitment reduction plan submitted under this section may contain a request for additional state funding in the manner described by Subsection (e). A commitment reduction plan must contain:

(1) a target number by which the county or counties served by the department or regional partnership of departments will, relative to the number of individuals committed in the preceding state fiscal year from the county or counties to the Texas Department of Criminal Justice for offenses not listed in or described by Article 42A.054, Code of Criminal Procedure, reduce that number in the fiscal year for which the commitment reduction plan is submitted by reducing the number of:

(A) direct sentencing commitments;

(B) community supervision revocations; or

(C) direct sentencing commitments and community supervision revocations;

(2) a calculation, based on the most recent Criminal Justice Uniform Cost Report published by the Legislative Budget Board, of the savings to the state that will

result from the county or counties reaching the target number described by Subdivision (1);

(3) an explanation of the programs and services the department or regional partnership of departments intends to provide using any funding received under Subsection (e)(1), including any programs or services designed to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department or regional partnership of departments;

(4) a pledge by the department or regional partnership of departments to provide accurate data to the division at the time and in the manner required by the division;

(5) a pledge to repay to the state, not later than the 30th day after the last day of the state fiscal year in which the lump-sum award is made, a percentage of the lump sum received under Subsection (e)(1) that is equal to the percentage by which the county or counties fail to reach the target number described by Subdivision (1), if the county or counties do not reach that target number; and

(6) if the commitment reduction plan is submitted by a regional partnership of departments, an agreement and plan for the receipt, division, and administration of any funding received under Subsection (e).

(c) For purposes of Subsection (b)(5), if the target number contained in the commitment reduction plan is described by Subsection (b)(1)(B), the county or counties fail to reach the target number if the sum of any increase in the number of direct sentencing commitments and any reduction in community supervision revocations is less than the target number contained in the commitment reduction plan.

(d) A pledge described by Subsection (b)(4) or (5) must be signed by:

(1) the director of the department submitting the commitment reduction plan; or

(2) if the commitment reduction plan is submitted by a regional partnership of departments, a director of one of the departments in the regional partnership submitting the commitment reduction plan.

(e) After reviewing a commitment reduction plan, if the division is satisfied that the plan is feasible and would achieve desirable outcomes, the division may award to the department or regional partnership of departments:

(1) a one-time lump sum in an amount equal to 35 percent of the savings to the state described by Subsection (b)(2); and

(2) on a biennial basis, and from the 65 percent of the savings to the state that remains after payment of the lump sum described by Subdivision (1), the following incentive payments for the department's or regional partnership's performance in the two years immediately preceding the payment:

(A) 15 percent, for reducing the percentage of persons supervised by the department or regional partnership of departments who commit a new felony while under supervision;

(B) five percent, for increasing the percentage of persons supervised by the department or regional partnership of departments who are not delinquent in making any restitution payments; and

(C) five percent, for increasing the percentage of persons supervised by the department or regional partnership of departments who are gainfully employed, as determined by the division.

(f) A department or regional partnership of departments may use funds received under Subsection (e) to provide any program or service that a department is authorized to provide under other law, including implementing, administering, and supporting evidence-based community supervision strategies, electronic monitoring, substance abuse and mental health counseling and treatment, specialized community supervision caseloads, intermediate sanctions, victims' services, restitution collection, short-term incarceration in county jails, specialized courts, pretrial services and intervention programs, and work release and day reporting centers.

(g) Any funds received by a department or regional partnership of departments under Subsection (e):

(1) are in addition to any per capita or formula funding received under Section 509.011; and

(2) may not be deducted from any per capita or formula funding received or to be received by:

(A) another department, if the commitment reduction plan is submitted by a department; or

(B) any department, if the commitment reduction plan is submitted by a regional partnership of departments.

(h) The division shall deduct from future state aid paid to a department, or from any incentive payments under Subsection (e)(2) for which a department is otherwise eligible, an amount equal to the amount of any pledge described by Subsection (b)(5) that remains unpaid on the 31st day after the last day of the state fiscal year in which a lump-sum award is made under Subsection (e)(1). If the lump-sum award was made to a regional partnership of departments, the division shall deduct, in accordance with the agreement and plan described by Subsection (b)(6), the amount of the unpaid pledge from the future state aid to each department that is part of the partnership or from any incentive payments under Subsection (e)(2) for which the regional partnership of departments is otherwise eligible.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 1045 (H.B. 3691), § 7, effective June 17, 2011; Enacted by Acts 2011, 82nd Leg., ch. 1074 (S.B. 1055), § 6, effective September 1, 2011; Acts 2015, 84th Leg., ch. 770 (H.B. 2299), § 2.57, effective January 1, 2017; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 10, effective September 1, 2015.

Sec. 509.011. Payment of State Aid.

(a) If the division determines that a department complies with division standards and if the department has submitted a strategic plan under Section 509.007 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for each felony defendant directly supervised by the department pursuant to lawful authority;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority, other than a felony defendant; and

(3) for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

(a-1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 346 (H.B. 1526), Sec. 3, eff. September 1, 2017.

(b) The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1) development and operation of pretrial and presentencing services;

(2) electronic monitoring services, surveillance supervision programs, and controlled substances testing services;

(3) research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4) contract services for felony defendants;

(5) residential services for misdemeanor defendants who exhibit levels of risk or needs indicating a need for confinement and treatment, as described by Section 509.005(b);

(6) establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections facilities for which the division has established standards under Section 509.006;

(7) development and operation of treatment alternative to incarceration programs under Section 76.017; and

(8) other purposes determined appropriate by the division and approved by the board.

(b-1) The division may award a grant to a department for the development and operation of a pretrial intervention program for defendants who are:

(1) pregnant at the time of placement into the program; or

(2) the primary caretaker of a child younger than 18 years of age.

(c) Each department, county, or municipality shall deposit all state aid received from the division in a special fund of the county treasury or municipal treasury, as appropriate, to be used solely for the provision of services, programs, and facilities under this chapter or Subchapter H, Chapter 351, Local Government Code.

(d) The division shall provide state aid to each department on a biennial basis, pursuant to the strategic plan for the biennium submitted by the department. A department with prior division approval may transfer funds from one program or function to another program or function.

(e) In establishing per diem payments authorized by Subsections (a)(1) and (a)(2), the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium.

(f) The division annually shall compute for each department for community corrections program formula funding a percentage determined by assigning equal weights to the percentage of the state's population residing in the counties served by the department and the department's percentage of all felony defendants in the state under direct community supervision. The division shall use the most recent information available in making computations under this subsection. The board by rule may adopt a policy limiting for all departments the percentage of benefit or loss that may be realized as a result of the operation of the formula.

(g) If the Texas Department of Criminal Justice determines that at the end of a biennium a department maintains in reserve an amount greater than six months' basic supervision operating costs for the department, the Texas Department of Criminal Justice in the succeeding biennium may reduce the amount of per capita and formula funding provided under Subsection (a) so that in the succeeding biennium the department's reserves do not exceed six months' basic supervision operating costs. The Texas Department of Criminal Justice may adopt policies and standards permitting a department to maintain reserves in an amount greater than otherwise permitted by this subsection as necessary to cover emergency costs or implement new programs with the approval of the Texas Department of Criminal Justice. The Texas Department of Criminal Justice may distribute unallocated per capita or formula funds to provide supplemental funds to individual departments to further the purposes of this chapter.

(h) A community supervision and corrections department at any time may transfer to the Texas Department of Criminal Justice any unencumbered state funds held by the department. The Texas Department of Criminal Justice may distribute funds received from a community supervision and corrections department under this subsection to provide supplemental funds to individual departments to further the purposes of this chapter.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 7.01, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.28(a), effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1188 (S.B. 365), § 1.39, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1030 (H.B. 725), § 2.02, effective June 1, 2004; am. Acts 2005, 79th Leg., ch. 255 (H.B. 1326), § 11, effective May 30, 2005; am. Acts 2013, 83rd Leg., ch. 1154 (S.B. 213), § 22, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1051 (H.B. 1930), § 12, effective September 1, 2015; Acts 2017, 85th Leg., ch. 346 (H.B. 1526), § 3, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1230 (H.B. 1374), § 1, effective June 14, 2019.

Sec. 509.016. Prison Diversion Progressive Sanctions Program.

(a) The division shall provide grants to selected departments for the implementation of a system of progressive sanctions designed to reduce the revocation rate of defendants placed on community supervision. The division shall give priority in providing grants to departments that:

(1) serve counties in which the revocation rate for defendants on community supervision significantly ex-

ceeds the statewide average or historically has significantly exceeded the statewide average; or

(2) have demonstrated success, through the implementation of a system of progressive sanctions, in reducing the revocation rate of defendants placed on community supervision.

(b) In determining which departments are proper candidates for grants under this section, the division shall give preference to departments that present to the division a plan that will target medium-risk and high-risk defendants and use progressive sanction models that adhere to the components set forth in Section 469.001, Health and Safety Code. As a condition to receiving a grant, a department must offer a plan that contains some if not all of the following components:

(1) an evidence-based assessment process that includes risk and needs assessment instruments and clinical assessments that support conditions of community supervision or case management strategies;

(2) reduced and specialized caseloads for supervision officers, which may include electronic monitoring or substance abuse testing of defendants;

(3) the creation, designation, and fiscal support of courts and associated infrastructure necessary to increase judicial oversight and reduce revocations;

(4) increased monitoring and field contact by supervision officers;

(5) shortened terms of community supervision, with increased supervision during the earliest part of the term;

(6) strategies that reduce the number of technical violations;

(7) improved coordination between courts and departments to provide early assessment of defendant needs at the outset of supervision;

(8) graduated sanctions and incentives, offered to a defendant by both the departments and courts served by the department;

(9) the use of inpatient and outpatient treatment options, including substance abuse treatment, mental health treatment, and cognitive and behavioral programs for defendants;

(10) the use of intermediate sanctions facilities;

(11) the use of community corrections beds;

(12) early termination strategies and capabilities;

(13) gang intervention strategies; and

(14) designation of faith-based community coordinators who will develop faith-based resources, including a mentoring program.

(c) The division shall, not later than December 1 of each even-numbered year, provide a report to the board. The report must state the number of departments receiving grants under this section, identify those departments by name, and describe for each department receiving a grant the components of the department's program and the success of the department in reducing revocations. The report must also contain an analysis of the scope, effectiveness, and cost benefit of programs funded by grants provided under this section and a comparison of those programs to similar programs in existence in various departments before March 1, 2005. The division may include in the report any other information the division determines will be beneficial to the board or the legislature. The board shall forward the report to the lieutenant governor and the speaker of the house of representatives not later than December 15 of each even-numbered year.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 799 (S.B. 166), § 1, effective June 15, 2007.

CHAPTER 511

Commission On Jail Standards [Expires September 1, 2035]

Section
511.001. Definitions [Expires September 1, 2035].
511.0085. Risk Factors; Risk Assessment Plan [Expires September 1, 2035].
511.009. General Duties [Expires September 1, 2035].
511.0098. Prisoner Health Benefits Coverage Information; Payment for Mental Health Services [Expires September 1, 2035].
511.011. Report on Noncompliance [Expires September 1, 2035].

Sec. 511.001. Definitions [Expires September 1, 2035].

In this chapter:

(1) "Commission" means the Commission on Jail Standards.

(2) "Correctional facility" means a facility operated by a county, a municipality, or a private vendor for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

(3) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense.

(4) "Executive director" means the executive director of the commission.

(5) "Federal prisoner" means a person arrested for, charged with, or convicted of a violation of a federal law.

(6) "Inmate" means a person arrested for, charged with, or convicted of a criminal offense of this state or another state of the United States and confined in a county jail, a municipal jail, or a correctional facility operated by a county, a municipality, or a private vendor.

(7) "Prisoner" means a person confined in a county jail.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 259 (S.B. 367), § 1, effective September 1, 1997.

Sec. 511.0085. Risk Factors; Risk Assessment Plan [Expires September 1, 2035].

(a) The commission shall develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under the commission's jurisdiction. The set of risk factors must include:

(1) a history of the jail's compliance with state law and commission rules, standards, and procedures;

(2) the population of the jail;

(3) the number and nature of complaints regarding the jail, including complaints regarding a violation of any required ratio of correctional officers to inmates;

(4) problems with the jail's internal grievance procedures;

(5) available mental and medical health reports relating to inmates in the jail, including reports relating to infectious disease or pregnant inmates;

(6) recent turnover among sheriffs and jail staff;

(7) inmate escapes from the jail;

(8) the number and nature of inmate deaths at the jail, including the results of the investigations of those deaths; and

(9) whether the jail is in compliance with commission rules, standards developed by the Texas Correctional Office on Offenders with Medical or Mental Impairments, and the requirements of Article 16.22, Code of Criminal Procedure, regarding screening and assessment protocols for the early identification of and reports concerning persons with mental illness or an intellectual disability.

(b) The set of risk factors developed under this section may include the number of months since the commission's last inspection of the jail.

(c) The commission shall use the set of risk factors developed under this section to guide the inspections process for all jails under the commission's jurisdiction by:

(1) establishing a risk assessment plan to use in assessing the overall risk level of each jail; and

(2) regularly monitoring the overall risk level of each jail.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1215 (S.B. 1009), § 8, effective September 1, 2009; Acts 2019, 86th Leg., ch. 1276 (H.B. 601), § 22, effective September 1, 2019; Acts 2021, 87th Leg., ch. 254 (H.B. 1545), § 6, effective September 1, 2021.

Sec. 511.009. General Duties [Expires September 1, 2035].

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) regularly review the commission's rules and procedures and revise, amend, or change the rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(13) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(14) adopt reasonable rules and procedures establishing minimum requirements for a county jail to:

(A) determine if a prisoner is pregnant;

(B) ensure that the jail's health services plan addresses medical care, including obstetrical and gynecological care, mental health care, nutritional requirements, and any special housing or work assignment needs for prisoners who are known or determined to be pregnant; and

(C) identify when a pregnant prisoner is in labor and provide appropriate care to the prisoner, including promptly transporting the prisoner to a local hospital;

(15) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety;

(16) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(17) require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner during the intake process by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service;

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs, including providing the prisoner on verification of the prisoner's veteran status with a prepaid postcard that

is supplied by the Texas Veterans Commission for purposes of requesting assistance in applying for veterans benefits;

(C) submit a weekly report identifying each prisoner whose veteran status was verified under Paragraph (A) during the previous week to the Texas Veterans Commission and, as applicable, the veterans county service officer for the county and each court in which charges against a prisoner identified in the report are pending; and

(D) allow for a prisoner whose veteran status has been verified under Paragraph (A) to have in-person or video visitation with the veterans county service officer for the county or a peer service coordinator at no cost to the prisoner;

(18) adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner;

(19) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day or, if a mental health professional is not at the county jail at the time, then require the jail to use all reasonable efforts to arrange for the inmate to have access to a mental health professional within a reasonable time;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals; and

(20) adopt reasonable rules and procedures establishing minimum standards for the quantity and quality of feminine hygiene products, including tampons in regular and large sizes and menstrual pads with wings in regular and large sizes, provided to a female prisoner.

(a-1) A county jail that as of September 1, 2015, has incurred significant design, engineering, or construction costs to provide prisoner visitation that does not comply with a rule or procedure adopted under Subsection (a)(16), or does not have the physical plant capability to provide the in-person prisoner visitation required by a rule or procedure adopted under Subsection (a)(16), is not required to comply with any commission rule or procedure adopted under Subsection (a)(16).

(a-2) A commission rule or procedure adopted under Subsection (a)(16) may not restrict the authority of a county jail under the commission's rules in effect on September 1, 2015, to limit prisoner visitation for disciplinary reasons.

(b) A commission rule or procedure is not unreasonable because compliance with the rule or procedure requires major modification or renovation of an existing jail or construction of a new jail.

(c) At any time and on the application of the county commissioners court or sheriff, the commission may grant reasonable variances, including variances that are to last for the life of a facility, clearly justified by the facts, for operation of a facility not in strict compliance with state law. A variance may not permit unhealthy, unsanitary, or unsafe conditions.

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that:

(1) a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody; and

(2) a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determines is necessary for the care, treatment, or stabilization of the prisoner.

(e) The commission may monitor compliance with the provisions of Article 43.13, Code of Criminal Procedure, relating to the release of a prisoner from county jail.

(f) The commission's compliance with the requirements of this section, particularly the requirements regarding the adoption of rules and procedures, is not contingent on the enactment and becoming law of any additional legislation.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 171 (S.B. 1168), § 1, effective August 28, 1995; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 89, effective January 1, 1996; am. Acts 1995, 74th Leg., ch. 722 (H.B. 179), § 2, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.30, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 259 (S.B. 367), § 7, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 1092 (H.B. 2071), § 1, effective June 20, 2003; am. Acts 2005, 79th Leg., ch. 1094 (H.B. 2120), § 8, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 977 (H.B. 3654), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1215 (S.B. 1009), § 9, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 11.012, effective September 1, 2011; Acts 2015, 84th Leg., ch. 281 (H.B. 875), § 2, effective September 1, 2015; Acts 2015, 84th Leg., ch. 648 (H.B. 549), § 1, effective September 1, 2015; Acts 2015, 84th Leg., ch. 688 (H.B. 634), § 4, effective September 1, 2015; Acts 2017, 85th Leg., ch. 324 (S.B. 1488), § 8.008, effective September 1, 2017; Acts 2017, 85th Leg., ch. 950 (S.B. 1849), §§ 3.05, 3.06, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1074 (H.B. 1651), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 1104 (H.B. 2169), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 1, effective September 1, 2019; Acts 2019, 86th Leg., ch. 401 (S.B. 1700), § 2, effective September 1, 2019; Acts 2021, 87th Leg., ch. 254 (H.B. 1545), § 8, effective September 1, 2021; Acts 2021, 87th Leg., ch. 936 (S.B. 49), § 10, effective September 1, 2021; 2025, 89th Leg., ch. 299 (S.B. 2938), § 3, effective September 1, 2025.

Sec. 511.0098. Prisoner Health Benefits Coverage Information; Payment for Mental Health Services [Expires September 1, 2035].

(a) The commission shall adopt procedures by which a local mental health authority or other mental health services provider providing services to a prisoner in a county jail under a contract with the county may collect the following from a prisoner who receives those services and is covered by health insurance or other health benefits coverage:

(1) the name of the policyholder or group contract holder;

(2) the number of the policy or evidence of coverage;

(3) a copy of the health coverage membership card, if available; and

(4) any other information necessary for the prisoner to obtain benefits under the coverage.

(b) A local mental health authority or other mental health services provider who provides mental health services to a prisoner under a contract with a county may arrange for the issuer of the health insurance policy or other health benefits coverage to pay for those services.

HISTORY: Acts 2019, 86th Leg., ch. 1195 (H.B. 4559), § 1, effective September 1, 2019.

Sec. 511.011. Report on Noncompliance [Expires September 1, 2035].

(a) If the commission finds that a county jail does not comply with state law, including Chapter 89, Health and Safety Code, or the rules, standards, or procedures of the commission, it shall report the noncompliance to the county commissioners and sheriff of the county responsible for the county jail and shall send a copy of the report to the governor.

(b) If a notice of noncompliance is issued to a facility operated by a private entity under Section 351.101 or 361.061, Local Government Code, the compliance status of the facility shall be reviewed at the next meeting of the Commission on Jail Standards.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 212 (S.B. 1044), § 2.01, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 348 (S.B. 939), § 12, effective September 1, 1997; Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 2, effective September 1, 2019.

SUBTITLE I

HEALTH AND HUMAN SERVICES

CHAPTER 539

Community Collaboratives [Repealed]

Section
539.001. Definition. [Repealed]
539.002. Grants for Establishment and Expansion of Community Collaboratives. [Repealed]
539.003. Acceptable Uses of Grant Money. [Repealed]
539.004. Elements of Community Collaboratives. [Repealed]
539.005. Outcome Measures for Community Collaboratives. [Repealed]
539.0051. Plan Required for Certain Community Collaboratives. [Repealed]
539.006. Annual Review of Outcome Measures. [Repealed]
539.007. Reduction and Cessation of Funding. [Repealed]
539.008. Rules. [Repealed]
539.009. Administrative Costs. [Repealed]
539.010. Biennial Report. [Repealed and Renumbered]

Sec. 539.001. Definition. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 2.277, effective April 2, 2015; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.002. Grants for Establishment and Expansion of Community Collaboratives. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.03, effective September 1, 2017; Acts 2019, 86th Leg., ch. 1252 (H.B. 4468), § 4, effective September 1, 2019; Acts 2021, 87th Leg., ch. 486 (H.B. 3088), § 4, effective June 14, 2021; Acts 2023, 88th Leg., ch. 859 (H.B. 3466), § 2, effective September 1, 2023; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.003. Acceptable Uses of Grant Money. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; Acts 2021, 87th Leg., ch. 486 (H.B. 3088), § 5, effective June 14, 2021; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.004. Elements of Community Collaboratives. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.005. Outcome Measures for Community Collaboratives. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.0051. Plan Required for Certain Community Collaboratives. [Repealed]

HISTORY: Acts 2017, 85th Leg., ch. 950 (S.B. 1849), § 2.04, effective September 1, 2017; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.006. Annual Review of Outcome Measures. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.007. Reduction and Cessation of Funding. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; Acts 2021, 87th Leg., ch. 486 (H.B. 3088), § 6, effective June 14, 2021; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.008. Rules. [Repealed]

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1143 (S.B. 58), § 2, effective September 1, 2013; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.009. Administrative Costs. [Repealed]

HISTORY: Acts 2021, 87th Leg., ch. 486 (H.B. 3088), § 7, effective June 14, 2021; repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025.

Sec. 539.010. Biennial Report. [Repealed and Renumbered]

HISTORY: Repealed by 2023, 88th Leg., H.B. 4611, § 3.01(3), effective April 1, 2025; Renumbered to Tex. Gov't Code § 547A.0010 by 2025, 89th Leg., ch. 204 (H.B. 1620), § 8.046, effective September 1, 2025.

CHAPTER 547A

Community Collaboratives

Section
547A.0001. Grants for Establishing and Expanding Community Collaboratives.
547A.0002. Acceptable Uses of Grant Money.
547A.0003. Elements of Community Collaboratives.
547A.0004. Outcome Measures for Community Collaboratives.
547A.0005. Plan Required for Certain Community Collaboratives.
547A.0006. Annual Review of Outcome Measures.
547A.0007. Reduction and Cessation of Funding.
547A.0008. Rules.
547A.0009. Administrative Costs.
547A.0010. Biennial Report.

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0001. Grants for Establishing and Expanding Community Collaboratives.

(a) To the extent funds are appropriated to the commission for that purpose, the commission shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to individuals experiencing homelessness, substance use issues, or mental illness. In awarding grants, the commission shall give special consideration to entities:

(1) establishing new collaboratives;

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000; or

(3) providing services to an average of at least 50 percent of persons experiencing homelessness in a geographic area served by a Continuum of Care Program funded by the United States Department of Housing and Urban Development according to the last three Point-in-Time surveys of homelessness conducted by that department.

(b) Except as provided by Subsection (c), the commission shall require each entity awarded a grant under this section to:

(1) leverage additional funding or in-kind contributions from private contributors or local governments, excluding state or federal funds, in an amount that is at least equal to the amount of the grant awarded under this section;

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate individuals from jails, other detention facilities, or mental health facilities operated by or under contract with the commission to an entity affiliated with a community collaborative for the purpose of providing services to those individuals.

(c) The commission may award a grant under this section to an entity for the purpose of establishing a community mental health program in a county with a population of less than 250,000, if the entity leverages additional funding or in-kind contributions from private contributors or local governments, excluding state or federal funds, in an amount equal to one-quarter of the grant amount to be awarded under this section, and the entity otherwise meets the requirements of Subsections (b)(2) and (3). (Gov. Code, Sec. 539.002.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025; 2025, 89th Leg., ch. 204 (H.B. 1620), § 8.045(a), effective September 1, 2025.

Sec. 547A.0002. Acceptable Uses of Grant Money.

An entity shall use money received from a grant made by the commission and private funding sources to establish or expand a community collaborative. Acceptable uses for the money include:

(1) developing the infrastructure of the collaborative and the start-up costs of the collaborative;

(2) establishing, operating, or maintaining other community service providers in the community the collaborative serves, including intake centers, detoxification units, sheltering centers for food, workforce training centers, microbusinesses, and educational centers;

(3) providing clothing, hygiene products, and medical services to and arranging transitional and permanent residential housing for individuals the collaborative serves;

(4) providing mental health services and substance use treatment not readily available in the community the collaborative serves;

(5) providing information, tools, and resource referrals to assist individuals the collaborative serves in addressing the needs of their children; and

(6) establishing and operating coordinated intake processes, including triage procedures, to protect public safety in the community the collaborative serves. (Gov. Code, Sec. 539.003.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0003. Elements of Community Collaboratives.

(a) If appropriate, an entity may incorporate into the community collaborative the entity operates the use of the homeless management information system, transportation plans, and case managers. An entity may also consider incorporating into a collaborative mentoring and volunteering opportunities, strategies to assist homeless youth and homeless families with children, strategies to reintegrate individuals who were recently incarcerated into the community, services for veterans, and strategies for individuals the collaborative serves to participate in the planning, governance, and oversight of the collaborative.

(b) The focus of a community collaborative shall be the eventual successful transition of individuals from receiving services from the collaborative to becoming integrated into the community the collaborative serves through community relationships and family supports. (Gov. Code, Sec. 539.004.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0004. Outcome Measures for Community Collaboratives.

Each entity that receives a grant from the commission to establish or expand a community collaborative shall select at least four of the following outcome measures that the entity will focus on meeting through implementing and operating the collaborative:

(1) individuals the collaborative serves finding employment that results in those individuals having incomes that are at or above 100 percent of the federal poverty level;

(2) individuals the collaborative serves finding permanent housing;

(3) individuals the collaborative serves completing alcohol or substance use programs;

(4) the collaborative helping to start social businesses in the community or engaging in job creation, job training, or other workforce development activities;

(5) a decrease in the use of jail beds by individuals the collaborative serves;

(6) a decrease in the need for emergency care by individuals the collaborative serves;

(7) a decrease in the number of children whose families lack adequate housing referred to the Department of Family and Protective Services or a local entity responsible for child welfare; and

(8) any other appropriate outcome measure the commission approves that measures whether a collaborative is meeting a specific need of the community the collaborative serves. (Gov. Code, Sec. 539.005.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0005. Plan Required for Certain Community Collaboratives.

(a) The governing body of a county shall develop and make public a plan detailing the method by which:

(1) local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county may coordinate to establish or expand a community collaborative to accomplish the goals of Section 547A.0001;

(2) entities in the county may leverage funding from private sources to accomplish the goals of Section 547A.0001 through the formation or expansion of a community collaborative; and

(3) the formation or expansion of a community collaborative may establish or support resources or services to help local law enforcement agencies to divert individuals who have been arrested to appropriate mental health care or substance use treatment.

(b) The governing body of a county in which an entity that received a grant under former Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a). (Gov. Code, Sec. 539.0051.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0006. Annual Review of Outcome Measures.

The commission shall contract with an independent third party to verify annually whether a community collaborative is meeting the outcome measures the entity that operates the collaborative selects under Section 547A.0004. (Gov. Code, Sec. 539.006.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0007. Reduction and Cessation of Funding.

The commission shall establish processes by which the commission may reduce or cease providing funding to an entity if the community collaborative the entity operates does not meet the outcome measures the entity for the collaborative selects under Section 547A.0004. The commission shall redistribute on a competitive basis any funds withheld from an entity under this section to other entities operating high-performing collaboratives. (Gov. Code, Sec. 539.007.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0008. Rules.

The executive commissioner shall adopt any rules necessary to implement the community collaborative grant program established under this chapter, including rules establishing:

(1) the requirements for an entity to be eligible to receive a grant;

(2) the required elements of a community collaborative an entity operates; and

(3) permissible and prohibited uses of money an entity receives from a grant the commission makes. (Gov. Code, Sec. 539.008.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0009. Administrative Costs.

The commission may use a reasonable amount not to exceed five percent of the money the legislature appropriates for the purposes of this chapter to pay administrative costs of implementing this chapter. (Gov. Code, Sec. 539.009.)

HISTORY: 2023, 88th Leg., H.B. 4611, § 1.01, effective April 1, 2025.

Sec. 547A.0010. Biennial Report.

(a) The commission shall prepare a report that includes:

(1) the method by which the commission chose entities to award grants to under this chapter;

(2) the amount of each grant awarded to an entity under this chapter;

(3) the number of individuals served by each community collaborative receiving grant funds under this chapter; and

(4) the results of the annual review of outcome measures required by Section 547A.0006.

(b) Not later than September 1 of each even-numbered year, the commission shall submit a report described by Subsection (a) to:

(1) the lieutenant governor;

(2) the speaker of the house of representatives;

(3) the standing committees of the legislature having primary jurisdiction over the department and state finance; and

(4) the Legislative Budget Board.

HISTORY: Renumbered from Tex. Gov't Code § 539.010 by 2025, 89th Leg., ch. 204 (H.B. 1620), § 8.046, effective September 1, 2025.

TITLE 7

INTERGOVERNMENTAL RELATIONS

CHAPTER 772

Governmental Planning

Subchapter A

Planning Entities

Section
772.0061. Specialty Courts Advisory Council.

Sec. 772.0061. Specialty Courts Advisory Council.

(a) In this section:

(1) "Council" means the Specialty Courts Advisory Council.

(2) "Specialty court" means:

(A) a commercially sexually exploited persons court program established under Chapter 126 or former law;

(B) a family drug court program established under Chapter 122 or former law;

(C) a drug court program established under Chapter 123 or former law;

(D) a veterans treatment court program established under Chapter 124 or former law;

(E) a mental health court program established under Chapter 125 or former law;

(F) a public safety employees treatment court program established under Chapter 129; and

(G) a juvenile family drug court program established under Chapter 130.

(b) The governor shall establish the Specialty Courts Advisory Council within the criminal justice division established under Section 772.006 to:

(1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to the criminal justice division; and

(2) make recommendations to the Texas Judicial Council, the Office of Court Administration of the Texas Judicial System, and the criminal justice division regarding best practices for specialty courts established under Chapter 122, 123, 124, 125, 129, or 130, or former law.

(c) The council is composed of nine members appointed by the governor as follows:

(1) four members, each of whom has experience as the judge of at least one specialty court described by Subsection (a)(2); and

(2) five members who represent the public.

(d) The members appointed under Subsection (c)(5) must:

(1) reside in various geographic regions of the state; and

(2) have experience practicing law in a specialty court or possess knowledge and expertise in a field relating to behavioral or mental health issues or to substance abuse treatment.

(e) Members are appointed for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(f) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the council.

(g) If a vacancy occurs on the council, the governor shall appoint a person to serve for the remainder of the unexpired term.

(h) The council shall select a presiding officer.

(i) The council shall meet at the call of its presiding officer or at the request of the governor.

(j) A member of the council may not receive compensation for service on the council. The member may receive reimbursement from the criminal justice division for actual and necessary expenses incurred in performing council functions as provided by Section 2110.004.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 287 (H.B. 1771), § 1, effective June 17, 2011; am. Acts 2013, 83rd Leg., ch. 747 (S.B. 462), §§ 1.08, 1.09, effective September 1, 2013; am. Acts 2013, 83rd Leg., ch. 1167 (S.B. 484), § 3, effective September 1, 2013; Acts 2015, 84th Leg., ch. 604 (S.B. 536), § 3, effective June 16, 2015; Acts 2015, 84th Leg., ch. 1205 (S.B. 1474), § 11, effective September 1, 2015; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 9.009, effective September 1, 2015; Acts 2017, 85th Leg., ch. 369 (H.B. 3391), §§ 5, 6, effective September 1, 2017; Acts 2023, 88th Leg., ch. 842 (H.B. 2741), §§ 1, 2, effective September 1, 2023.

HUMAN RESOURCES CODE

Title
10. Juvenile Boards, Juvenile Probation Departments, and Family Services Offices
12. Juvenile Justice Services and Facilities

TITLE 10

JUVENILE BOARDS, JUVENILE PROBATION DEPARTMENTS, AND FAMILY SERVICES OFFICES

Subtitle
A. Juvenile Probation Services
B. Juvenile Boards and Family Services Offices

SUBTITLE A

JUVENILE PROBATION SERVICES

CHAPTER 142

Juvenile Probation Departments and Personnel

Section
142.001. Definition.
142.007. Post-Discharge Services.

Sec. 142.001. Definition.

In this chapter, "juvenile probation services" means:

(1) services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction, including:

(A) protective services;

(B) prevention of delinquent conduct and conduct indicating a need for supervision;

(C) diversion;

(D) deferred prosecution;

(E) foster care;

(F) counseling;

(G) supervision; and

(H) diagnostic, correctional, and educational services; and

(2) services provided by a juvenile probation department that are related to the operation of a preadjudication or post-adjudication juvenile facility.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1997, 75th Leg., ch. 1394 (H.B. 1917), § 7, effective September 1, 1997.

Sec. 142.007. Post-Discharge Services.

(a) For purposes of this section, "post-discharge services" means community-based services offered after a child is discharged from probation to support the child's vocational, educational, behavioral, or other goals and to provide continuity for the child as the child transitions out of juvenile probation services. The term includes:

(1) behavioral health services;

(2) mental health services;

(3) substance abuse services;

(4) mentoring;

(5) job training; and

(6) educational services.

(b) Provided that existing resources are available, a juvenile board or juvenile probation department may provide post-discharge services to a child for not more than six months after the date the child is discharged from probation, regardless of the age of the child on that date.

(c) A juvenile board or juvenile probation department may not require a child to participate in post-discharge services.

HISTORY: Acts 2017, 85th Leg., ch. 435 (S.B. 1548), § 1, effective September 1, 2017.

SUBTITLE B

JUVENILE BOARDS AND FAMILY SERVICES OFFICES

CHAPTER 152

Juvenile Boards

Subchapter A

General Provisions

Section
152.0007. Duties.
152.0010. Advisory Council.
152.00162. Determinate Sentence Parole.
152.00163. Child with Mental Illness or Intellectual Disability.
152.00164. Examination Before Discharge.
152.00165. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

Sec. 152.0007. Duties.

(a) The juvenile board shall:

(1) establish a juvenile probation department and employ a chief probation officer who meets the standards set by the Texas Juvenile Justice Department; and

(2) adopt a budget and establish policies, including financial policies, for juvenile services within the jurisdiction of the board.

(b) The board may establish guidelines for the initial assessment of a child by the juvenile probation department. The guidelines shall provide a means for assessing a child's mental health status, family background, and level of education. The guidelines shall assist the probation department in determining whether a comprehensive psychological evaluation of the child should be conducted. The board shall require that probation department personnel use assessment information compiled by the child's school, if the information is available, before conducting a comprehensive psychological evaluation of the child. The

board may adopt all or part of the Texas Juvenile Justice Department's minimum standards for assessment under Section 221.002 in complying with this subsection.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 73, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 64, effective September 1, 2001; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 3.016, effective September 1, 2011; Acts 2015, 84th Leg., ch. 734 (H.B. 1549), § 126, effective September 1, 2015.

Sec. 152.0010. Advisory Council.

(a) A juvenile board may appoint an advisory council consisting of the number of citizen members determined appropriate by the board. To the extent available in the county, the advisory council may include:

(1) a prosecuting attorney as defined by Section 51.02, Family Code;

(2) a mental health professional;

(3) a medical health professional; and

(4) a representative of the education community.

(b) Council members serve terms as specified by the board.

(c) The juvenile board shall fill any vacancies on the advisory council.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 352 (S.B. 1104), § 1, effective September 1, 1989; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 74, effective January 1, 1996; am. Acts 2001, 77th Leg., ch. 1297 (H.B. 1118), § 66, effective September 1, 2001.

Sec. 152.00162. Determinate Sentence Parole.

(a) Not later than the 90th day before the date the juvenile board or local juvenile probation department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole supervision under Section 152.0016(g) or 152.00161(e), the juvenile board or local juvenile probation department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the juvenile board or local juvenile probation department as a result of a commitment under Section 54.04011(c)(2), Family Code, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the juvenile board or local juvenile probation department, local officials, family members of the person, victims of the offense, or the general public.

(b) The juvenile board or local juvenile probation department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs provided by the juvenile board or local juvenile probation department. The juvenile boards and local juvenile probation departments and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility, as recorded by the board or department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

HISTORY: Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

Sec. 152.00163. Child with Mental Illness or Intellectual Disability.

(a) A juvenile board or local juvenile probation department shall accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department.

(b) Unless a child is committed to the custody of a juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile board or local juvenile probation department shall discharge a child with a mental illness or an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability.

(c) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 152.00164(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge is effective immediately. If the child is receiving mental health services outside the child's home county, the juvenile board or local juvenile probation department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the 30th day after the date that the referral is made under Section 152.00164(c).

(f) If a child who is discharged from the custody of a juvenile board or local juvenile probation department

under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge is effective immediately.

(g) If a child with a mental illness or an intellectual disability is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

HISTORY: Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

Sec. 152.00164. Examination Before Discharge.

(a) A juvenile board or local juvenile probation department shall establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department.

(b) Before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), the juvenile board or local juvenile probation department shall arrange for a psychiatrist to examine the child. The juvenile board or local juvenile probation department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the juvenile board or local juvenile probation department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the custody of a juvenile board or local juvenile probation department under Section 152.00163(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

HISTORY: Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015; Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 24, effective September 1, 2019.

Sec. 152.00165. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

(a) A juvenile board or local juvenile probation department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code.

(b) A petition made by a juvenile board or local juvenile probation department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) A juvenile board or local juvenile probation department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to a juvenile board or local juvenile probation department. The juvenile court may transfer the child to the custody of the juvenile board or local juvenile probation department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

HISTORY: Acts 2015, 84th Leg., ch. 854 (S.B. 1149), § 10, effective September 1, 2015.

TITLE 12

JUVENILE JUSTICE SERVICES AND FACILITIES

Subtitle
B. Probation Services; Probation Facilities
C. Secure Facilities

SUBTITLE B

PROBATION SERVICES; PROBATION FACILITIES

CHAPTER 221

Assistance to Counties and Regulation of Juvenile Boards and Juvenile Probation Departments

Subchapter
A. General Provisions
B. Contract Standards and Monitoring

Subchapter A

General Provisions

Section
221.003. Rules Concerning Mental Health Screening Instrument and Risk and Needs Assessment Instrument; Admissibility of Statements.
221.0061. Trauma-Informed Care Training.

Sec. 221.003. Rules Concerning Mental Health Screening Instrument and Risk and Needs Assessment Instrument; Admissibility of Statements.

(a) The board by rule shall require juvenile probation departments to use the mental health screening instru-

ment selected by the department for the initial screening of children under the jurisdiction of probation departments who have been formally referred to a juvenile probation department. The department shall give priority to training in the use of this instrument in any preservice or in-service training that the department provides for probation officers. The rules adopted by the board under this section must allow a clinical assessment by a licensed mental health professional to be substituted for the mental health screening instrument selected by the department if the clinical assessment is performed in the time prescribed by the department.

(b) A juvenile probation department must, before the disposition of a child's case and using a validated risk and needs assessment instrument or process provided or approved by the department, complete a risk and needs assessment for each child under the jurisdiction of the juvenile probation department. The risk and needs assessment must include a screening for risk of commercial sexual exploitation using a validated, evidence-informed tool selected by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code.

(b-1) Any risk and needs assessment instrument or process that is provided or approved by the department for a juvenile probation department to use under Subsection (b) must be a validated instrument or process.

(c) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication hearing. The person administering the mental health screening instrument or initial risk and needs assessment instruments shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication hearing.

(d) A juvenile probation department shall report data from the use of the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b) to the department in the format and at the time prescribed by the department.

(e) The board shall adopt rules to ensure that youth in the juvenile justice system are assessed using the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b).

HISTORY: Am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.004, effective September 1, 2011 (renumbered from Sec. 141.042(e) to (j); am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 36, effective September 1, 2013; Acts 2015, 84th Leg., ch. 962 (S.B. 1630), § 5, effective September 1, 2015; 2025, 89th Leg., ch. 262 (H.B. 451), § 2, effective September 1, 2025.

Sec. 221.0061. Trauma-Informed Care Training.

The department shall provide trauma-informed care training during the preservice training the department provides for juvenile probation officers, juvenile supervision officers, juvenile correctional officers, and juvenile parole officers. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1351 (S.B. 1356), § 3, effective September 1, 2013.

Subchapter B

Contract Standards and Monitoring

Section
221.056. Residential Treatment Facility.

Sec. 221.056. Residential Treatment Facility.

(a) The department may contract with a local mental health authority and local intellectual and developmental disability authority for the establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The department may work in cooperation with the local mental health authority and local intellectual and developmental disability authority to provide mental health residential treatment services for juveniles residing at a facility established under this section.

(b) A residential treatment facility established under this section must provide juveniles receiving treatment at the facility:

(1) a short-term program of mental health stabilization that does not exceed 150 days in duration; and

(2) all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) If a residential treatment facility established under this section is unable to provide adequate and sufficient educational opportunities and services to juveniles residing at the facility, the facility may not continue to operate beyond the end of the school year in which the opportunities or services provided by the facility are determined to be inadequate or insufficient.

(d) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education shall grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 3.012, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.004, effective September 1, 2011 (renumbered from Sec. 141.059); am. Acts 2013, 83rd Leg., ch. 1140 (S.B. 2), § 45, effective September 1, 2013; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 7.01, effective September 1, 2023; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 30, effective September 1, 2023.

SUBTITLE C

SECURE FACILITIES

Chapter
244. Care and Treatment of Children
245. Release

CHAPTER 244

Care and Treatment of Children

Subchapter
A. General Care and Treatment of Children
B. Provision of Certain Information; Rights of Parents

Subchapter A

General Care and Treatment of Children

Section
244.001. Initial Examination.
244.002. Reexamination.
244.003. Records of Examinations and Treatment.
244.004. Failure to Examine or Reexamine.
244.005. Determination of Treatment.
244.006. Type of Treatment Permitted.
244.007. Family Programs.
244.0075. Restraint of Pregnant Juvenile.
244.008. Infant Care and Parenting Program.
244.009. Health Care Delivery System.
244.010. Department Caseworkers.
244.0105. Report Concerning Foster Children Committed to Department.
244.0106. Rules Regarding Services for Foster Children.
244.011. Children with Mental Illness or Intellectual Disability [2 Versions: As amended by Acts 2023, 88th Leg., HB 446].
244.011. Children with Mental Illness or Intellectual Disabilities [2 Versions: As amended by Acts 2023, 88th Leg., SB 1727 .
244.012. Examination Before Discharge.
244.0125. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.
244.013. Notice of Pending Discharge.
244.014. Referral of Determinate Sentence Offenders for Transfer.
244.015. Evaluation of Certain Children Serving Determinate Sentences.

Sec. 244.001. Initial Examination.

(a) The department shall examine and make a study of each child committed to it within three business days after commitment. The study shall be made according to rules established by the board and shall include:

(1) long-term and specialized treatment planning for the child; and

(2) consideration of the child's:

(A) medical history;

(B) substance abuse;

(C) treatment history;

(D) psychiatric history;

(E) sex offender history; and

(F) violent offense history.

(a-1) As soon as possible, the department shall develop a written treatment plan for the child which outlines the specialized treatment needs identified by the study described by Subsection (a), makes recommendations for meeting the child's specialized treatment needs, and makes an individually tailored statement of treatment goals, objectives, and timelines.

(b) For a child for whom a minimum length of stay is established under Section 243.002 of one year or longer, the initial examination must include a comprehensive psychiatric evaluation unless the department had received the results of a comprehensive evaluation of the child conducted not more than 90 days before the date of the initial examination.

(c) The department shall administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. If the results of a child's psychological assessments indicate that the child is in need of a psychiatric evaluation, the department shall as soon as practicable conduct a psychiatric evaluation of the child.

(d) The board shall establish rules for the periodic review and reevaluation of the written treatment plan as described by Subsection (a-1).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 427), art. 2, § 34, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 31, effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 1048 (H.B. 1731), § 4, effective September 1, 1993; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 46, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.071).

Sec. 244.002. Reexamination.

(a) The department shall periodically reexamine each child under its control, except those on release under supervision or in foster homes, for the purpose of determining whether a rehabilitation plan made by the department concerning the child should be modified or continued.

(b) The reexamination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination.

(c) The reexamination of a child may be made as frequently as the department considers necessary, but shall be made at intervals not exceeding six months.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 428), art. 2, § 36, effective April 26, 1983; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 46, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.072).

Sec. 244.003. Records of Examinations and Treatment.

(a) The department shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Subsection (c) of this section, Section 58.005, Family Code, Section 244.051 of this code, and Chapter 67, Code of Criminal Procedure.

(c) The department may disclose information concerning a person who was committed to the department, including personally identifiable information, if:

(1) the person:

(A) has been discharged from commitment by the department;

(B) is at least 18 years of age; and

(C) has given consent for the department to disclose the information; and

(2) the department does not disclose any information for which the person did not consent to disclosure and does not disclose any information for a purpose other than the purpose for which the person consented to disclosure.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 429), art. 2, § 37, effective April 26, 1983; am. Acts 1983, 68th Leg., ch. 769 (H.B. 475), § 2, effective June 19, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 32, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 57, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 32, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 283 (H.B. 2319), § 46, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 1294 (H.B. 2895), § 1, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.073); Acts 2017, 85th Leg., ch. 1058 (H.B. 2931), § 4.14, effective January 1, 2019; Acts 2025, 89th Leg., ch. 164 (S.B. 2776), § 1, effective September 1, 2025.

Sec. 244.004. Failure to Examine or Reexamine.

(a) Failure of the department to examine or reexamine a child as required by this subchapter does not entitle the child to be discharged from the control of the department, but the child may petition the committing court for discharge.

(b) After due notice to the department, the committing court shall discharge the child from the control of the department unless the department satisfies the court that further control is necessary.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 430), art. 2, § 38, effective April 26, 1983; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.074).

Sec. 244.005. Determination of Treatment.

When a child has been committed to the department, the department may:

(1) permit the child liberty under supervision and on conditions the department believes conducive to acceptable behavior;

(2) order the child's confinement under conditions the department believes best designed for the child's welfare and the interests of the public;

(3) order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) revoke or modify any order of the department affecting a child, except an order of final discharge, as often as conditions indicate; or

(5) discharge the child from control when the department is satisfied that discharge will best serve the child's welfare and the protection of the public.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 431), art. 2, § 39, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 33, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.075).

Sec. 244.006. Type of Treatment Permitted.

(a) As a means of correcting the socially harmful tendencies of a child committed to the department, the department may:

(1) require the child to participate in moral, academic, vocational, physical, and correctional training and activities;

(2) require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public;

(3) provide any medical or psychiatric treatment that is necessary; and

(4) place physically fit children in parks-maintenance camps, forestry camps, or ranches owned by the state or the United States and require the performance of suitable conservation and maintenance work.

(b) The dominant purpose of placing children in camps is to benefit and rehabilitate the children rather than to make the camps self-sustaining. Children placed in camps may not be exploited.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 432), art. 2, § 40, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 34, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.076).

Sec. 244.007. Family Programs.

The department shall develop programs that encourage family involvement in the rehabilitation of the child.

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 35, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0761).

Sec. 244.0075. Restraint of Pregnant Juvenile.

(a) The department may not use restraints to control the movement of a pregnant child who is committed to the department at any time during which the child is in labor or delivery or recovering from delivery, unless the executive director or executive director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the child or her infant, department or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the child will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1184 (H.B. 3653), § 2, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.07611).

Sec. 244.008. Infant Care and Parenting Program.

(a) In this section, "child" means the child of a person who is committed to the department.

(b) The department may establish child care and parenting programs for persons committed to the department who are parents.

(c) The department may permit a mother to have possession of her child in a residential program that has an

infant care and parenting program or to have possession of her child in a department-funded independent living residence for up to six months if:

(1) the child's father or another relative or guardian of the child agrees in advance of the child's placement with the child's mother to assume possession of the child immediately upon notice by the department to do so;

(2) the child's parents and any other person having a duty of support acknowledge that by permitting the mother to have possession of the child while the mother is confined in a residential facility or placed in an independent living residence, the department assumes no responsibility for the child's care beyond the responsibility of care that is ordinarily due the child's mother and the reasonable accommodations that are necessary for the mother's care of her child;

(3) the child's parents and any other person having a duty of support agree to indemnify and hold the department harmless from any claims that may be made against the department for the child's support, including medical support; and

(4) the department determines that the placement is in the best interest of both the mother and her child.

HISTORY: Enacted by Acts 1999, 76th Leg., ch. 162 (S.B. 1607), § 1, effective August 30, 1999; am. Acts 2007, 80th Leg., ch. 908 (H.B. 2884), § 32, effective September 1, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0762).

Sec. 244.009. Health Care Delivery System.

(a) In providing medical care, behavioral health care, or rehabilitation services, the department shall integrate the provision of those services in an integrated comprehensive delivery system.

(b) The delivery system may be used to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the department, including:

(1) health care;

(2) dental care;

(3) behavioral health care;

(4) substance abuse treatment;

(5) nutrition;

(6) programming;

(7) case management; and

(8) general rehabilitation services, including educational, spiritual, daily living, recreational, and security services.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.

Sec. 244.010. Department Caseworkers.

(a) The department shall assign a caseworker to a child committed to the department. A department caseworker shall:

(1) explore family issues and needs with the parent or guardian of a child committed to the department;

(2) as needed, provide the parent or guardian of a child committed to the department with information concerning programs and services provided by the department or another resource; and

(3) perform other duties required by the department.

(b) A department caseworker shall:

(1) at least once a month, attempt to contact the child's parent or guardian by phone, in person while the parent or guardian is visiting the facility, or, if necessary, by mail;

(2) if unsuccessful in contacting the child's parent or guardian under Subdivision (1), attempt at least one additional time each month to contact the child's parent or guardian; and

(3) document successful as well as unsuccessful attempts to contact the child's parent or guardian.

(c) To the extent practicable, a caseworker or another facility administrator shall attempt to communicate with a parent or guardian who does not speak English in the language of choice of the parent or guardian.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 49, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0764).

Sec. 244.0105. Report Concerning Foster Children Committed to Department.

(a) Not later than the 10th day before the date of a permanency hearing under Subchapter D, Chapter 263, Family Code, or Subchapter F, Chapter 263, Family Code, regarding a child for whom the Department of Family and Protective Services has been appointed managing conservator, a department caseworker shall submit a written report regarding the child's commitment to the department to:

(1) the court;

(2) the Department of Family and Protective Services;

(3) any attorney ad litem or guardian ad litem appointed for the child; and

(4) any volunteer advocate appointed for the child.

(b) The report required by Subsection (a) must include:

(1) the results of any assessments of the child during the child's commitment to the department, including assessments of the child's emotional, mental, educational, psychological, psychiatric, medical, or physical needs;

(2) information regarding the child's placement in particular programs administered by the department; and

(3) a description of the child's progress in programs administered by the department.

HISTORY: Am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0766); Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 84, effective September 1, 2015.

Sec. 244.0106. Rules Regarding Services for Foster Children.

(a) The board and the executive commissioner of the Health and Human Services Commission shall jointly adopt rules to ensure that a child for whom the Department of Family and Protective Services has been appointed managing conservator receives appropriate services while the child is committed to the department or released under supervision by the department.

(b) The rules adopted under this section must require the department and the Department of Family and Protective Services to cooperate in providing appropriate services to a child for whom the Department of Family and Protective Services has been appointed managing conservator while the child is committed to the department or released under supervision by the department, including:

(1) medical care, as defined by Section 266.001, Family Code;

(2) mental health treatment and counseling;

(3) education, including special education;

(4) case management;

(5) drug and alcohol abuse assessment or treatment;

(6) sex offender treatment; and

(7) trauma informed care.

(c) The rules adopted under this section must require:

(1) the Department of Family and Protective Services to:

(A) provide the department with access to relevant health and education information regarding a child; and

(B) require a child's caseworker to visit the child in person at least once each month while the child is committed to the department;

(2) the department to:

(A) provide the Department of Family and Protective Services with relevant health and education information regarding a child;

(B) permit communication, including in person, by telephone, and by mail, between a child committed to the department and:

(i) the Department of Family and Protective Services; and

(ii) the attorney ad litem, the guardian ad litem, and the volunteer advocate for the child; and

(C) provide the Department of Family and Protective Services and any attorney ad litem or guardian ad litem for the child with timely notice of the following events relating to the child:

(i) a meeting designed to develop or revise the individual case plan for the child;

(ii) in accordance with any participation protocols to which the Department of Family and Protective Services and the department agree, a medical appointment at which a person authorized to consent to medical care must participate as required by Section 266.004(i), Family Code;

(iii) an education meeting, including admission, review, or dismissal meetings for a child receiving special education;

(iv) a grievance or disciplinary hearing for the child;

(v) a report of abuse or neglect of the child; and

(vi) a significant change in medical condition of the child, as defined by Section 264.018, Family Code; and

(3) the Department of Family and Protective Services and the department to participate in transition planning for the child through release from detention, release under supervision, and discharge.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 108 (H.B. 1629), § 15, effective May 23, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0767); Acts 2015, 84th Leg., ch. 722 (H.B. 1309), § 4, effective June 17, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 85, effective September 1, 2015.

Sec. 244.011. Children with Mental Illness or Intellectual Disability [2 Versions: As amended by Acts 2023, 88th Leg., HB 446].

(a) The department shall accept a child committed to the department who is a person with a mental illness or a person with an intellectual disability.

(b) Unless a child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child who is a person with a mental illness or a person with an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or intellectual disability.

(c) If a child who is discharged from the department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 244.012(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge from the department is effective immediately. If the child is receiving mental health services outside the child's home county, the department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for intellectual disability services filed under Section 244.012(b); or

(2) the 30th day after the date that the application is filed.

(f) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge from the department is effective immediately.

(g) If a child who is a person with a mental illness or a person with an intellectual disability is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 433), art. 2, § 41, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 36, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 60, effective

May 31, 1995; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 33, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 32, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.077); Acts 2023, 88th Leg., ch. 30 (H.B. 446), §§ 7.02, 7.03, effective September 1, 2023.

Sec. 244.011. Children with Mental Illness or Intellectual Disabilities [2 Versions: As amended by Acts 2023, 88th Leg., SB 1727].

(a) The department shall accept a child with mental illness or intellectual disabilities who is committed to the department.

(b) Unless the child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child with mental illness or intellectual disabilities from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or intellectual disabilities.

(c) If a child who is discharged from the department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 244.012(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge from the department is effective immediately. If the child is receiving mental health services outside the child's home county, the department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for intellectual disability services filed under Section 244.012(b); or

(2) the 30th day after the date that the application is filed.

(f) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge from the department is effective immediately.

(g) If a child with mental illness or intellectual disabilities is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 433), art. 2, § 41, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 36, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 60, effective May 31, 1995; am. Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 33, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 32, effective September 1, 1999; am. Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 1, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.077); Acts 2023, 88th Leg., ch. 950 (S.B. 1727), §§ 41, 42, effective September 1, 2023.

Sec. 244.012. Examination Before Discharge.

(a) [As amended by Acts 2023, 88th Leg., HB 446] The department shall establish a system that identifies children in the department's custody who have a mental illness or an intellectual disability.

(a) [As amended by Acts 2023, 88th Leg., SB 1727] The department shall establish a system that identifies children with mental illness or intellectual disabilities in the department's custody.

(b) Before a child with mental illness is discharged from the department's custody under Section 244.011(b), a department psychiatrist shall examine the child. The department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child is a child with mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) [As amended by Acts 2023, 88th Leg., HB 446] Before a child who is identified as a person with an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for intellectual disability services if the child is not receiving those services.

(c) [As amended by Acts 2023, 88th Leg., SB 1727] Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1086 (H.B. 1550), § 34, effective June 19, 1997; am. Acts 1999, 76th Leg., ch. 1477 (H.B. 3517), § 33, effective September 1, 1999; am. Acts 2003, 78th Leg., ch. 1294 (H.B. 2895), § 3, effective September 1, 2003; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0772); Acts 2019, 86th Leg., ch. 582 (S.B. 362), § 25, effective September 1, 2019; Acts 2023, 88th Leg., ch. 30 (H.B. 446), § 7.04, effective September 1, 2023; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 43, effective September 1, 2023.

Sec. 244.0125. Transfer of Certain Children Serving Determinate Sentences for Mental Health Services.

(a) The department may petition the juvenile court that entered the order of commitment for a child for the

initiation of mental health commitment proceedings if the child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code.

(b) A petition made by the department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) The department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to the department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to the department. The juvenile court may transfer the child to the custody of the department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1038 (H.B. 4451), § 2, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0773).

Sec. 244.013. Notice of Pending Discharge.

As soon as practicable after the department makes a decision to discharge a child or authorize the child's absence from the department's custody, the department shall give notice of the department's decision to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

HISTORY: Enacted by Acts 1981, 67th Leg., ch. 523 (H.B. 345), § 2, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 44 (S.B. 434), art. 2, § 42, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), § 38, effective September 1, 1987; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.078).

Sec. 244.014. Referral of Determinate Sentence Offenders for Transfer.

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 245.051, indicates that the welfare of the community requires the transfer.

(a-1) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department shall refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence;

(2) while the child was committed to the custody of the department, the child was subsequently adjudicated or convicted for conduct constituting a felony of the first or second degree or an offense punishable under Section 22.01(b)(1), Penal Code; and

(3) the child was at least 16 years of age at the time the conduct occurred.

(b) The department shall cooperate with the court on any proceeding on the transfer of the child.

(c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination under Section 244.005(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

HISTORY: Enacted by Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 17, effective September 1, 1987; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 61, effective January 1, 1996; am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 40, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 50, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.079); am. Acts 2013, 83rd Leg., ch. 1299 (H.B. 2862), § 39, effective September 1, 2013; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 44, effective September 1, 2023.

Sec. 244.015. Evaluation of Certain Children Serving Determinate Sentences.

(a) When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the department shall evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of the department or transfer to the Texas Department of Criminal Justice.

(b) This section does not apply to a child who is released from the custody of the department or who is transferred to the Texas Department of Criminal Justice before the child's 18th birthday.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 51, effective June 8, 2007; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0791).

Subchapter B

Provision of Certain Information; Rights of Parents

Section
244.052. Rights of Parents.

Sec. 244.052. Rights of Parents.

(a) The department, in consultation with advocacy and support groups such as those described in Section 242.056(a), shall develop a parent's bill of rights for distribution to the parent or guardian of a child who is

under 18 years of age and committed to the department. The parent's bill of rights must include:

(1) a description of the department's grievance policies and procedures, including contact information for the office of inspector general and the office of the independent ombudsman established under Chapter 261;

(2) a list of possible incidents that require parental notification;

(3) policies concerning visits and telephone conversations with a child committed to the department;

(4) a description of department caseworker responsibilities;

(5) a statement that the department caseworker assigned to a child may assist the child's parent or guardian in obtaining information and services from the department and other resources concerning:

(A) counseling, including substance abuse and mental health counseling;

(B) assistance programs, including financial and travel assistance programs for visiting a child committed to the department;

(C) workforce preparedness programs;

(D) parenting programs; and

(E) department seminars; and

(6) information concerning the indeterminate sentencing structure at the department, an explanation of reasons that a child's commitment at the department could be extended, and an explanation of the review process under Sections 245.101 and 245.104 for a child committed to the department without a determinate sentence.

(b) Not later than 48 hours after the time a child is admitted to a department facility, the department shall mail to the child's parent or guardian at the last known address of the parent or guardian:

(1) the parent's bill of rights; and

(2) the contact information of the department caseworker assigned to the child.

(c) The department shall on a quarterly basis provide to the parent, guardian, or designated advocate of a child who is in the custody of the department a report concerning the progress of the child at the department, including:

(1) the academic and behavioral progress of the child; and

(2) the results of any reexamination of the child conducted under Section 244.002.

(d) The department shall ensure that written information provided to a parent or guardian regarding the rights of a child in the custody of the department or the rights of a child's parent or guardian, including the parent's bill of rights, is clear and easy to understand.

(e) The department shall ensure that if the Department of Family and Protective Services has been appointed managing conservator of a child, the Department of Family and Protective Services is given the same rights as the child's parent under the parent's bill of rights developed under this section.

HISTORY: Enacted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.

CHAPTER 245

Release

Subchapter
B. Authority to Release; Resumption of Care
D. Termination of Control

Subchapter B

Authority to Release; Resumption of Care

Section
245.051. Release Under Supervision.
245.0535. Comprehensive Reentry and Reintegration Plan for Children; Study and Report.
245.0536. Providing Released or Discharged Child with State-Issued Identification.
245.0537. Providing Released or Discharged Child with Birth Certificate and Social Security Card.
245.054. Information Provided to Court Before Release.

Sec. 245.051. Release Under Supervision.

(a) The department may release under supervision any child in the department's custody and place the child in the child's home or in any situation or family approved by the department. Prior to placing a child in the child's home, the department shall evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

(b) Not later than 10 days before the day the department releases a child under this section, the department shall give notice of the release to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

(c) If a child is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may not release the child under supervision without approval of the juvenile court that entered the order of commitment unless the child has served at least:

(1) 10 years, if the child was sentenced to commitment for conduct constituting capital murder;

(2) 3 years, if the child was sentenced to commitment for conduct constituting an aggravated controlled substance felony or a felony of the first degree;

(3) 2 years, if the child was sentenced to commitment for conduct constituting a felony of the second degree; or

(4) 1 year, if the child was sentenced to commitment for conduct constituting a felony of the third degree.

(d) The department may request the approval of the court under this section at any time.

(e) The department may resume the care and custody of any child released under supervision at any time before the final discharge of the child.

(f) If the department finds that a child has violated an order under which the child is released under supervision, on notice by any reasonable method to all persons affected, the department may order the child:

(1) to return to an institution;

(2) if the violation resulted in property damage or personal injury:

(A) to make full or partial restitution to the victim of the offense; or

(B) if the child is financially unable to make full or partial restitution, to perform services for a charitable or educational institution; or

(3) to comply with any other conditions the department considers appropriate.

(g) Notwithstanding Subsection (c), if a child is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may release the child under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge under Section 245.151(b).

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1981, 67th Leg., ch. 523 (H.B. 345), § 1, effective August 31, 1981; am. Acts 1983, 68th Leg., ch. 44 (S.B. 435), art. 2, § 43, effective April 26, 1983; am. Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 15, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 1099 (S.B. 33), §§ 39—41, effective September 1, 1987; am. Acts 1989, 71th Leg., ch. 2 (S.B. 221), § 16.01(26), effective August 28, 1989; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 62, effective January 1, 1996; am. Acts 2005, 79th Leg., ch. 949 (H.B. 1575), § 41, effective September 1, 2005; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.081).

Sec. 245.0535. Comprehensive Reentry and Reintegration Plan for Children; Study and Report.

(a) The department shall develop a comprehensive plan for each child committed to the custody of the department to reduce recidivism and ensure the successful reentry and reintegration of the child into the community following the child's release under supervision or final discharge, as applicable, from the department. The plan for a child must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the department to the time of the child's final discharge from the department. The plan for a child must include, as applicable:

(1) housing assistance;

(2) a step-down program, such as placement in a halfway house;

(3) family counseling;

(4) academic and vocational mentoring;

(5) trauma counseling for a child who is a victim of abuse while in the custody of the department; and

(6) other specialized treatment services appropriate for the child.

(b) The comprehensive reentry and reintegration plan developed under this section must provide for:

(1) an assessment of each child committed to the department to determine which skills the child needs to develop to be successful in the community following release under supervision or final discharge;

(2) programs that address the assessed needs of each child;

(3) a comprehensive network of transition programs to address the needs of children released under supervision or finally discharged from the department;

(4) the identification of providers of existing local programs and transitional services with whom the department may contract under this section to implement the reentry and reintegration plan; and

(5) subject to Subsection (c), the sharing of information between local coordinators, persons with whom the department contracts under this section, and other providers of services as necessary to adequately assess and address the needs of each child.

(c) A child's personal health information may be disclosed under Subsection (b)(5) only in the manner authorized by Section 244.051 or other state or federal law, provided that the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

(d) The programs provided under Subsections (b)(2) and (3) must:

(1) be implemented by highly skilled staff who are experienced in working with reentry and reintegration programs for children;

(2) provide children with:

(A) individualized case management and a full continuum of care;

(B) life-skills training, including information about budgeting, money management, nutrition, and exercise;

(C) education and, if a child has a learning disability, special education;

(D) employment training;

(E) appropriate treatment programs, including substance abuse and mental health treatment programs; and

(F) parenting and relationship-building classes; and

(3) be designed to build for children post-release and post-discharge support from the community into which the child is released under supervision or finally discharged, including support from agencies and organizations within that community.

(e) The department may contract and coordinate with private vendors, units of local government, or other entities to implement the comprehensive reentry and reintegration plan developed under this section, including contracting to:

(1) coordinate the supervision and services provided to children during the time children are in the custody of the department with any supervision or services provided children who have been released under supervision or finally discharged from the department;

(2) provide children awaiting release under supervision or final discharge with documents that are necessary after release or discharge, including identification papers that include, if available, personal identification certificates obtained under Section 245.0536, medical prescriptions, job training certificates, and referrals to services; and

(3) provide housing and structured programs, including programs for recovering substance abusers, through which children are provided services immediately following release under supervision or final discharge.

(f) To ensure accountability, any contract entered into under this section must contain specific performance measures that the department shall use to evaluate compliance with the terms of the contract.

(g) [Deleted by Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011.]

(h) The department shall conduct and coordinate research:

(1) to determine whether the comprehensive reentry and reintegration plan developed under this section reduces recidivism rates; and

(2) to review the effectiveness of the department's programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness.

(i) Not later than December 31 of each even-numbered year, the department shall deliver a report of the results of research conducted or coordinated under Subsection (h) to the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of each house of the legislature with primary jurisdiction over juvenile justice and corrections.

(j) If a program or service in the child's comprehensive reentry and reintegration plan is not available at the time the child is to be released, the department shall find a suitable alternative program or service so that the child's release is not postponed.

(k) The department shall:

(1) clearly explain the comprehensive reentry and reintegration plan and any conditions of supervision to a child who will be released on supervision; and

(2) require each child committed to the department that is to be released on supervision to acknowledge and sign a document containing any conditions of supervision.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 1.011, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.08131); am. Acts 2013, 83rd Leg., ch. 1033 (H.B. 2733), § 8, effective September 1, 2013; Acts 2021, 87th Leg., ch. 909 (H.B. 4544), § 1, effective September 1, 2021; Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 45, effective September 1, 2023.

Sec. 245.0536. Providing Released or Discharged Child with State-Issued Identification.

(a) Before releasing a child under supervision or finally discharging a child, the department shall:

(1) determine whether the child has:

(A) a valid license issued under Chapter 521, Transportation Code; or

(B) a valid personal identification certificate issued under Chapter 521, Transportation Code; and

(2) if the child does not have a valid license or certificate described by Subdivision (1), submit to the Department of Public Safety on behalf of the child a request for the issuance of a personal identification certificate under Chapter 521, Transportation Code.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the personal identification certificate before the department releases or discharges the child and to provide the child with the personal identification certificate when the department releases or discharges the child.

(c) The department, the Department of Public Safety, and the vital statistics unit of the Department of State Health Services shall adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a child, including responsibilities related to verification of the child's identity. The memorandum of understanding must require the Department of State Health Services to electronically verify the birth record of a child whose name and any other personal information is provided by the department and to electronically report the recorded filing information to the Department of Public Safety to validate the identity of a child under this section.

(d) The department shall reimburse the Department of Public Safety or the Department of State Health Services for the actual costs incurred by those agencies in performing responsibilities established under this section. The department may charge the child's parent or guardian for the actual costs incurred under this section or the fees required by Section 521.421, Transportation Code.

(e) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

HISTORY: Acts 2021, 87th Leg., ch. 909 (H.B. 4544), § 2, effective September 1, 2021.

Sec. 245.0537. Providing Released or Discharged Child with Birth Certificate and Social Security Card.

(a) In addition to complying with the requirements of Section 245.0536, before releasing a child under supervision or finally discharging a child, the department must:

(1) determine whether the child has a:

(A) certified copy of the child's birth certificate; and

(B) copy of the child's social security card; and

(2) if the child does not have a document described by Subdivision (1), submit to the appropriate entity on behalf of the child a request for the issuance of the applicable document.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the applicable document before the department releases or discharges the child and to provide the child with the applicable document when the department releases or discharges the child.

(c) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

HISTORY: Acts 2021, 87th Leg., ch. 909 (H.B. 4544), § 2, effective September 1, 2021.

Sec. 245.054. Information Provided to Court Before Release.

(a) In addition to providing the court with notice of release of a child under Section 245.051(b), as soon as possible but not later than the 30th day before the date the department releases the child, the department shall provide the court that committed the child to the department:

(1) a copy of the child's reentry and reintegration plan developed under Section 245.0535; and

(2) a report concerning the progress the child has made while committed to the department.

(b) If, on release, the department places a child in a county other than the county served by the court that committed the child to the department, the department shall provide the information described by Subsection (a) to both the committing court and the juvenile court in the county where the child is placed after release.

(c) If, on release, a child's residence is located in another state, the department shall provide the information described by Subsection (a) to both the committing court and a juvenile court of the other state that has jurisdiction over the area in which the child's residence is located.

HISTORY: Enacted by Acts 2009, 81st Leg., ch. 1187 (H.B. 3689), § 1.012, effective June 19, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.08141).

Subchapter D

Termination of Control

Section
245.151. Termination of Control.
245.152. Determinate Sentence Parole.

Sec. 245.151. Termination of Control.

(a) Except as provided by Subsections (b) and (c), if a person is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may not discharge the person from its custody.

(b) The department shall discharge without a court hearing a person committed to the department for a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, who has not been transferred to the Texas Department of Criminal Justice under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent at the department under the order of commitment equals the period of the sentence.

(c) The department shall transfer to the Texas Department of Criminal Justice a person who is the subject of an order under Section 54.11(i)(2), Family Code, transferring the person to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence.

(d) Except as provided by Subsection (e), the department shall discharge from its custody a person not already discharged on the person's 19th birthday.

(e) The department shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the department under Section 54.11(i)(1), Family Code, to the custody of the Texas Department of Criminal Justice on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 842 (H.B. 1834), art. 1, § 1, effective September 1, 1979; am. Acts 1983, 68th Leg., ch. 44 (S.B. 438), art. 2, § 46, effective April 26, 1983; am. Acts 1985, 69th Leg., ch. 45 (S.B. 120), § 2, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 385 (H.B. 682), § 16, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 574 (S.B. 303), § 4, effective September 1, 1991; am. Acts 1995, 74th Leg., ch. 262 (H.B. 327), § 64, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12.19, effective September 1, 1997; am. Acts 2003, 78th Leg., ch. 283 (H.B. 2319), § 48, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 283 (H.B. 2319), § 61(3), effective September 1, 2003; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), §§ 53, 64(3), effective June 8, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.114, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.084).

Sec. 245.152. Determinate Sentence Parole.

(a) Not later than the 90th day before the date the department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole under Section 245.051(c) or 245.151(e), the department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the department and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the department, local officials, family members of the person, victims of the offense, or the general public.

(b) The department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs at the department. The department and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person at the department and in a juvenile detention facility, as recorded by the department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 12(12.20), effective September 1, 1997; am. Acts 2007, 80th Leg., ch. 263 (S.B. 103), § 54, effective June 8, 2007; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.115, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 85 (S.B. 653), § 1.007, effective September 1, 2011 (renumbered from Sec. 61.0841).

TITLE 3

HEALTH PROFESSIONS

SUBTITLE A

PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY

Chapter
111. Telemedicine, Teledentistry, and Telehealth
113. Mental Health Telemedicine and Telehealth Services

CHAPTER 111

Telemedicine, Teledentistry, and Telehealth

Section
111.001. Definitions.

Sec. 111.001. Definitions.

In this chapter:

(1) "Dentist," "health professional," and "physician" have the meanings assigned by Section 1455.001, Insurance Code.

(2) "Store and forward technology" means technology that stores and transmits or grants access to a person's clinical information for review by a health professional at a different physical location than the person.

(2-a) "Teledentistry dental service" means a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

(3) "Telehealth service" means a health service, other than a telemedicine medical service or a teledentistry dental service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

(4) "Telemedicine medical service" means a health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology.

HISTORY: Enacted by Acts 2003, 78th Leg., ch. 1274 (H.B. 2922), § 22, effective April 1, 2005; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(69), effective September 1, 2005 (renumbered from Sec. 107.001); Acts 2017, 85th Leg., ch. 205 (S.B. 1107), § 1, effective May 27, 2017; Acts 2021, 87th Leg., ch. 811 (H.B. 2056), § 2, effective September 1, 2021.

CHAPTER 113.

Mental Health Telemedicine and Telehealth Services

Section
113.001. Definitions.
113.002. Patient Located Outside of State.

Sec. 113.001. Definitions.

The definitions provided by Section 111.001 apply to this chapter.

HISTORY: Acts 2019, 86th Leg., ch. 1328 (H.B. 4455), § 1, effective September 1, 2019.

Sec. 113.002. Patient Located Outside of State.

Notwithstanding any other law, a health professional may provide a mental health service that is within the scope of the professional's license, certification, or authorization through the use of a telemedicine medical service or a telehealth service to a patient who is located outside of this state, subject to any applicable regulation of the jurisdiction in which the patient is located.

HISTORY: Acts 2019, 86th Leg., ch. 1328 (H.B. 4455), § 1, effective September 1, 2019.

PENAL CODE

Title
1. Introductory Provisions
2. General Principles of Criminal Responsibility

TITLE 1

INTRODUCTORY PROVISIONS

CHAPTER 1

General Provisions

Section
1.07. Definitions.

Sec. 1.07. Definitions.

(a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" is used in this code, it means "actor."

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(5) "Another" means a person other than the actor.

(6) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8-a) "Civil commitment facility" means a facility owned, leased, or operated by the state, or by a vendor under contract with the state, that houses only persons who have been civilly committed as sexually violent predators under Chapter 841, Health and Safety Code.

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) "Conduct" means an act or omission and its accompanying mental state.

(11) "Consent" means assent in fact, whether express or apparent.

(12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(13) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

(21) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(22) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

(27) [Repealed by Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.144, effective September 1, 2009.]

(28) "Intentional" is defined in Section 6.03 (Culpable Mental States).

(29) "Knowing" is defined in Section 6.03 (Culpable Mental States).

(30) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(30-a) "Mass shooting" means a person's discharge of a firearm to cause serious bodily injury or death, or to attempt to cause serious bodily injury or death, to four or more persons:

(A) during the same criminal transaction; or

(B) during different criminal transactions but pursuant to the same scheme or course of conduct.

(31) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) "Oath" includes affirmation.

(33) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) "Omission" means failure to act.

(35) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2A.001, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(37) "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(38) "Person" means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(39) "Possession" means actual care, custody, control, or management.

(40) "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(43) "Reckless" is defined in Section 6.03 (Culpable Mental States).

(44) "Rule" includes regulation.

(45) "Secure correctional facility" means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(46-a) "Sight order" means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

(46-b) "Federal special investigator" means a person described by Article 2A.002, Code of Criminal Procedure.

(47) "Swear" includes affirm.

(48) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(49) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(b) The definition of a term in this code applies to each grammatical variation of the term.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 1, effective January 1, 1974; am. Acts 1975, 64th Leg., ch. 342 (S.B. 127), § 1, effective September 1, 1975; am. Acts 1977, 65th Leg., ch. 848 (H.B. 2007), § 1, effective August 29, 1977; am. Acts 1979, 66th Leg., ch. 530 (S.B. 952), § 1, effective August 27, 1979; am. Acts 1979, 66th Leg., ch. 655 (S.B. 846), § 1, effective September 1, 1979; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(43), effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 997 (H.B. 832), § 1, effective August 28, 1989; am. Acts 1991, 72nd Leg., ch. 543 (H.B. 1801), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994; am. Acts 2003, 78th Leg., ch. 822 (S.B. 319), § 2.01, effective September 1, 2003; am. Acts 2009, 81st Leg., ch. 87 (S.B. 1969), § 25.144, effective September 1,

2009; am. Acts 2009, 81st Leg., ch. 421 (H.B. 2031), § 1, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 839 (H.B. 3423), § 1, effective September 1, 2011; Acts 2017, 85th Leg., ch. 34 (S.B. 1576), § 26, effective September 1, 2017; Acts 2019, 86th Leg., ch. 112 (S.B. 1258), § 1, effective September 1, 2019; Acts 2023, 88th Leg., ch. 467 (H.B. 165), § 1, effective September 1, 2023; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.153, effective January 1, 2025.

TITLE 2

GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 8

General Defenses to Criminal Responsibility

Section
8.01. Insanity.
8.08. Child with Mental Illness, Disability, or Lack of Capacity.

Sec. 8.01. Insanity.

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

HISTORY: Enacted by Acts 1973, 63rd Leg., ch. 399 (S.B. 34), § 1, effective January 1, 1974; am. Acts 1983, 68th Leg., ch. 454 (S.B. 7), § 1, effective August 29, 1983; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994.

Sec. 8.08. Child with Mental Illness, Disability, or 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 court with jurisdiction of an offense described by Section 8.07(a)(4) or (5) shall determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirement of the law.

(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, "child" has the meaning assigned by Article 45A.453(a), Code of Criminal Procedure.

HISTORY: Enacted by Acts 2013, 83rd Leg., ch. 1407 (S.B. 393), § 18, effective September 1, 2013; Acts 2023, 88th Leg., ch. 765 (H.B. 4504), § 2.154, effective January 1, 2025.

Index

A

ABUSE, NEGLECT, AND EXPLOITATION.
Intellectual or developmental disabilities, persons with.
Protection from, H&S §592.012.
State supported living centers.
Electronic monitoring of residents' rooms.
Reports, H&S §555.158.
Supported decision-making agreements.
Reporting, EST §1357.102.

ACTIONS.
Aging and disability services department.
Intellectual disability services, H&S §591.024.
Mental illness, persons with.
Notice, H&S §571.024.

ADMINISTRATION OF MEDICATION.
See MEDICATION, ADMINISTRATION OF.

ADMISSIBILITY OF EVIDENCE.
Incompetency to stand trial, CCP §46B.007.
Sexual offenses.
Hearsay, CCP §38.072.

ADMISSION AND COMMITMENT OF PERSONS.
Authority to enact statutes, TX ConstArt I §15-a.
Court-ordered mental health services.
Criminal justice department facility, H&S §574.044.
Federal facility, H&S §574.043.
Mental health commitment records, H&S §574.014.
Private mental hospitals and mental health facilities, H&S §574.042.
Voluntary admission.
Applicability of provisions, H&S §574.151.
Applications, H&S §572.005.
Capacity to consent to treatment, H&S §574.152.
Human subject research, H&S §574.154.
Rights of patients, H&S §574.153.
Essential caregiver, right of facility resident to designate, TX ConstArt I §35.
Guardianship proceedings.
Commitment of adult wards, EST §1151.053.
Incompetency to stand trial, CCP §§46B.101 to 46B.117.
See INCOMPETENCY TO STAND TRIAL.
Inpatient mental health services.
Authorization, H&S §575.001.
Chemical dependency, H&S §575.003.
Persons charged with criminal offenses, H&S §575.003.
Private mental hospitals and mental health facilities.
Voluntary mental health services, H&S §575.002.
Insanity defense.
Disposition following acquittal, CCP §§46C.251 to 46C.270.
See INSANITY DEFENSE.
Maximum period determined by maximum term for offense, CCP §46C.002.
Intellectual disability services, H&S §§593.001 to 593.014.
Absent without authority, H&S §593.012.
Appeals, H&S §593.010.

ADMISSION AND COMMITMENT OF PERSONS —Cont'd
Intellectual disability services —Cont'd
Consent requirement, H&S §593.002.
Decisions, H&S §593.009.
Determination of intellectual disability, H&S §593.005.
Applications, H&S §593.004.
Requirements, H&S §593.003.
Epilepsy, H&S §593.014.
Fees, H&S §593.011.
Hearings, H&S §593.008.
Reports, H&S §593.009.
Interdisciplinary team recommendations, H&S §593.013.
Long-term placement without interdisciplinary team recommendation, H&S §593.0511.
Notification of rights, H&S §593.007.
Reports, H&S §593.006.
Hearings, H&S §593.009.
Requirements, H&S §593.001.
Intellectual or developmental disabilities, persons with.
Prior law, H&S §593.091.
Discharge of patients, H&S §593.092.
Reimbursement for expenses, H&S §593.093.
Local mental health authorities.
See LOCAL MENTAL HEALTH AUTHORITIES.
Medical or psychiatric testimony required, TX ConstArt I §15-a.
Mental illness or intellectual disability, children with, FAM §§55.11 to 55.19.
See MENTAL ILLNESS OR INTELLECTUAL DISABILITY, CHILDREN WITH.
Mental illness, persons with.
Conditions.
Effect of, H&S §571.009.
Return to state of residence, H&S §571.008.
Reciprocal agreements, H&S §571.0081.
Private mental hospitals and mental health facilities.
Court-ordered mental health services, H&S §574.042.
Inpatient mental health services.
Voluntary mental health services, H&S §575.002.
Voluntary mental health treatment, H&S §572.002.
Requests for admission, H&S §572.001.
Restrictions based on available space, H&S §572.0026.

ADVANCE DIRECTIVES.
Patient determined incompetent or incapable of communication.
Physician refusal to honor directive, H&S §166.046.

ADVISORY COMMITTEES.
Aging and disability services department, H&S §532A.004.
Community-based intellectual disability services, H&S §534.071.
Community-based mental health services, H&S §534.071.
Community centers, H&S §534.012.
Special education.
Continuing advisory committee, ED §29.006.

ADVISORY COMMITTEES —Cont'd
State health services department, H&S §532.004.

AGED PERSONS.
See ELDERLY PERSONS.

AGENTS.
Durable power of attorney.
See DURABLE POWER OF ATTORNEY.

AGING AND DISABILITY SERVICES DEPARTMENT.
Advisory committees, H&S §532A.004.
Commissioner.
Conflict of laws, H&S §533A.002.
Powers and duties, H&S §533A.002.
Criminal history record information.
Use of, H&S §533A.007.
Definitions, H&S §§532A.001, 533A.001.
Easements, H&S §533A.005.
Elderly persons.
See ELDERLY PERSONS.
Employees.
Employment opportunities for persons with mental illness or intellectual disabilities, H&S §533A.008.
Exchange of employment records, H&S §533A.0075.
Facilities, H&S §§533A.081 to 533A.087.
Budgets, H&S §533A.081.
Expansion, closure, or consolidation, H&S §533A.083.
Inmate and parolee care, H&S §533A.085.
Mental retardation community services account, H&S §533A.0846.
Real property.
Leases, H&S §533A.087.
Management of surplus real property, H&S §533A.084.
Savings.
Determinations, H&S §533A.082.
Guardianship services.
See ELDERLY PERSONS.
ICF-IID program.
Information relating to, H&S §533A.066.
ICF-MR program.
Long-term care plan, H&S §533A.062.
Immunity from liability.
Intellectual disability services, H&S §591.024.
Inspections.
Unannounced inspections, H&S §533A.015.
Intellectual disability components, H&S §532A.001.
Intellectual disability services, H&S §§533A.031 to 533A.043.
See INTELLECTUAL DISABILITY SERVICES.
Intellectual or developmental disabilities, persons with.
See INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH.
Jail diversion programs.
Powers and duties, H&S §533A.108.
Liens, H&S §533A.004.
Medical director, H&S §532A.002.
Procurement.
Group purchasing programs, H&S §533A.017.
Purchasing contracts, H&S §533A.017.
Service providers, H&S §533A.016.
Records.
Client records.
Exchange of, H&S §533A.009.
Employment records.
Exchange of, H&S §533A.0075.
Information relating to conditions, H&S §533A.010.

AGING AND DISABILITY SERVICES DEPARTMENT —Cont'd
Records —Cont'd
Insanity defense.
Collection and maintenance of information, H&S §533A.0095.
Reports.
Allegations against physicians, H&S §533A.006.
Return of client to state of residence, H&S §533A.011.
Special Olympics Texas license plates.
Revenues, H&S §533A.018.
State agencies.
Cooperation, H&S §533A.012.
State supported living centers, H&S §§555.001 to 555.202.
See STATE SUPPORTED LIVING CENTERS.

AMERICAN RED CROSS.
Medical records.
Exemptions, H&S §181.056.

ANATOMICAL GIFTS.
State supported living centers, H&S §555.027.

ANNUITIES.
Statutory durable power of attorney.
Powers, EST §752.107.

APPEALS.
Court-ordered mental health services.
Administration of medication, H&S §574.108.
Post-commitment proceedings, H&S §574.070.
Credit for time spent in jail pending appeal, CCP §42.03.
Guardianship proceedings.
Jurisdiction, EST §1022.001.
Incompetency to stand trial, CCP §46B.011.
Insanity defense.
Disposition following acquittal.
Dangerous conduct, CCP §46C.270.
Intellectual disability services.
Admission and commitment of persons, H&S §593.010.
Residential care facilities, H&S §593.056.
Intellectual or developmental disabilities, persons with.
Psychoactive medication, H&S §592.158.
Transfer or discharge of patients, H&S §594.017.
Intermediate care facilities.
Capacity to consent to treatment.
Surrogate consent, H&S §597.053.
Juvenile justice, FAM §56.01.
Private mental hospitals and mental health facilities, H&S §577.018.

APPROPRIATIONS.
Accounting, TX ConstArt XVI §6.
Child mental health care consortium.
Contingency, H&S §113.0252.
Correctional office on offenders with medical or mental impairments.
Contingency, H&S §614.0205.
Private purposes.
Prohibitions, TX ConstArt XVI §6.

ARRAIGNMENT.
Attorneys.
Appointment of counsel, CCP §26.04.
Capital cases, CCP §26.052.
Compensation, CCP §26.05.
Indigent inmate defense, CCP §26.051.

ARRAIGNMENT —Cont'd
Attorneys —Cont'd
Manages assigned counsel program, CCP §26.047.
Public defender's office, CCP §26.044.
Capital cases.
Attorneys.
Appointment of counsel, CCP §26.052.
Reimbursement for investigative expenses, CCP §26.052.
Guilty pleas, CCP §26.13.

ARREST.
Credit for time spent in jail between arrest and sentencing, CCP §42.03.
Under warrant.
Arresting officers.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Magistrates.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Without warrant.
Intellectual or developmental disabilities, persons with.
Release in lieu of arrest, CCP §14.035.
Law enforcement officers.
Authority, CCP §14.03.
Extraterritorial arrest, CCP §14.051.
Offense within view, CCP §14.01.
Taking offender before magistrate, CCP §14.06.

ATTORNEY GENERAL.
Medical records.
Access and use.
Complaints.
Reports, H&S §181.104.

ATTORNEYS.
Arraignment.
Appointment of counsel, CCP §26.04.
Capital cases, CCP §26.052.
Compensation, CCP §26.05.
Indigent inmate defense, CCP §26.051.
Manages assigned counsel program, CCP §26.047.
Public defender's office, CCP §26.044.
Court-ordered mental health services.
Appointment, H&S §574.003.
Duties, H&S §574.004.
Incompetency to stand trial.
Appointment, CCP §46B.006.
Competency restoration.
Motions for determinations, CCP §46B.110.
Representation by, CCP §46B.006.
Intellectual disability services.
Residential care facilities, H&S §593.043.
Juvenile justice.
Right to attorney representation, FAM §51.10.
Protective custody.
Appointment, H&S §574.024.

AUDITS.
Community-based intellectual disability services, H&S §534.068.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Program audits, H&S §534.0601.
Community-based mental health services, H&S §534.068.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Program audits, H&S §534.0601.

AUDITS —Cont'd
Community centers.
Financial audits, H&S §534.036.
Procedures, H&S §534.035.
Program audits, H&S §534.037.
Medical records, H&S §181.206.

B

BACKGROUND CHECKS.
See CRIMINAL HISTORY RECORD INFORMATION.

BAIL.
Bail bond.
Requisites, CCP §17.08.
Incompetency to stand trial.
Release on.
Felonies, CCP §46B.072.
Misdemeanors, CCP §§46B.072, 46B.0711.
Personal bond, CCP §17.03.
Office, CCP §17.42.
Release on, CCP §17.031.
Mental illness or intellectual disability, defendants with, CCP §17.032.
Requisites, CCP §17.04.

BANKRUPTCY.
Durable power of attorney.
Effect on, EST §751.057.

BANKS.
Medical records.
Exemptions, H&S §181.052.
Statutory durable power of attorney.
Powers, EST §752.106.

BEHAVIORAL HEALTH.
Intellectual disability services.
Behavioral supports, H&S §533A.03552.

BENEFICIARIES.
Statutory durable power of attorney.
Powers, EST §752.108.

BOND ISSUES.
Construction and repair.
General obligation bonds, TX ConstArt III §50-f.
Correctional facilities, TX ConstArt III §49-h.
Equipment.
General obligation bonds, TX ConstArt III §50-f.
Intellectual or developmental disabilities, persons with.
Institutions, TX ConstArt III §49-h.
Mental health facilities, TX ConstArt III §49-h.

BONDS, SURETY.
Guardianship proceedings, EST §1105.003.

BURDEN OF PROOF.
Guardianship proceedings.
Modification of, EST §1202.151.
Restoration of ward's capacity, EST §1202.151.
Health information privacy.
Notice of breach of unsecured protected health information, 45 CFR 164.414.

C

CAPITAL PUNISHMENT.
Arraignment.
Attorneys.
Appointment of counsel, CCP §26.052.

CAPITAL PUNISHMENT —Cont'd
Arraignment —Cont'd
Attorneys —Cont'd
Reimbursement for investigative expenses, CCP §26.052.
Competency for, CCP §46.05.

CHILD MENTAL HEALTH CARE CONSORTIUM, H&S §§113.0001 to 113.0252.
Appropriations.
Contingency, H&S §113.0252.
Child and adolescent psychiatry fellowship, H&S §113.0202.
Child psychiatry access network, H&S §113.0151.
Child psychiatry workforce expansion, H&S §113.0201.
Composition of, H&S §113.0052.
Definitions, H&S §113.0001.
Establishment, H&S §113.0051.
Executive committee, H&S §§113.0101 to 113.0105.
Composition of, H&S §113.0101.
Duties, H&S §113.0105.
Presiding officer, H&S §113.0103.
Statewide behavioral health coordinating council, H&S §113.0104.
Terms of office, H&S §113.0102.
Vacancies, H&S §113.0102.
Higher education coordinating board.
Administrative attachment, H&S §113.0053.
Purpose, H&S §113.0051.
Reports, H&S §113.0251.
Rural pediatric mental health care access program, H&S §113.0181.
Consent, services to minor, H&S §113.0182.
Services.
Consent requirement, H&S §113.0152.
Reimbursement for, H&S §113.0153.
Telemedicine and telehealth programs, H&S §113.0151.

CHILD PROTECTIVE SERVICES.
Grants, GOV §22.017.
Required notifications, FAM §264.018.
Supreme court.
Judicial guidance, GOV §22.0135.

CHILDREN AND MINORS.
Child mental health care consortium, H&S §§113.0001 to 113.0252.
See CHILD MENTAL HEALTH CARE CONSORTIUM.
Children's advocacy centers.
Duties, FAM §264.405.
Multidisciplinary team working protocol, FAM §264.4031.
Consent to treatment by non-parent or minor.
By minor, FAM §32.003.
By non-parent, FAM §32.001.
Counseling, FAM §32.004.
Emergency shelter or care, FAM §32.201.
By minor, FAM §32.202.
Examinations, FAM §32.005.
Form, FAM §32.002.
Transitional living program.
Housing or care provided through, FAM §32.203.
Criminal law and procedure.
Defenses.
Children with mental illness, disability, or lack of capacity, PEN §8.08.

CHILDREN AND MINORS —Cont'd
Family and protective services department.
Children in conservatorship of.
Medical care, FAM §§266.003 to 266.012.
See FAMILY AND PROTECTIVE SERVICES DEPARTMENT.
Foster care.
See FOSTER CARE.
Inpatient mental health services.
Temporary authorization, FAM §§35A.001 to 35A.005.
Applicability of provisions, FAM §35A.001.
Orders, FAM §35A.005.
Petition, FAM §35A.002.
Contents, FAM §35A.003.
Hearings, FAM §35A.004.
Notice, FAM §35A.004.
Intellectual disability services, H&S §533A.040.
Voluntary mental health services.
Minors reaching majority, H&S §593.029.
Intellectually disabled children.
See INTELLECTUALLY DISABLED CHILDREN.
Juvenile justice.
See JUVENILE JUSTICE.
Mental health services.
State health services department, H&S §533.040.
Mental illness or intellectual disability.
See MENTAL ILLNESS OR INTELLECTUAL DISABILITY, CHILDREN WITH.

CHILDREN'S ADVOCACY CENTERS.
Duties, FAM §264.405.
Multidisciplinary team working protocol, FAM §264.4031.

CHILD SUPPORT.
Intellectual disability services.
Child support payments for benefit of residents, H&S §593.077.
State hospitals.
Payments for benefit of patients, H&S §552.014.

COLLABORATIVE TASK FORCE ON PUBLIC SCHOOL MENTAL HEALTH SERVICES.
See SCHOOLS AND EDUCATION.

COMMISSION ON JAIL STANDARDS.
Definitions, GOV §511.001.
Duties, GOV §511.009.
Mental health services.
Payment, GOV §511.0098.
Noncompliance.
Reports, GOV §511.011.
Prescription medication for prisoner with mental illness, GOV §511.009.
Prisoner health benefits.
Coverage information, GOV §511.0098.
Risk assessment plan, GOV §511.0085.
Risk factors, GOV §511.0085.

COMMITMENT OF PERSONS.
See ADMISSION AND COMMITMENT OF PERSONS.

COMMODITIES.
Statutory durable power of attorney.
Powers, EST §752.105.

COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES, H&S §§534.101 to 534.124.
Advisory committees, H&S §534.124.
Audits, H&S §534.121.
Financial audits, H&S §534.112.
Additional financial audit activity, H&S §534.113.

COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES —Cont'd
Audits —Cont'd
Program audits, H&S §534.111.
Contracts, H&S §534.106.
Compliance, H&S §534.109.
Renewal, H&S §534.116.
Community services, H&S §534.117.
Coordination of activities, H&S §534.107.
Definitions, H&S §534.101.
Designation of providers, H&S §534.105.
Fees.
Collection, H&S §534.119.
Joint discharge planning, H&S §534.104.
Local match requirement, H&S §534.118.
Local mental health authorities.
Contracts.
Compliance, H&S §534.109.
Financial audits, H&S §534.112.
Additional financial audit activity, H&S §534.113.
Monitoring and review, H&S §534.110.
Program audits, H&S §534.111.
Monitoring and review.
Community services, H&S §534.114.
Local mental health authorities, H&S §534.110.
Notice of denial, reduction, or termination of services, H&S §534.120.
Peer review organizations, H&S §534.115.
Prospective payment funds.
Use of, H&S §534.123.
Required services, H&S §534.103.
Respite care, H&S §534.1075.
Rules and regulations, H&S §534.102.
Standards of care, H&S §534.108.
Start-up costs.
Criteria for funding, H&S §534.122.

COMMUNITY-BASED MENTAL HEALTH SERVICES, H&S §§534.051 to 534.071.
Advisory committees, H&S §534.071.
Audits, H&S §534.068.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Program audits, H&S §534.0601.
Contracts, H&S §534.055.
Compliance, H&S §534.059.
Renewal, H&S §534.064.
Community services, H&S §534.065.
Coordination of activities, H&S §534.056.
Definitions, H&S §534.051.
Designation of providers, H&S §534.054.
Fees.
Collection, H&S §534.067.
Joint discharge planning, H&S §534.0535.
Local match requirement, H&S §534.066.
Local mental health authorities.
Contracts.
Compliance, H&S §534.059.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Monitoring and review, H&S §534.060.
Program audits, H&S §534.0601.
Monitoring and review.
Community services, H&S §534.061.
Local mental health authorities, H&S §534.060.
Notice of denial, reduction, or termination of services, H&S §534.0675.
Peer review organizations, H&S §534.063.

COMMUNITY-BASED MENTAL HEALTH SERVICES —Cont'd
Prospective payment funds.
Use of, H&S §534.070.
Required services, H&S §534.053.
Rules and regulations, H&S §534.052.
Standards of care, H&S §534.058.
Start-up costs.
Criteria for funding, H&S §534.069.

COMMUNITY CENTERS, H&S §§534.0001 to 534.040.
Abuse, neglect, and exploitation.
See ABUSE, NEGLECT, AND EXPLOITATION.
Advisory committees, H&S §534.012.
Appeal procedures, H&S §534.035.
Audits.
Financial audits, H&S §534.036.
Procedures, H&S §534.035.
Program audits, H&S §534.037.
Boards of trustees.
Administration, H&S §534.008.
Conflicts of interest, H&S §534.0065.
Established by one local agency, H&S §534.002.
Established by two or more local agencies, H&S §534.003.
Former members.
Prohibited activities, H&S §534.007.
Meetings, H&S §534.009.
Procedures, H&S §534.004.
Qualifications, H&S §534.0065.
Removal of, H&S §534.0065.
Terms of office, H&S §534.005.
Training, H&S §534.006.
Vacancies, H&S §534.005.
Budgets, H&S §534.014.
Cooperation by departments, H&S §534.013.
Definitions, H&S §534.0001.
Establishment, H&S §534.001.
Executive directors, H&S §534.010.
Funding, H&S §534.014.
Gifts, H&S §534.018.
Grants, H&S §534.018.
Limitation on departmental control and review, H&S §534.033.
Local agencies.
Contributions, H&S §534.019.
Management teams.
Appointment, H&S §534.038.
Powers and duties, H&S §534.039.
Restoration of management to center, H&S §534.040.
Personal property.
Surplus property, H&S §534.031.
Personnel, H&S §534.011.
Nepotism, H&S §534.0115.
Public policy, H&S §534.0015.
Purpose, H&S §534.0015.
Real property.
Acquisition and construction, H&S §534.020.
Approval, H&S §534.021.
Notice, H&S §534.021.
Financing, H&S §534.022.
Sale of, H&S §534.023.
Research, H&S §534.032.
Review procedures, H&S §534.035.
Services.
Continuing care services, H&S §534.016.
Fees, H&S §534.017.
Persons for whom services provided, H&S §534.0155.
Provision of, H&S §534.015.

COMMUNITY CENTERS —Cont'd
Services —Cont'd
Screening services, H&S §534.016.
Trusts.
Exemptions, H&S §534.0175.
Volunteer programs.
Use of funds, H&S §533A.003.

COMMUNITY COLLABORATIVES, GOV §§547A.0001 to 547A.0010.
Administrative costs, GOV §547A.0009.
Elements, GOV §547A.0003.
Funding.
Reduction of, GOV §547A.0007.
Termination, GOV §547A.0007.
Grants.
Issuance of, GOV §547A.0001.
Uses of, GOV §547A.0002.
Outcome measures, GOV §547A.0004.
Annual review, GOV §547A.0006.
Plan required, GOV §§547A.0005, 547A.0005.
Reporting, GOV §547A.0010.
Rules and regulations, GOV §547A.0008.

COMMUNITY JUSTICE ASSISTANCE DIVISION.
Commitment reduction plan, GOV §509.0071.
Community corrections facilities, GOV §509.006.
Definitions, GOV §509.001.
Prison diversion progressive sanctions program, GOV §509.016.
Procedures, GOV §509.003.
Purpose, GOV §509.002.
Risk and needs assessment instruments, GOV §509.0041.
Standards, GOV §509.003.
State aid, GOV §509.011.
Strategic plan, GOV §509.007.

COMMUNITY SERVICE.
Court costs.
In satisfaction of, CCP §45.049.
Juvenile defendants, CCP §§45.0492, 45A.459, 45A.460.
Fines.
Community service in satisfaction of, CCP §45.049.
Juvenile defendants, CCP §§45.0492, 45A.459, 45A.460.

COMMUNITY SUPERVISION, CCP §§42A.051 to 42A.561.
Authority to grant, CCP §42A.051.
Conditions of, CCP §42A.104.
Authority to impose or modify, CCP §42A.051.
Educational skill level, CCP §42A.351.
Intellectual or developmental disabilities, persons with, CCP §42A.506.
Mental illness, persons with, CCP §42A.506.
Modification by supervision officer or magistrate, CCP §42A.052.
Confidential information.
Supervision officer.
Release of information to, CCP §42A.256.
Continuing jurisdiction in felony cases, CCP §42A.202.
Discharge of defendant.
Authority, CCP §42A.051.
Fines and civil penalties, CCP §42A.104.
Medical release, CCP §§42A.560, 42A.561.
Nondisclosure order, CCP §42A.106.
Postsentence reports, CCP §42A.259.
Presentence reports, CCP §42A.253.

COMMUNITY SUPERVISION —Cont'd
State jail felony cases.
Revocation, CCP §42A.558.
Sanctions on modification of community supervision, CCP §42A.556.
Supervision officer.
Release of information to, CCP §42A.256.
Transfer of jurisdiction, CCP §42A.151.

COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS.
Community justice council, GOV §76.003.
Establishment, GOV §76.002.
Services and programs, GOV §76.011.

COMPLAINTS.
Correctional office on offenders with medical or mental impairments, H&S §614.0102.
Medical records.
Access and use.
Information regarding complaint filing procedures, H&S §181.105.
Reports, H&S §181.104.

CONFIDENTIAL INFORMATION.
Community supervision.
Supervision officer.
Release of information to, CCP §42A.256.
Health information privacy, 45 CFR 164.102 to 45 CFR 164.535.
See HEALTH INFORMATION PRIVACY.
Intellectual or developmental disabilities, persons with.
Medical records, H&S §595.001.
Exceptions, H&S §595.005.
Past services, H&S §595.007.
Intermediate care facilities.
Capacity to consent to treatment.
Surrogate consent.
Application for treatment decision, H&S §597.047.
Mental health records, H&S §611.002.
Persons entitled to claim privilege, H&S §611.003.
Mental health services.
Rights of persons receiving, H&S §576.005.
Peer assistance programs, H&S §467.007.
State supported living centers.
Office of independent ombudsman, H&S §555.057.

CONFLICT OF LAWS.
Durable power of attorney, EST §751.007.
Restraint and seclusion.
State supported living centers, H&S §592.106.
State health services department.
Commissioner, H&S §533.0002.

CONFLICTS OF INTEREST.
Community centers.
Boards of trustees, H&S §534.0065.
Mental health facilities, H&S §551.002.
State supported living centers.
Office of independent ombudsman, H&S §555.055.

CONSENT TO TREATMENT.
By non-parent or minor.
See CHILDREN AND MINORS.
Child mental health care consortium.
Rural pediatric mental health care access program, H&S §113.0182.
Consent to medical treatment act, H&S §§313.001 to 313.007.
See INFORMED CONSENT.

CONSENT TO TREATMENT —Cont'd
Court-ordered mental health services.
Voluntary admission.
Capacity to consent to treatment, H&S §574.152.
Informed consent.
See INFORMED CONSENT.
Intellectual disability services.
Adequacy of, H&S §591.006.
Intermediate care facilities.
Capacity to consent to treatment, H&S §§597.001 to 597.054.
See INTERMEDIATE CARE FACILITIES.

CONSERVATORSHIP.
Family and protective services department.
Children in conservatorship of.
Medical care, FAM §§266.003 to 266.012.
See FAMILY AND PROTECTIVE SERVICES DEPARTMENT.

CONSTITUTIONAL COUNTY COURTS.
See COUNTY COURTS.

CONTRABAND.
Forfeitures.
Disposition of, CCP §59.06.

CONTRACTS.
Community-based intellectual disability services, H&S §534.055.
Compliance, H&S §534.059.
Renewal, H&S §534.064.
Community services, H&S §534.065.
Community-based mental health services, H&S §534.055.
Compliance, H&S §534.059.
Renewal, H&S §534.064.
Community services, H&S §534.065.
Correctional facilities.
Diagnostic and evaluation services, GOV §495.023.
Health maintenance organizations.
Conditions, H&S §534.156.
Local mental health authorities.
Contract management.
See LOCAL MENTAL HEALTH AUTHORITIES.
Prisons and prisoners.
Mental health care, GOV §501.056.
Private mental hospitals and mental health facilities.
Limitations, H&S §577.009.
Special education.
Contracts for services, ED §29.008.

CONTROLLED SUBSTANCES.
Administration of medication.
See MEDICATION, ADMINISTRATION OF.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.
Substance use disorders.
See SUBSTANCE USE DISORDERS.

CORRECTIONAL FACILITIES.
Bond issues, TX ConstArt III §49-h.
Commission on jail standards.
See COMMISSION ON JAIL STANDARDS.
Community corrections facilities, GOV §509.006.
Diagnostic and evaluation services.
Contracts, GOV §495.023.
Unit and system capacity.
Staff determinations and recommendations, GOV §499.102.

CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS, H&S §§614.001 to 614.021.
Applicability of provisions, H&S §614.006.
Appropriations.
Contingency, H&S §614.0205.
Biennial report, H&S §614.009.
Committee.
Composition of, H&S §614.002.
Duties, H&S §614.002.
Meetings, H&S §614.005.
Officers, H&S §614.005.
Public access, H&S §614.0101.
Terms of office, H&S §614.004.
Community-based diversion program, H&S §614.008.
Competency or fitness to proceed.
Determinations, H&S §614.0032.
Complaints, H&S §614.0102.
Continuity of care.
Elderly offenders, H&S §614.014.
Juveniles with mental impairments, H&S §614.018.
Law enforcement, H&S §614.016.
Offenders with mental impairments, H&S §614.013.
Offenders with physical disabilities, terminal illnesses, or significant illnesses, H&S §614.015.
Definitions, H&S §614.001.
Director, H&S §614.003.
Duties, H&S §614.003.
Exchange of information, H&S §614.017.
Juveniles.
Continuity of care, H&S §614.018.
Programs for, H&S §614.019.
Youth assertive community treatment program, H&S §614.020.
Powers and duties, H&S §614.007.
Medically recommended supervision, H&S §614.0032.
Training program, H&S §614.0031.
Wrongfully imprisoned persons.
Services for, H&S §614.021.

CORRECTIONAL OFFICERS.
Training.
De-escalation, crisis intervention, and behavioral health, GOV §493.0325.
Pregnant inmates, GOV §493.032.

COUNSELORS.
Children and minors.
Consent to treatment by non-parent or minor, FAM §32.004.
Mandatory supervision.
Psychological counseling, GOV §508.223.
Parole.
Psychological counseling, GOV §508.223.

COUNTIES.
Intellectual or developmental disabilities, persons with.
Responsibility, H&S §615.001.
Mental illness, persons with.
Responsibility, H&S §615.001.
Property held for public purpose.
Forced sale.
Exemptions, TX ConstArt XI §9.
Property taxation.
Exemptions, TX ConstArt XI §9.

COUNTY COURTS.
Constitutional county courts.
Mental health cases, GOV §26.052.

COUNTY COURTS —Cont'd
Constitutional county courts —Cont'd
Probate cases, GOV §26.052.
Visiting judges.
Assignment.
Guardianship cases, GOV §26.012.
Mental health cases, GOV §26.012.
Probate cases, GOV §26.012.
Statutory county courts.
Community supervision and corrections departments.
Community justice council, GOV §76.003.
Establishment, GOV §76.002.
Services and programs, GOV §76.011.
Definitions, GOV §25.0002.
Exchange of judges, GOV §25.0012.
Jurisdiction, GOV §25.0003.
Probate courts, GOV §25.0021.
Probate courts.
See PROBATE COURTS.

COURT COSTS.
Community service in satisfaction of, CCP §45.049.
Juvenile defendants, CCP §§45.0492, 45A.459, 45A.460.
Judgments in justice or municipal courts, CCP §45.041.
Mental illness, persons with, H&S §571.018.
Recovery, H&S §571.026.
Waiver.
Indigent defendants, CCP §§43.091, 45.0491.

COURT OF CRIMINAL APPEALS.
Court-ordered outpatient mental health services.
Judicial instruction, GOV §22.1106.

COURT-ORDERED MENTAL HEALTH SERVICES, H&S §§574.001 to 574.203.
Administration of medication, H&S §§574.101 to 574.110.
See MEDICATION, ADMINISTRATION OF.
Admission and commitment of persons.
Criminal justice department facility, H&S §574.044.
Federal facility, H&S §574.043.
Mental health commitment records, H&S §574.014.
Private facility, H&S §574.042.
Voluntary mental health services. See within this heading, "Voluntary mental health services."
Applications, H&S §574.001.
Disclosure of information, H&S §574.007.
Forms, H&S §574.002.
Hearings, H&S §574.005.
Notice, H&S §574.006.
Associate judges, H&S §574.0085.
Attorneys.
Appointment, H&S §574.003.
Duties, H&S §574.004.
Care or commitment, H&S §574.036.
Court of criminal appeals.
Court-ordered outpatient mental health services.
Judicial instruction, GOV §22.1106.
Designation of facilities, H&S §574.041.
Discharge of patients, H&S §§574.081 to 574.089.
See DISCHARGE OF PATIENTS.
Experts, H&S §574.010.
Extended outpatient services, H&S §574.0355.
Extended services, H&S §574.035.
Facilities.
Designation, H&S §574.041.
Furloughs.
Continuing care plans, H&S §574.081.

COURT-ORDERED MENTAL HEALTH SERVICES —Cont'd
Furloughs —Cont'd
Inpatient mental health services, H&S §574.082.
Revocation, H&S §574.084.
Transportation plans, H&S §574.089.
Hearings.
Administration of medication.
Date, H&S §574.104.
Psychoactive medication, H&S §574.106.
Applications, H&S §574.005.
General provisions, H&S §574.031.
Liberty pending hearing, H&S §574.013.
Post-commitment proceedings.
Reexaminations.
Requests, H&S §574.069.
Rehearings.
Motions, H&S §574.067.
Release following, H&S §574.033.
Right to jury, H&S §574.032.
Transcripts, H&S §574.047.
Incompetency to stand trial.
Court-ordered medications, CCP §46B.086.
Inpatient mental health services.
Discharge of patients, H&S §574.082.
Furloughs, H&S §574.082.
Post-commitment proceedings.
Modification of order, H&S §574.061.
Temporary services, H&S §574.034.
Insanity defense.
Experts.
Court-ordered examination and report.
Appointment, CCP §46C.101.
Choice of defendant, CCP §46C.107.
Compensation, CCP §46C.106.
Incompetency to stand trial.
Concurrent appointment, CCP §46C.103.
Qualifications, CCP §46C.102.
Reports, CCP §46C.105.
Intellectual or developmental disabilities, persons with.
Transfer of patients to state mental hospitals, H&S §594.032.
Evaluation of resident upon transfer, H&S §594.033.
Return of, H&S §594.045.
Jurisdiction, H&S §574.008.
Medical examinations, H&S §574.009.
Certificates, H&S §574.011.
Medication information, H&S §574.0415.
Outpatient mental health services, H&S §574.037.
Court of criminal appeals.
Judicial instruction, GOV §22.1106.
Identification of responsible persons, H&S §574.0125.
Post-commitment proceedings.
Modification of order.
Motions, H&S §574.062.
Orders, H&S §574.065.
Temporary services, H&S §574.0345.
Post-commitment proceedings, H&S §§574.061 to 574.070.
Appeals, H&S §574.070.
Extended mental health services.
Renewal of order, H&S §574.066.
Inpatient mental health services.
Modification of order, H&S §574.061.
Outpatient treatment.
Modification of order.
Motions, H&S §574.062.

COURT-ORDERED MENTAL HEALTH SERVICES —Cont'd
Post-commitment proceedings —Cont'd
Outpatient treatment —Cont'd
Modification of order —Cont'd
Orders, H&S §574.065.
Reexaminations.
Requests, H&S §574.068.
Hearings, H&S §574.069.
Rehearings.
Motions, H&S §574.067.
Status conferences, H&S §574.0665.
Temporary detention.
Apprehension and release, H&S §574.064.
Orders, H&S §574.063.
Protective custody, H&S §§574.021 to 574.028.
See PROTECTIVE CUSTODY.
Psychiatric evaluations, H&S §574.010.
Records.
Mental health commitment records, H&S §574.014.
Rights of individuals.
Administration of medication, H&S §574.105.
Voluntary admission, H&S §574.153.
Temporary services, H&S §574.034.
Inpatient mental health services, H&S §574.034.
Outpatient mental health services, H&S §574.0345.
Transportation of patients, H&S §574.045.
Acknowledgment of delivery, H&S §574.048.
Discharge of patients.
Transportation plans, H&S §574.089.
Furloughs.
Transportation plans, H&S §574.089.
List of qualified service providers, H&S §574.0455.
To other state, H&S §574.0456.
Writ of commitment, H&S §574.046.
Treatment recommendations, H&S §574.012.
Videotaping.
Applicability of provisions, H&S §574.201.
Testimony permitted, H&S §574.202.
Use of secure electronic communication method, H&S §574.203.
Voluntary mental health services.
Applicability of provisions, H&S §574.151.
Applications, H&S §572.005.
Capacity to consent to treatment, H&S §574.152.
Human subject research, H&S §574.154.
Rights of patients, H&S §574.153.

COURTS.
Definitions, GOV §21.009.
Judicial and court personnel training fund, GOV §56.001.
Use of funds, GOV §56.003.

CRIMINAL HISTORY RECORD INFORMATION.
Aging and disability services department.
Use of, H&S §533A.007.
State health services department.
Use of, H&S §533.007.
State supported living centers, H&S §555.021.

CRIMINAL JUSTICE DEPARTMENT.
Case management committees, GOV §493.031.
Correctional officers.
Training.
De-escalation, crisis intervention, and behavioral health, GOV §493.0325.
Pregnant inmates, GOV §493.032.
Court-ordered mental health services.
Commitment of persons facilities, H&S §574.044.

CRIMINAL JUSTICE DEPARTMENT —Cont'd
Educational and vocational training pilot program for inmates, GOV §493.034.
Early release for participation, GOV §508.1455.
Transfer of patients.
Inpatient mental health services, H&S §575.016.

CRIMINAL LAW AND PROCEDURE.
Arraignment.
See ARRAIGNMENT.
Bail bond.
Requisites, CCP §17.08.
Community supervision, CCP §§42A.051 to 42A.561.
See COMMUNITY SUPERVISION.
Court costs.
Community service in satisfaction of, CCP §45.049.
Juvenile defendants, CCP §§45.0492, 45A.459, 45A.460.
Judgments in justice or municipal courts, CCP §45.041.
Waiver.
Indigent defendants, CCP §§43.091, 45.0491.
Defenses.
Children with mental illness, disability, or lack of capacity, PEN §8.08.
Insanity defense, CCP §§46C.001 to 46C.270, PEN §8.01.
See INSANITY DEFENSE.
Definitions, CCP §59.01, PEN §1.07.
Destruction of records, CPR §§144.001 to 144.009.
See DESTRUCTION OF RECORDS.
Expunction of records.
Eligibility, CCP §55.01.
Procedure, CCP §55.02.
Felonies.
Fines.
Manual labor in lieu of, CCP §43.10.
Incompetency to stand trial.
Bail.
Release on, CCP §46B.072.
Fines.
See FINES.
Forfeitures.
Contraband.
Disposition of, CCP §59.06.
Insanity defense, CCP §§46C.001 to 46C.270.
See INSANITY DEFENSE.
Intellectual disability services.
Criminal penalties, H&S §591.021.
Intellectual or developmental disabilities, persons with.
Medical records.
Use in criminal proceedings, H&S §595.006.
Juvenile justice.
See JUVENILE JUSTICE.
Mental illness, persons with.
Applicability of provisions, H&S §571.011.
Penalties, H&S §571.020.
Misdemeanors.
See MISDEMEANORS.
Personal bond, CCP §17.03.
Office, CCP §17.42.
Release on, CCP §17.031.
Mental illness or intellectual disability, defendants with, CCP §17.032.
Requisites, CCP §17.04.
Sentencing.
See SENTENCING.

CRIMINAL LAW AND PROCEDURE —Cont'd
State supported living centers.
Electronic monitoring of residents' rooms.
Criminal liability, H&S §555.152.
Covert use of devices, H&S §555.153.
Interference with devices, H&S §555.162.
Victims of crimes.
Compensation.
Medical records.
Exemptions, H&S §181.059.
Insanity defense.
Notification of release, CCP §46C.003.
Sexual offenses.
Testimony in corroboration of victim, CCP §38.07.

CRISIS STABILIZATION UNITS.
Hill county local mental health authority crisis stabilization unit, H&S §551.009.

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DEAF OR HARD OF HEARING PERSONS.
Interpreters, CCP §38.31.

DEATH PENALTY.
Competency for, CCP §46.05.

DECLARATION FOR MENTAL HEALTH TREATMENT, CPR §§137.001 to 137.011.
Acknowledgment, CPR §137.003.
Conflicting or contrary provisions, CPR §137.009.
Definitions, CPR §137.001.
Discrimination prohibited, CPR §137.006.
Disregard of, CPR §137.008.
Effect of, CPR §137.007.
Execution, CPR §137.003.
Form of, CPR §137.011.
Health care providers to act in accordance with, CPR §137.004.
Limitation on liability, CPR §137.005.
Period of validity, CPR §137.002.
Persons who may execute, CPR §137.002.
Revocation of, CPR §137.010.
Use of, CPR §137.007.
Witnesses, CPR §137.003.

DEFENSES.
Children with mental illness, disability, or lack of capacity, PEN §8.08.
Insanity defense, CCP §§46C.001 to 46C.270.
See INSANITY DEFENSE.

DEFINED TERMS.
Access.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Act.
Criminal law and procedure, PEN §1.07.
Actor.
Criminal law and procedure, PEN §1.07.
Actual knowledge.
Durable power of attorney, EST §751.002.
Adaptive behavior.
Incompetency to stand trial, CCP §46B.001.
Intellectual disability services, H&S §591.002.
Mental illness or intellectual disability, children with, FAM §55.01.
Administrative safeguards.
Standards for protection of electronic protected health information, 45 CFR 164.304.

DEFINED TERMS —Cont'd
Adult.
Consent to medical treatment act, H&S §313.002.
Declaration for mental health treatment, CPR §137.001.
Supported decision-making agreement act, EST §1357.002.
Advisory board.
Guardianship, GOV §155.001.
Advisory committee.
Intellectual disability services, H&S §533A.0335.
Affiliate.
Durable power of attorney, EST §751.002.
After-care.
Interstate compact on mental health, H&S §612.001.
Agency.
Correctional office on offenders with medical or mental impairments, H&S §614.017.
Criminal law and procedure, PEN §1.07.
Agent.
Durable power of attorney, EST §751.002.
Alcoholic beverage.
Criminal law and procedure, PEN §1.07.
Alleged offender resident.
Forensic state supported living center, ED §29.451.
State supported living centers, H&S §555.001.
Another.
Criminal law and procedure, PEN §1.07.
Approved peer assistance program.
Peer assistance programs, H&S §467.001.
Assigned counsel program.
Indigent defense commission, GOV §79.001.
Association.
Criminal law and procedure, PEN §1.07.
Attending physician.
Consent to medical treatment act, H&S §313.002.
Declaration for mental health treatment, CPR §137.001.
Attorney ad litem.
Indigent defense commission, GOV §79.001.
Attorney representing the state.
Criminal law and procedure, CCP §59.01.
Authentication.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Availability.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Benefit.
Criminal law and procedure, PEN §1.07.
Board.
Arraignment, CCP §26.051.
Indigent defense commission, GOV §79.001.
Bodily injury.
Criminal law and procedure, PEN §1.07.
Breach.
Notice of breach of unsecured protected health information, 45 CFR 164.402.
Business entity.
Mental health services, H&S §531.002.
Capacity.
Court-ordered mental health services, H&S §574.101.
Intellectual or developmental disabilities, persons with, H&S §592.151.
Care.
Intellectual disability services, H&S §591.002.
Cemetery organization.
Intellectual or developmental disabilities, persons with, H&S §595.0055.

DEFINED TERMS —Cont'd
Center.
State supported living centers, H&S §555.001.
Center employee.
State supported living centers, H&S §555.001.
Chemical dependency.
Mental health services, H&S §531.002.
Child.
Criminal law and procedure, PEN §8.08.
Child-placing agency.
Child welfare services, FAM §264.018.
Children's commission.
Permanent judicial commission for children, youth and families, GOV §22.017.
Child with an intellectual disability.
Mental illness or intellectual disability, children with, FAM §55.01.
Child with mental illness, FAM §55.01.
Civil commitment facility.
Criminal law and procedure, PEN §1.07.
Client.
Capacity to consent to treatment, H&S §597.001.
Intellectual disability services, H&S §591.002.
State supported living centers, H&S §555.001.
Coercion.
Criminal law and procedure, PEN §1.07.
Commission.
Commission on jail standards, GOV §511.001.
Incompetency to stand trial, CCP §§46B.001, 46B.091.
Indigent defense commission, GOV §79.001.
Insanity defense, CCP §46C.001.
Intellectual disability services, H&S §591.002.
Mental health facilities, H&S §551.001.
Mental health services, H&S §531.002.
Permanent judicial commission for children, youth and families, GOV §22.017.
Veterans, GOV §434.351.
Commissioner.
Aging and disability services department, H&S §§532A.001, 533A.001.
Community-based intellectual disability services, H&S §534.101.
Community-based mental health services, H&S §534.051.
Community centers, H&S §534.0001.
Intellectual disability services, H&S §591.002.
Mental health facilities, H&S §551.001.
Mental health services, H&S §531.002.
Mental illness, persons with, H&S §571.003.
State health services department, H&S §§532.001, 533.0001.
Commitment order.
Mental illness, persons with, H&S §571.003.
Committee.
Capacity to consent to treatment, H&S §597.001.
Common control.
Health information privacy, 45 CFR 164.103.
Common ownership.
Health information privacy, 45 CFR 164.103.
Community center.
Intellectual disability services, H&S §591.002.
Mental health services, H&S §531.002.
Mental illness, persons with, H&S §571.003.
Community corrections facility.
Community justice assistance division, GOV §509.001.
Community mental health provider.
Child mental health care consortium, H&S §113.0001.
Competency restoration.
Incompetency to stand trial, CCP §46B.001.

DEFINED TERMS —Cont'd
Complaint.
State supported living centers, H&S §555.001.
Conduct.
Criminal law and procedure, PEN §1.07.
Confidentiality.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Consent.
Criminal law and procedure, PEN §1.07.
Consortium.
Child mental health care consortium, H&S §113.0001.
Continuity of care and service program.
Correctional office on offenders with medical or mental impairments, H&S §614.018.
Contraband.
Criminal law and procedure, CCP §59.01.
Contract defender program.
Indigent defense commission, GOV §79.001.
Controlled substance.
Bail, CCP §17.03.
Criminal law and procedure, PEN §1.07.
Corporate fiduciary.
Guardianship, GOV §155.001.
Corporation.
Criminal law and procedure, PEN §1.07.
Correctional facility.
Commission on jail standards, GOV §511.001.
Comprehensive reentry and reintegration plan, GOV §501.091.
Criminal law and procedure, PEN §1.07.
Correctional institution.
Individually identifiable health information privacy, 45 CFR 164.501.
Correctional institutions division.
Arraignment, CCP §26.051.
Council.
Indigent defense commission, GOV §79.001.
Specialty courts advisory council, GOV §772.0061.
County court.
Courts, GOV §21.009.
County jail.
Commission on jail standards, GOV §511.001.
County judge.
Courts, GOV §21.009.
Court.
Former mental health patient, CPR §144.001.
Guardianship proceedings, EST §22.007.
Covered entity.
Medical records, H&S §181.001.
Covered functions.
Health information privacy, 45 CFR 164.103.
Crime.
Indigent defense commission, GOV §79.001.
Crime of violence.
Criminal law and procedure, CCP §59.01.
Criminal law cases and proceedings.
Statutory county courts, GOV §25.0002.
Criminal negligence.
Criminal law and procedure, PEN §1.07.
Dangerous drug.
Criminal law and procedure, PEN §1.07.
Data aggregation.
Individually identifiable health information privacy, 45 CFR 164.501.
Deadly weapon.
Criminal law and procedure, PEN §1.07.
Deaf person, CCP §38.31.

DEFINED TERMS —Cont'd
Death.
Criminal law and procedure, PEN §1.07.
Decision-making capacity.
Consent to medical treatment act, H&S §313.002.
Declaration for mental health treatment, CPR §137.001.
Defendant.
Indigent defense commission, GOV §79.001.
Department.
Aging and disability services department, H&S §§532A.001, 533A.001.
Community-based intellectual disability services, H&S §534.101.
Community-based mental health services, H&S §534.051.
Community centers, H&S §534.0001.
Community justice assistance division, GOV §509.001.
Incompetency to stand trial, CCP §46B.090.
Intellectual disability services, H&S §591.002.
Mental health facilities, H&S §551.001.
Mental health services, H&S §531.002.
Mental illness, persons with, H&S §571.003.
Peer assistance programs, H&S §467.001.
State health services department, H&S §§532.001, 533.0001.
State hospitals, H&S §552.0011.
State supported living centers, H&S §555.001.
Waco center for youth, H&S §554.0001.
Department facility.
Aging and disability services department, H&S §533A.001.
Community-based intellectual disability services, H&S §534.101.
Intellectual disability services, H&S §533A.038.
Mental health facilities, H&S §551.001.
State health services department, H&S §533.0001.
Depository account.
Criminal law and procedure, CCP §59.01.
Designated record set.
Individually identifiable health information privacy, 45 CFR 164.501.
Developmental period.
Incompetency to stand trial, CCP §46B.001.
Direct care employee.
State hospitals, H&S §552.0011.
State supported living centers, H&S §555.001.
Director.
Intellectual disability services, H&S §591.002.
Direct supervision.
State hospitals, H&S §552.0011.
Direct treatment relationship.
Individually identifiable health information privacy, 45 CFR 164.501.
Disability.
Supported decision-making agreement act, EST §1357.002.
Disabled.
Durable power of attorney, EST §751.00201.
Disclose.
Medical records, H&S §181.001.
Division.
Community justice assistance division, GOV §509.001.
Drug.
Criminal law and procedure, PEN §1.07.
Durable power of attorney, EST §751.002.
Educational records.
Juvenile justice, FAM §58.0051.

DEFINED TERMS —Cont'd
Effective administration.
Mental health services, H&S §531.002.
Effective consent.
Criminal law and procedure, PEN §1.07.
Elderly resident.
Intellectual disability services, H&S §533A.031.
Mental health services, H&S §533.031.
Electric generating plant.
Criminal law and procedure, PEN §1.07.
Electric utility substation.
Criminal law and procedure, PEN §1.07.
Electronic broadcast system.
Incompetency to stand trial, CCP §46B.001.
Element of offense.
Criminal law and procedure, PEN §1.07.
Emergency.
Declaration for mental health treatment, CPR §137.001.
Emergency medical services personnel.
Emergency detention, H&S §573.0001.
Encryption.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Executive commissioner.
Incompetency to stand trial, CCP §§46B.001, 46B.091.
Insanity defense, CCP §46C.001.
Intellectual disability services, H&S §591.002.
Mental health facilities, H&S §551.001.
Mental health services, H&S §531.002.
Mental illness, persons with, H&S §571.003.
Peer assistance programs, H&S §467.001.
Executive committee.
Child mental health care consortium, H&S §113.0001.
Executive director.
Commission on jail standards, GOV §511.001.
Indigent defense commission, GOV §79.001.
Extended care unit.
Mental health services, H&S §533.031.
Facility.
Restraint and seclusion, H&S §322.001.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Facility administrator.
Mental illness, persons with, H&S §571.003.
Family law cases and proceedings.
Statutory county courts, GOV §25.0002.
Family protection services.
Indigent defense commission, GOV §79.001.
Federal prisoner.
Commission on jail standards, GOV §511.001.
Federal special investigator.
Criminal law and procedure, PEN §1.07.
Felony.
Criminal law and procedure, PEN §1.07.
Financial institution.
Medical records, H&S §181.052.
Forensic patient.
State health services director, H&S §532.013.
Forensic services.
State health services director, H&S §532.013.
Former mental health patient.
Destruction of records, CPR §144.001.
Functional need.
Intellectual disability services, H&S §533A.0335.
General hospital.
Mental illness, persons with, H&S §571.003.
Government.
Criminal law and procedure, PEN §1.07.

DEFINED TERMS —Cont'd
Governmental entity.
Arraignment, CCP §§26.044, 26.047.
Group home.
Intellectual disability services, H&S §591.002.
Guardian.
Guardianship, GOV §155.001.
Intellectual disability services, H&S §591.002.
Guardianship program.
Guardianship, GOV §155.001.
Habilitation.
Intellectual disability services, H&S §591.002.
Harm.
Criminal law and procedure, PEN §1.07.
Health and human services agency.
Restraint and seclusion, H&S §322.001.
Health care component.
Health information privacy, 45 CFR 164.103.
Health care operations.
Individually identifiable health information privacy, 45 CFR 164.501.
Health care provider.
Declaration for mental health treatment, CPR §137.001.
Health insurance portability and accountability act and privacy standards.
Medical records, H&S §181.001.
Health oversight agency.
Individually identifiable health information privacy, 45 CFR 164.501.
Highly restrictive procedure.
Capacity to consent to treatment, H&S §597.001.
High-risk alleged offender resident.
State supported living centers, H&S §555.001.
Home and community support services agency.
Consent to medical treatment act, H&S §313.002.
Hospital.
Consent to medical treatment act, H&S §313.002.
Hospital administrator.
Mental illness, persons with, H&S §571.003.
Hybrid entity.
Health information privacy, 45 CFR 164.103.
ICF-IID.
Capacity to consent to treatment, H&S §597.001.
Mental health services, H&S §531.002.
State supported living centers, H&S §555.001.
ICF-IID and related waiver programs.
Intellectual disability services, H&S §533A.031.
ICF-IID program.
Intellectual disability services, H&S §533A.0335.
Impaired professional.
Peer assistance programs, H&S §467.001.
Impaired student.
Peer assistance programs, H&S §467.001.
Incapacitated.
Consent to medical treatment act, H&S §313.002.
Declaration for mental health treatment, CPR §137.001.
Durable power of attorney, EST §751.00201.
Incapacitated person.
Guardianship, GOV §155.001.
Independent ombudsman.
State supported living centers, H&S §555.001.
Indigent defense support services.
Indigent defense commission, GOV §79.001.
Indirect treatment relationship.
Individually identifiable health information privacy, 45 CFR 164.501.

DEFINED TERMS —Cont'd
Individual.
Criminal law and procedure, PEN §1.07.
Information system.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Inmate.
Commission on jail standards, GOV §511.001.
Individually identifiable health information privacy, 45 CFR 164.501.
Interstate corrections compact, CCP §42.19.
Inpatient mental health facility.
Incompetency to stand trial, CCP §46B.001.
Mental illness, persons with, H&S §571.003.
Inspector general.
State hospitals, H&S §552.0011.
State supported living centers, H&S §555.001.
Institution.
Interstate compact on mental health, H&S §612.001.
Interstate corrections compact, CCP §42.19.
Integrity.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Intellectual disability.
Incompetency to stand trial, CCP §46B.001.
Insanity defense, CCP §46C.001.
Intellectual disability services, H&S §591.002.
Mental illness or intellectual disability, children with, FAM §55.01.
Intellectual disability services, H&S §591.002.
Mental health services, H&S §531.002.
Intentional.
Criminal law and procedure, PEN §1.07.
Interdisciplinary team.
Capacity to consent to treatment, H&S §597.001.
Forensic state supported living center, ED §29.451.
Intellectual disability services, H&S §591.002.
Mental illness or intellectual disability, children with, FAM §55.01.
State supported living centers, H&S §555.001.
Interested person.
Guardianship proceedings, EST §1002.018.
Interest holder.
Criminal law and procedure, CCP §59.01.
Juvenile justice agency.
Juvenile justice, FAM §58.0052.
Juvenile law cases and proceedings.
Statutory county courts, GOV §25.0002.
Juvenile offense.
Indigent defense commission, GOV §79.001.
Juvenile probation services, HR §142.001.
Juvenile service provider.
Juvenile justice, FAM §§58.0051, 58.0052.
Juvenile with a mental impairment.
Correctional office on offenders with medical or mental impairments, H&S §614.017.
Knowing.
Criminal law and procedure, PEN §1.07.
Law.
Criminal law and procedure, PEN §1.07.
Law enforcement agency.
Criminal law and procedure, CCP §59.01.
Emergency detention, H&S §573.0001.
Law enforcement official.
Health information privacy, 45 CFR 164.103.
Least restrictive appropriate setting.
Mental illness or intellectual disability, children with, FAM §55.01.

DEFINED TERMS —Cont'd
Legal holiday.
Mental illness, persons with, H&S §571.003.
Licensing or disciplinary authority.
Peer assistance programs, H&S §467.001.
Local agency.
Mental health services, H&S §531.002.
Local intellectual and developmental disability authority.
Incompetency to stand trial, CCP §46B.001.
Mental health services, H&S §531.002.
Local mental health authority.
Incompetency to stand trial, CCP §46B.001.
Mental health services, H&S §531.002.
Mental illness, persons with, H&S §571.003.
Local tax effort.
Special education, ED §29.008.
Local workforce development board.
Foster care, FAM §264.121.
Lower trial court.
Judgments, CPR §31.004.
Major medical and dental treatment.
Capacity to consent to treatment, H&S §597.001.
Malicious software.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Managed assigned counsel program.
Arraignment, CCP §26.047.
Indigent defense commission, GOV §79.001.
Marketing.
Individually identifiable health information privacy, 45 CFR 164.501.
Medical records, H&S §181.001.
Mass shooting.
Criminal law and procedure, PEN §1.07.
Medicaid waiver program.
Intellectual disability services, H&S §533A.0335.
Medical treatment.
Consent to medical treatment act, H&S §313.002.
Medication-related emergency.
Court-ordered mental health services, H&S §574.101.
Intellectual or developmental disabilities, persons with, H&S §592.151.
Mental deficiency.
Interstate compact on mental health, H&S §612.001.
Mental disease or defect.
Insanity defense, PEN §8.01.
Mental health cases and proceedings.
Statutory county courts, GOV §25.0002.
Mental health commission.
Judicial commission on mental health, GOV §22.017.
Mental health court program, GOV §125.001.
Mental health facility.
Incompetency to stand trial, CCP §46B.001.
Mental illness, persons with, H&S §571.003.
Mental health services, H&S §531.002.
Mental health treatment.
Declaration for mental health treatment, CPR §137.001.
Mental hospital.
Mental illness, persons with, H&S §571.003.
Mental illness.
Incompetency to stand trial, CCP §46B.001.
Insanity defense, CCP §46C.001.
Interstate compact on mental health, H&S §612.001.
Mental illness or intellectual disability, children with, FAM §55.01.
Mental illness, persons with, H&S §571.003.

DEFINED TERMS —Cont'd
Mental retardation.
Intellectual disability services, H&S §591.002.
Minor.
Intellectual disability services, H&S §591.002.
Misdemeanor.
Criminal law and procedure, PEN §1.07.
Multi-system youth.
Juvenile justice, FAM §58.0052.
Non-physician mental health professional.
Mental illness, persons with, H&S §571.003.
Nursing home.
Consent to medical treatment act, H&S §313.002.
Oath.
Criminal law and procedure, PEN §1.07.
Offender.
Comprehensive reentry and reintegration plan, GOV §501.091.
Office.
Specialty courts, GOV §121.003.
State supported living centers, H&S §555.001.
Office of capital and forensic writs.
Arraignment, public defender's office, CCP §26.044.
Indigent defense commission, GOV §79.001.
Office of child representation.
Indigent defense commission, GOV §79.001.
Office of parent representation.
Indigent defense commission, GOV §79.001.
Official proceeding.
Criminal law and procedure, PEN §1.07.
Omission.
Criminal law and procedure, PEN §1.07.
Oversight board.
Arraignment, public defender's office, CCP §26.044.
Owner.
Criminal law and procedure, CCP §59.01, PEN §1.07.
Parent.
Special education, ED §29.022.
Password.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Patient.
Consent to medical treatment act, H&S §313.002.
Interstate compact on mental health, H&S §612.001.
Mental health records, H&S §611.001.
Mental illness, persons with, H&S §571.003.
State hospitals, H&S §552.0011.
Payment.
Individually identifiable health information privacy, 45 CFR 164.501.
Peace officer.
Criminal law and procedure, PEN §1.07.
Peer.
Veterans, GOV §434.351.
Peer service coordinator.
Veterans, GOV §434.351.
Penal institution.
Criminal law and procedure, PEN §1.07.
Person.
Criminal law and procedure, PEN §1.07.
Mental illness, persons with, H&S §571.003.
Personal health information.
Juvenile justice, FAM §58.0052.
Person interested.
Durable power of attorney, EST §753.001.
Guardianship proceedings, EST §1002.018.
Person responsible for a patient.
State hospitals, H&S §552.018.

DEFINED TERMS —Cont'd
Person responsible for a resident.
Intellectual disability services, H&S §593.082.
Person with a developmental disability.
Mental health services, H&S §531.002.
Person with a disability.
Sexual offenses, CCP §38.07.
Person with an intellectual disability.
Intellectual disability services, H&S §591.002.
Mental health services, H&S §531.002.
Person with mental retardation.
Intellectual disability services, H&S §591.002.
Physical safeguards.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Physician.
Consent to medical treatment act, H&S §313.002.
Mental illness, persons with, H&S §571.003.
Plan sponsor.
Health information privacy, 45 CFR 164.103.
Political subdivision.
Mental illness, persons with, H&S §571.003.
Possession.
Criminal law and procedure, PEN §1.07.
Post-discharge services.
Juvenile probation services, HR §142.007.
Preparation for adult living program.
Foster care, FAM §264.121.
Primary state or federal financial institution regulator.
Criminal law and procedure, CCP §59.01.
Principal.
Declaration for mental health treatment, CPR §137.001.
Durable power of attorney, EST §751.002.
Priority population.
Mental health services, H&S §531.002.
Prisoner.
Commission on jail standards, GOV §511.001.
Private mental hospital.
Mental illness, persons with, H&S §571.003.
Private professional guardian.
Guardianship, GOV §155.001.
Private space.
State supported living centers, H&S §555.025.
Probate court.
Guardianship proceedings, EST §22.007.
Proceeds.
Criminal law and procedure, CCP §59.01.
Product.
Medical records, H&S §181.001.
Professional.
Mental health records, H&S §611.001.
Peer assistance programs, H&S §467.001.
Professional association.
Peer assistance programs, H&S §467.001.
Program.
Arraignment, CCP §26.047.
Psychiatric residential youth treatment facility, H&S §577A.001.
Psychoactive medication.
Capacity to consent to treatment, H&S §597.001.
Court-ordered mental health services, H&S §574.101.
Guardianship proceedings, EST §1151.054.
Intellectual or developmental disabilities, persons with, H&S §592.151.
Psychotherapy notes.
Individually identifiable health information privacy, 45 CFR 164.501.

DEFINED TERMS —Cont'd
Psychotropic medication.
Child welfare services, FAM §264.018.
Public defender's office.
Arraignment, CCP §26.044.
Indigent defense commission, GOV §79.001.
Public health authority.
Individually identifiable health information privacy, 45 CFR 164.501.
Public place.
Criminal law and procedure, PEN §1.07.
Public safety employee.
Public safety employees treatment court program, GOV §129.001.
Public safety employees treatment court program, GOV §129.002.
Public servant.
Criminal law and procedure, PEN §1.07.
Qualified interpreter.
Deaf or hard of hearing persons, CCP §38.31.
Qualified service provider.
Intellectual disability services, H&S §533A.031.
Reasonable belief.
Criminal law and procedure, PEN §1.07.
Receiving state.
Interstate compact on mental health, H&S §612.001.
Interstate corrections compact, CCP §42.19.
Reckless.
Criminal law and procedure, PEN §1.07.
Record.
Durable power of attorney, EST §751.002.
Former mental health patient, CPR §144.001.
Region.
Mental health services, H&S §531.002.
Registration.
Guardianship, GOV §155.001.
Regulated financial institution.
Criminal law and procedure, CCP §59.01.
Required by law.
Health information privacy, 45 CFR 164.103.
Research.
Individually identifiable health information privacy, 45 CFR 164.501.
Resident.
Intellectual disability services, H&S §§591.002, 593.082.
State supported living centers, H&S §555.001.
Residential care facility.
Incompetency to stand trial, CCP §46B.001.
Insanity defense, CCP §46C.001.
Intellectual disability services, H&S §591.002.
Residential child-care facility.
Child welfare services, FAM §264.018.
Restoration classes.
Mental illness or intellectual disability, children with, FAM §55.01.
Retirement plan.
Durable power of attorney, EST §752.113.
Rule.
Criminal law and procedure, PEN §1.07.
Rural health clinic.
Child mental health care consortium, H&S §113.0001.
Rural hospital.
Child mental health care consortium, H&S §113.0001.
Rural hospital organization.
Child mental health care consortium, H&S §113.0001.
School business day.
Special education, ED §29.022.

DEFINED TERMS —Cont'd
Seclusion.
Restraint and seclusion, H&S §322.001.
Section 1915(c) waiver program.
Intellectual disability services, H&S §533A.031.
Secure correctional facility.
Criminal law and procedure, PEN §1.07.
Security.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Security incident.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Security measures.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Seizure.
Criminal law and procedure, CCP §59.01.
Self-contained classroom.
Special education, ED §29.022.
Sending state.
Interstate compact on mental health, H&S §612.001.
Interstate corrections compact, CCP §42.19.
Serious bodily injury.
Criminal law and procedure, PEN §1.07.
Servicemember.
Special education, ED §29.0163.
Service provider.
Intellectual disability services, H&S §591.002.
Severe emotional disturbance.
Psychiatric residential youth treatment facilities, H&S §577A.001.
Sight order.
Criminal law and procedure, PEN §1.07.
Significant change in medical condition.
Child welfare services, FAM §264.018.
Significant event.
Child welfare services, FAM §264.018.
Special needs offender.
Correctional office on offenders with medical or mental impairments, H&S §614.017.
Specialty court, GOV §121.001.
Specialty courts advisory council, GOV §772.0061.
Staff member.
Special education, ED §29.022.
State.
Interstate compact on mental health, H&S §612.001.
Interstate corrections compact, CCP §42.19.
State aid.
Community justice assistance division, GOV §509.001.
State hospital, H&S §552.0011.
State mental hospital.
Intellectual or developmental disabilities, persons with, H&S §594.0301.
Mental illness, persons with, H&S §571.003.
State or local authority.
Mental illness, persons with, H&S §571.0081.
State supported living center, H&S §555.001.
Forensic state supported living center, ED §29.451.
Mental health services, H&S §531.002.
Statutory county court.
Courts, GOV §21.009.
Statutory probate court, GOV §54A.201.
Courts, GOV §21.009.
Guardianship proceedings, EST §22.007.
Store and forward technology.
Telemedicine and telehealth services, OCC §111.001.
Student.
Juvenile justice, FAM §58.0051.

DEFINED TERMS —Cont'd
Student —Cont'd
Peer assistance programs, H&S §467.001.
Subaverage general intellectual functioning.
Incompetency to stand trial, CCP §46B.001.
Mental illness or intellectual disability, children with, FAM §55.01.
Subaverage general intelligence functioning.
Intellectual disability services, H&S §591.002.
Supported decision-making.
Supported decision-making agreement act, EST §1357.002.
Supported decision-making agreement.
Supported decision-making agreement act, EST §1357.002.
Supporter.
Supported decision-making agreement act, EST §1357.002.
Surrogate decision-maker.
Capacity to consent to treatment, H&S §597.001.
Consent to medical treatment act, H&S §313.002.
Swear.
Criminal law and procedure, PEN §1.07.
Technical safeguards.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Teledentistry dental service, OCC §111.001.
Telehealth service, OCC §111.001.
Telemedicine medical service, OCC §111.001.
Time-out.
Special education, ED §29.022.
Training.
Intellectual disability services, H&S §591.002.
Transitional living program.
Children and minors, FAM §32.203.
Transitional living services program.
Foster care, FAM §264.121.
Transitional living unit.
Mental health services, H&S §533.031.
Treatment.
Individually identifiable health information privacy, 45 CFR 164.501.
Intellectual disability services, H&S §591.002.
Unlawful.
Criminal law and procedure, PEN §1.07.
Unsecured protected health information.
Notice of breach of unsecured protected health information, 45 CFR 164.402.
Urban area.
Parole and mandatory supervision, GOV §508.146.
User.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Veteran, GOV §434.351.
Veterans treatment court program, GOV §124.001.
Violent offense.
Bail, CCP §17.032.
Ward.
Court-ordered mental health services, H&S §574.103.
Guardianship, GOV §155.001.
Guardianship proceedings, EST §1002.030.
Workstation.
Standards for protection of electronic protected health information, 45 CFR 164.304.
Wrongfully imprisoned person.
Correctional office on offenders with medical or mental impairments, H&S §614.021.

DENTISTS AND DENTISTRY.
Intellectual or developmental disabilities, persons with.
Residents, H&S §592.052.
Mental health facilities.
Dental treatment, H&S §551.041.
State board of dental examiners.
Peer assistance programs.
Funding, H&S §467.0041.

DESTRUCTION OF RECORDS, CPR §§144.001 to 144.009.
Applicability of provisions, CPR §144.009.
Collateral effects of order, CPR §144.006.
Court records concerning orders, CPR §144.005.
Criminal law and procedure, CPR §144.008.
Definitions, CPR §144.001.
Disclosure of information subject to order, CPR §144.008.
Limitation on actions, CPR §144.007.
Misdemeanors, CPR §144.008.

DEVELOPMENTAL DISABILITIES, PERSONS WITH.
See INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH.

DISABILITIES, PERSONS WITH.
Assistance grants, TX ConstArt III §51-a.
Eligibility for services, TX ConstArt III §51-a.
Federal aid.
Acceptance by stage agencies, TX ConstArt XVI §6.
Gifts.
Acceptance by stage agencies, TX ConstArt XVI §6.
Person first respectful language initiative.
Legislative findings, GOV §392.001.
Use of respectful language, GOV §392.002.

DISCHARGE OF PATIENTS.
Community-based intellectual disability services.
Joint discharge planning, H&S §534.104.
Community-based mental health services.
Joint discharge planning, H&S §534.0535.
Court-ordered mental health services, H&S §§574.081 to 574.089.
Certificate of discharge, H&S §574.087.
Continuing care plans, H&S §574.081.
Inpatient mental health services, H&S §574.082.
On expiration of court order, H&S §574.085.
Prior to expiration of court order, H&S §574.086.
Relief from disabilities, H&S §574.088.
Return to facility, H&S §574.083.
Revocation, H&S §574.084.
Transportation plans, H&S §574.089.
Intellectual or developmental disabilities, persons with, H&S §§594.001 to 594.019.
Alternative services, H&S §594.019.
Appeals, H&S §594.017.
Applicability of provisions, H&S §594.001.
Approval, H&S §594.013.
Decisions, H&S §594.016.
Furloughs, H&S §594.002.
Habeas corpus.
Effect on, H&S §594.003.
Hearings, H&S §594.015.
Right to, H&S §594.014.
Leaves of absence, H&S §594.002.
Notice, H&S §594.013.
Committing court, H&S §594.018.
Requests, H&S §594.012.
Service providers, H&S §594.011.

DISCHARGE OF PATIENTS —Cont'd
Intellectual or developmental disabilities, persons with —Cont'd
Voluntary mental health services.
Prior law.
Discharge of patients, H&S §593.092.
Voluntary mental health services, H&S §572.004.
Intellectual or developmental disabilities, persons with.
Prior law.
Discharge of patients, H&S §593.092.

DISCRIMINATION.
Declaration for mental health treatment.
Prohibitions, CPR §137.006.

DISMISSAL OF CHARGES.
Incompetency to stand trial, CCP §46B.078.
Admission and commitment of persons, CCP §46B.151.
Mandatory dismissal of charges, CCP §46B.010.

DIVERSION PROGRAMS.
Youth diversion, CCP §§45.301 to 45.313.

DIVORCE.
Intellectual disability services.
Fees for divorced parents, H&S §593.076.

DONATIONS.
See GIFTS.

DRINKING WATER.
State supported living centers, H&S §555.026.

DUAL OFFICE HOLDING.
General prohibition and exceptions, TX ConstArt XVI §40.
Salary or compensation for persons holding more than one public office, TX ConstArt XVI §33.

DUE PROCESS.
Special education.
Due process hearings.
Evaluations pursuant to, ED §29.016.
Limitations period for filing complaint, ED §29.0164.
Representation, ED §29.0162.

DURABLE POWER OF ATTORNEY, EST §§751.001 to 753.002.
Acceptance.
Agents.
Certification, EST §751.203.
Date of, EST §751.208.
English translation, EST §751.205.
Exceptions, EST §751.201.
Opinion of counsel, EST §751.204.
Prohibited conditions, EST §751.202.
Refusal of.
Actions, EST §751.212.
Grounds for, EST §751.206.
Liability of principal, EST §751.213.
Written statement requirement, EST §751.207.
Requirements, EST §751.201.
Accounting, EST §751.104.
Actual knowledge.
Transactions conducted through employees, EST §751.211.
Agents.
Acceptance of appointment, EST §751.022.
Certification, EST §751.203.
Co-agents, EST §751.021.
Compensation, EST §751.024.

DURABLE POWER OF ATTORNEY —Cont'd
Agents —Cont'd
Effect of acts performed by, EST §751.051.
Fiduciary duties, EST §751.101.
Accounting, EST §751.104.
Duty to inform, EST §751.102.
Duty to notify of breach by other agent, EST §751.121.
Effect on principal's rights, EST §751.106.
Estate plan.
Duty to preserve, EST §751.122.
Noncompliance, EST §751.105.
Recordkeeping, EST §751.103.
Successor agents, EST §751.023.
Applicability of provisions, EST §751.0015.
Uniformity, EST §751.003.
Attorney in fact.
Removal.
Notice to third parties, EST §753.002.
Procedure, EST §753.001.
Bankruptcy.
Effect of, EST §751.057.
Co-agents, EST §751.021.
Conflict of laws, EST §751.007.
Definitions, EST §§751.002, 751.00201.
Duty to inform, EST §751.102.
Effect of, EST §751.0024.
Estate plan.
Duty to preserve, EST §751.122.
Fiduciary duties, EST §751.101.
Accounting, EST §751.104.
Breach.
Duty to notify of breach by other agent, EST §751.121.
Duty to inform, EST §751.102.
Effect on principal's rights, EST §751.106.
Noncompliance, EST §751.105.
Recordkeeping, EST §751.103.
Good faith reliance on, EST §751.209.
Effect of termination on, EST §§751.054, 751.055.
Judicial relief, EST §751.251.
Meaning of, EST §751.0024.
Principals.
Extension of authority to other persons, EST §751.005.
Fiduciary duties.
Effect on principal's rights, EST §751.106.
Refusal of acceptance.
Liability of principal, EST §751.213.
Real property.
Recordation, EST §751.151.
Statutory durable power of attorney.
Powers, EST §752.102.
Recordation.
Real property transactions, EST §751.151.
Recordkeeping, EST §751.103.
Reliance on.
Certain requested information, EST §751.210.
Good faith reliance, EST §751.209.
Effect of termination on, EST §751.054.
Remedies under other laws, EST §751.006.
Requirements, EST §751.0021.
Short title, EST §751.001.
Signatures.
Presumptions, EST §751.0022.
Statutory construction.
Conflict of laws, EST §751.007.
Remedies under other laws, EST §751.006.

DURABLE POWER OF ATTORNEY —Cont'd
Statutory construction —Cont'd
Statutory durable power of attorney, EST §752.101.
Uniformity, EST §751.003.
Statutory durable power of attorney, EST §§752.001 to 752.115.
Effect of, EST §752.001.
Forms, EST §752.051.
Modification to grant specific authority, EST §752.052.
Legal sufficiency, EST §752.004.
Meaning of, EST §752.001.
Powers.
Annuities, EST §752.108.
Banking, EST §752.106.
Beneficiaries, EST §752.109.
Business operation, EST §752.107.
Claims, EST §752.110.
Commodities, EST §752.105.
Estates, EST §752.109.
Existing interests, EST §752.115.
Family maintenance, EST §752.111.
Foreign interests, EST §752.115.
Insurance, EST §752.108.
Litigation, EST §752.110.
Options, EST §752.105.
Personal maintenance, EST §752.111.
Public benefits, EST §752.112.
Real property, EST §752.102.
Retirement plans, EST §752.113.
Statutory construction, EST §752.101.
Stocks and bonds, EST §752.104.
Tangible personal property, EST §752.103.
Taxation, EST §752.114.
Trusts, EST §752.109.
Prescribed form not exclusive, EST §752.003.
Use of, EST §752.001.
Validity not affected, EST §752.002.
Successor agents, EST §751.023.
Termination.
Good faith reliance.
Effect on, EST §§751.054, 751.055.
Lack of knowledge of.
Affidavits, EST §751.055.
Effect on good faith reliance, EST §751.054.
Transactions conducted through employees.
Actual knowledge, EST §751.211.
Validity of, EST §751.0023.

DYSLEXIA.
Special education.
Program requirements, ED §§29.0031, 29.0032.

E

EASEMENTS.
Aging and disability services department, H&S §533A.005.
State health services department, H&S §533.005.

ECT.
See ELECTROCONVULSIVE THERAPY (ECT).

ELDERLY PERSONS.
Correctional office on offenders with medical or mental impairment.
Continuity of care, H&S §614.014.
Intellectual disability services.
Evaluations, H&S §533A.042.
Geriatric care proposals, H&S §533A.043.

ELDERLY PERSONS —Cont'd
Mental health services.
State health services department.
Evaluations, H&S §533.042.
Geriatric care proposals, H&S §533.043.
State supported living centers, H&S §§555.001 to 555.202.
See STATE SUPPORTED LIVING CENTERS.

ELECTROCONVULSIVE THERAPY (ECT), H&S §§578.001 to 578.008.
Applicability of provisions, H&S §578.001.
Equipment.
Registration, H&S §578.006.
Informed consent, H&S §578.003.
Withdrawal of consent, H&S §578.004.
Physicians and surgeons.
Requirements, H&S §578.005.
Reports, H&S §578.007.
Use of, H&S §578.002.
Use of information, H&S §578.008.

ELECTRONIC BROADCAST SYSTEMS.
Incompetency to stand trial.
Use in proceedings, CCP §46B.013.

EMERGENCY DETENTION, H&S §§573.0001 to 573.026.
Applications, H&S §573.011.
By guardian, H&S §573.004.
Definitions, H&S §573.0001.
Emergency admission, H&S §573.022.
Guardianship.
Applications, H&S §573.004.
Transportation of individuals by, H&S §573.003.
Law enforcement officers.
Apprehension without warrant, H&S §573.001.
Notice, H&S §573.002.
Notice, H&S §573.002.
Probate courts, H&S §573.0021.
Preliminary examination, H&S §573.021.
Probate courts.
Notice, H&S §573.0021.
Release, H&S §573.023.
Transportation following, H&S §573.024.
Rights of individuals, H&S §573.025.
Transportation of individuals.
By emergency medical services providers, H&S §573.005.
By guardian, H&S §573.003.
Following detention, H&S §573.026.
Following release, H&S §573.024.
Memorandum of understanding, H&S §573.005.
Warrants.
Apprehension without, H&S §573.001.
Issuance, H&S §573.012.

EMERGENCY MEDICAL SERVICES.
Emergency detention.
Transportation of individuals, H&S §573.005.

ENVIRONMENTAL QUALITY COMMISSION.
Drinking water.
Guidance on lead and copper testing.
State supported living centers, H&S §555.026.

EPILEPSY.
Intellectual disability services.
Admission and commitment of persons, H&S §593.014.

ESTATES.
Statutory durable power of attorney.
Powers, EST §752.108.

EVIDENCE.
Guardianship proceedings.
Applicability of rules, EST §1055.101.
Modification of, EST §1202.151.
Restoration of ward's capacity, EST §1202.151.
Incompetency to stand trial.
Admissibility of evidence, CCP §46B.007.
Interpreters.
Deaf or hard of hearing persons, CCP §38.31.
Foreign language interpreters, CCP §38.30.
Sexual offenses.
Hearsay.
Admissibility of evidence, CCP §38.072.
Testimony in corroboration of victim, CCP §38.07.

EXAMINATIONS.
Children and minors.
Consent to treatment by non-parent or minor, FAM §32.005.
Emergency detention.
Preliminary examination, H&S §573.021.
Guardianship proceedings.
Determination of necessity.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Incompetency to stand trial.
Custody status, CCP §46B.023.
Experts.
Appointment, CCP §46B.021.
Compensation, CCP §46B.027.
Qualifications, CCP §46B.022.
Reports, CCP §46B.025.
Time requirements, CCP §46B.026.
Factors considered, CCP §46B.024.
Reimbursement of facilities, CCP §46B.027.
Insanity defense.
Court-ordered examination and report, CCP §§46C.101 to 46C.107.
See INSANITY DEFENSE.
Juvenile boards.
Examination before discharge, HR §152.00164.
Juvenile justice.
Mental examinations, FAM §51.20.
Physical examinations, FAM §51.20.
Juvenile justice department.
Care and treatment of children.
Failure to examine, HR §244.004.
Initial examination, HR §244.001.
Prior to discharge, HR §244.012.
Records, HR §244.003.
Reexamination, HR §244.002.
Medical examinations.
Court-ordered mental health services, H&S §574.009.
Certificates, H&S §574.011.
Mental health services.
Treatment.
Period examinations, H&S §576.023.
Mental illness or intellectual disability, children with, FAM §55.11.
Forensic mental examination, FAM §55.04.
Lack of responsibility for conduct, FAM §55.51.
Unfitness to proceed, FAM §55.31.
Special education.
Psychological examinations and tests.
Consent, ED §29.0041.
Information, ED §29.0041.

EXPERTS.
Court-ordered mental health services, H&S §574.010.

EXPERTS —Cont'd
Incompetency to stand trial.
Examinations.
Appointment, CCP §46B.021.
Compensation, CCP §46B.027.
Qualifications, CCP §46B.022.
Reports, CCP §46B.025.
Time requirements, CCP §46B.026.
Insanity defense.
Court-ordered examination and report.
Appointment, CCP §46C.101.
Choice of defendant, CCP §46C.107.
Compensation, CCP §46C.106.
Incompetency to stand trial.
Concurrent appointment, CCP §46C.103.
Qualifications, CCP §46C.102.
Reports, CCP §46C.105.

EXPLOITATION.
See ABUSE, NEGLECT, AND EXPLOITATION.

EXPUNCTION OF RECORDS.
Eligibility, CCP §55.01.
Procedure, CCP §55.02.

F

FAMILY AND PROTECTIVE SERVICES DEPARTMENT.
Children in conservatorship of.
Medical care, FAM §§266.003 to 266.012.
Abused and neglected children, FAM §266.003.
Comprehensive assessments, FAM §266.012.
Consent for medical care, FAM §266.004.
Foster child age 16 or greater, FAM §266.010.
Psychoactive medication, FAM §266.0042.
Emergency provision of medical care, FAM §266.009.
Findings on health care consultations, FAM §266.005.
Health passport, FAM §266.006.
Judicial review of medical care, FAM §266.007.
Psychoactive medication.
Consent for, FAM §266.0042.
Monitoring use of, FAM §266.011.

FEDERAL AID.
Disabilities, persons with.
Acceptance by stage agencies, TX ConstArt XVI §6.
Interstate corrections compact, CCP §42.19.

FEES.
Community-based intellectual disability services.
Collection, H&S §534.067.
Community-based mental health services.
Collection, H&S §534.067.
Community centers.
Services, H&S §534.017.
Intellectual disability services, H&S §§593.071 to 593.082.
See INTELLECTUAL DISABILITY SERVICES.
Private mental hospitals and mental health facilities.
Licenses, H&S §577.006.
Public safety employees treatment court program, GOV §129.006.
State hospitals, H&S §552.016.
Sliding schedule, H&S §552.017.
Veterans treatment court program, GOV §124.005.

FELONIES.
Fines.
Manual labor in lieu of, CCP §43.10.

FELONIES —Cont'd
Incompetency to stand trial.
Bail.
Release on, CCP §46B.072.

FIDUCIARY DUTIES.
Durable power of attorney, EST §751.101.
Accounting, EST §751.104.
Breach.
Duty to notify of breach by other agent, EST §751.121.
Duty to inform, EST §751.102.
Effect on principal's rights, EST §751.106.
Noncompliance, EST §751.105.
Recordkeeping, EST §751.103.

FINANCIAL INSTITUTIONS.
Medical records.
Exemptions, H&S §181.052.
Statutory durable power of attorney.
Powers, EST §752.106.

FINES.
Community service in satisfaction of, CCP §45.049.
Juvenile defendants, CCP §§45.0492, 45A.459, 45A.460.
Community supervision, CCP §42A.104.
Discharge of, CCP §43.09.
Indigent defendants.
Waiver, CCP §§43.091, 45.0491.
Intellectual disability services, H&S §§591.022, 591.023.
Judgments in justice or municipal courts, CCP §45.041.
Manual labor in lieu of, CCP §43.10.
Medical records.
Violations, H&S §181.201.
Mental illness, persons with, H&S §571.023.
Criminal law and procedure, H&S §571.020.
Waiver.
Indigent defendants, CCP §§43.091, 45.0491.

FIREARMS AND OTHER WEAPONS.
Disarming of person by peace officer, CCP §14.03.
Mental illness, persons with.
Seizure.
Disposition of firearms, CCP §18.191.
State hospitals.
Carrying handguns in, H&S §552.002.

FORCED SALE.
Exemptions.
County or municipal property held for public purpose, TX ConstArt XI §9.

FORENSIC STATE SUPPORTED LIVING CENTER, ED §§29.451 to 29.458.
See SCHOOLS AND EDUCATION.

FORFEITURES.
Contraband.
Disposition of, CCP §59.06.

FORMS.
Court-ordered mental health services.
Applications, H&S §574.002.
Declaration for mental health treatment, CPR §137.011.
Residential care facilities.
Applications, H&S §593.042.
Special education.
Individualized education programs, ED §29.0051.

FORMS —Cont'd
State-supported living centers.
Electronic monitoring of residents' rooms, H&S §555.154.
Requests, H&S §555.156.
Statutory durable power of attorney, EST §752.051.
Modification to grant specific authority, EST §752.052.
Supported decision-making agreements, EST §1357.056.

FOSTER CARE.
Juvenile justice department.
Care and treatment of children.
Rules and regulations, HR §244.0106.
Prisons and prisoners.
Information concerning foster care history, GOV §501.023.
Special education.
Decision-making for children in, ED §29.015.
Transitional living services program, FAM §264.121.

FUNDS.
Judicial and court personnel training fund, GOV §56.001.
Use of funds, GOV §56.003.
Mental health community services account, H&S §533.0844.
Mental retardation community services account, H&S §533A.0846.
Special Olympics Texas account, H&S §533A.018.

FURLOUGHS.
Court-ordered mental health services.
Continuing care plans, H&S §574.081.
Inpatient mental health services, H&S §574.082.
Revocation, H&S §574.084.
Transportation plans, H&S §574.089.
Intellectual or developmental disabilities, persons with, H&S §594.002.

G

GIFTS.
Community centers, H&S §534.017.
Disabilities, persons with.
Acceptance by stage agencies, TX ConstArt XVI §6.
State health services department, H&S §533.001.

GRANTS.
Child protective services, GOV §22.017.
Community centers, H&S §534.017.
Community collaboratives.
Issuance of, GOV §547A.0001.
Uses of, GOV §547A.0002.
Disabilities, persons with.
Assistance grants, TX ConstArt III §51-a.
Special education, ED §29.018.
State health services department, H&S §533.001.

GUARDIANSHIP.
Adult wards.
Care of, EST §1151.052.
Civil commitment of, EST §1151.053.
Application for.
Action by court on, EST §1051.106.
Notice, EST §1051.104.
Appointment.
Applications, EST §1101.001.
Determination of necessity.
Acts by advanced practice registered nurse, EST §1101.1011.

GUARDIANSHIP —Cont'd
Appointment —Cont'd
Determination of necessity —Cont'd
Findings and proof required, EST §1101.101.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Recurring acts or occurrences, EST §1101.102.
Intellectual or developmental disabilities, persons with, EST §1101.104.
Full authority, EST §1101.151.
Hearings, EST §1101.051.
Limited authority, EST §1101.152.
Orders, EST §1101.153.
Venue, EST §1023.001.
Care of adult wards, EST §1151.052.
Certification, EST §1104.251, GOV §155.102.
Citation for application of guardianship.
Issuance, EST §1051.102.
Service of, EST §1051.103.
Civil commitment of adult wards, EST §1151.053.
Concurrent venue, EST §1023.002.
Definitions, EST §§22.007, 1002.018, 1002.030, GOV §155.001.
Determination of necessity.
Acts by advanced practice registered nurse, EST §1101.1011.
Findings and proof required, EST §1101.101.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Recurring acts or occurrences, EST §1101.102.
Intellectual or developmental disabilities, persons with, EST §1101.104.
Elderly persons.
See ELDERLY PERSONS.
Emergency detention.
Applications, H&S §573.004.
Transportation of individuals, H&S §573.003.
Evidence.
Applicability of rules, EST §1055.101.
Modification of, EST §1202.151.
Restoration of ward's capacity, EST §1202.151.
Exclusive jurisdiction, EST §1022.005.
Full authority, EST §1101.151.
Funds of ward, access and management by guardian, EST §1151.0525.
Intervention, EST §1055.003.
Jurisdiction, EST §§1022.001 to 1022.007.
Appeals, EST §1022.001.
Contested guardianship.
Counties with no statutory probate court, EST §1022.004.
Counties with no statutory probate court or county court at law, EST §1022.003.
Exclusive jurisdiction, EST §1022.005.
Original jurisdiction, EST §1022.002.
Probate courts, EST §1022.001.
Transfer of proceedings, EST §1022.007.
Jury trial, EST §1055.052.
Letters of guardianship, EST §1106.001.
Limited authority, EST §1101.152.
Matters related to guardianship proceedings, EST §1021.001.
Mental health services.
Effect on, H&S §576.004.
Modification of.
Applications, EST §1202.051.
Burden of proof, EST §1202.151.

GUARDIANSHIP —Cont'd
Modification of —Cont'd
Evidence, EST §1202.151.
Findings required, EST §1202.153.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Oaths, EST §1105.003.
Original jurisdiction, EST §1022.002.
Pleadings.
Request for notice of filing, EST §1051.252.
Powers and duties, EST §1151.051.
Psychoactive medication.
Administration of, EST §1151.054.
Restoration of ward's capacity.
Applications, EST §1202.051.
Burden of proof, EST §1202.151.
Evidence, EST §1202.151.
Findings required, EST §1202.153.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Standing, EST §1055.001.
Supported decision-making agreement act, EST §§1357.001 to 1357.102.
Abuse.
Reporting, EST §1357.102.
Agreements.
Alternate supporter.
Designation, EST §1357.0525.
Authority of supporter, EST §1357.052.
Authorization, EST §1357.055.
Duration of, EST §1357.053.
Form, EST §1357.056.
Limitation of liability, EST §1357.101.
Personal information.
Access to, EST §1357.054.
Relationship with supporter, EST §1357.052.
Reliance on, EST §1357.101.
Scope of, EST §1357.051.
Witnesses, EST §1357.055.
Definitions, EST §1357.002.
Exploitation.
Reporting, EST §1357.102.
Neglect.
Reporting, EST §1357.102.
Purpose, EST §1357.003.
Short title, EST §1357.001.
Surety bonds, EST §1105.003.
Transfer of.
Venue, EST §1023.003.
Venue.
Appointment, EST §1023.001.
Concurrent venue, EST §1023.002.
Transfer for want of venue, EST §1023.002.
Transfer of guardianship, EST §1023.003.
Witnesses.
Applicability of rules, EST §1055.101.

GUILTY PLEAS.
Arraignment, CCP §26.13.

H

HABEAS CORPUS.
Intellectual or developmental disabilities, persons with.
Transfer or discharge of patients.
Effect on, H&S §594.003.
Mental health services.
Rights of individuals receiving, H&S §576.003.

HABEAS CORPUS —Cont'd
Mental illness, persons with, H&S §571.0167.

HEALTH AND HUMAN SERVICES COMMISSION.
Inspector general.
State hospitals.
Annual status report, H&S §552.103.
Investigations.
Assisting law enforcement officers, H&S §552.101.
Retaliation.
Prohibitions, H&S §552.104.
Summary report, H&S §552.102.
State supported living centers.
Annual status report, H&S §555.103.
Investigations.
Assisting law enforcement officers, H&S §555.101.
Retaliation.
Prohibitions, H&S §555.104.
Summary report, H&S §555.102.
Mental health services.
See MENTAL HEALTH SERVICES.
Mental illness, persons with.
Delegation of powers and duties, H&S §571.007.
Powers, H&S §571.006.

HEALTH CARE DIRECTIVES.
Patient determined incompetent or incapable of communication.
Physician refusal to honor directive, H&S §166.046.

HEALTH CARE PROVIDERS.
Declaration for mental health treatment.
Acting in accordance with, CPR §137.004.
Manifest dangerousness determinations.
See MANIFEST DANGEROUSNESS DETERMINATIONS.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.
Restraint and seclusion.
See RESTRAINT AND SECLUSION.

HEALTH INFORMATION PRIVACY, 45 CFR 164.102 to 45 CFR 164.535.
General provisions, 45 CFR 164.102 to 45 CFR 164.106.
Applicability of provisions, 45 CFR 164.104.
Definitions, 45 CFR 164.103.
Organizational requirements, 45 CFR 164.105.
Relationship to other parts, 45 CFR 164.106.
Statutory basis, 45 CFR 164.102.
Individually identifiable health information, 45 CFR 164.500 to 45 CFR 164.535.
Access of individuals to information, 45 CFR 164.524.
Accounting of disclosures, 45 CFR 164.528.
Administrative requirements, 45 CFR 164.530.
Amendment of protected information, 45 CFR 164.526.
Applicability, 45 CFR 164.500.
Attestation.
Uses and disclosures for which attestation is required, 45 CFR 164.509.
Authorization required for use or disclosure, 45 CFR 164.508.
Compliance dates for initial implementation of standards, 45 CFR 164.534.
Definitions, 45 CFR 164.501.
General rules for use and disclosure, 45 CFR 164.502.
Notice of privacy practices, 45 CFR 164.520.
Opportunity for individual to agree or object to use and disclosure, 45 CFR 164.510.
When not required, 45 CFR 164.512.

HEALTH INFORMATION PRIVACY —Cont'd
Individually identifiable health information —Cont'd
Organizational requirements for use and disclosure, 45 CFR 164.504.
Other use and disclosure requirements, 45 CFR 164.514.
Right to request protection, 45 CFR 164.522.
Severability, 45 CFR 164.535.
Transition provisions, 45 CFR 164.532.
Treatment, payment or health care operations, 45 CFR 164.506.
Notice of breach of unsecured protected health information, 45 CFR 164.400 to 45 CFR 164.414.
Administrative requirements, 45 CFR 164.414.
Applicability, 45 CFR 164.400.
Burden of proof, 45 CFR 164.414.
Business associate, notification by, 45 CFR 164.410.
Definitions, 45 CFR 164.402.
Delay of notification by law enforcement, 45 CFR 164.412.
Individuals, notification to, 45 CFR 164.404.
Media, notification to, 45 CFR 164.406.
Secretary, notification to, 45 CFR 164.408.
Standards for protection of electronic protected health information, 45 CFR 164.302 to 45 CFR 164.318.
Administrative safeguards, 45 CFR 164.308.
Applicability, 45 CFR 164.302.
Compliance dates for initial implementation, 45 CFR 164.318.
Definitions, 45 CFR 164.304.
Documentation requirements, 45 CFR 164.316.
General rules, 45 CFR 164.306.
Organizational requirements, 45 CFR 164.314.
Physical safeguards, 45 CFR 164.310.
Policies and procedures, 45 CFR 164.316.
Technical safeguards, 45 CFR 164.312.

HEALTH INSURANCE.
Commission on jail standards.
Prisoner health benefits.
Coverage information, GOV §511.0098.
Employee benefit plans.
Medical records.
Exemptions, H&S §181.055.

HEALTH MAINTENANCE ORGANIZATIONS, H&S §§534.151 to 534.156.
Applicability of provisions, H&S §§534.153, 534.154.
Applicability of rules, H&S §534.153.
Authority, H&S §534.152.
Bids.
Consideration of, H&S §534.155.
Certificates of authority, H&S §534.151.
Contracts.
Conditions, H&S §534.156.

HEARINGS.
Children and minors.
Inpatient mental health services.
Temporary authorization.
Petition, FAM §35A.004.
Court-ordered mental health services.
Administration of medication.
Date, H&S §574.104.
Psychoactive medication, H&S §574.106.
Applications, H&S §574.005.
General provisions, H&S §574.031.
Liberty pending hearing, H&S §574.013.

HEARINGS —Cont'd
Court-ordered mental health services —Cont'd
Post-commitment proceedings.
Reexaminations.
Requests, H&S §574.069.
Rehearings.
Motions, H&S §574.067.
Release following, H&S §574.033.
Right to jury, H&S §574.032.
Transcripts, H&S §574.047.
Guardianship proceedings.
Appointment, EST §1101.051.
Incompetency to stand trial.
Admission and commitment of persons.
Intellectual or developmental disabilities, persons with, CCP §46B.103.
Mental illness, persons with, CCP §46B.102.
Competency restoration, CCP §46B.079.
Insanity defense.
Disposition following acquittal, CCP §46C.253.
Intellectual disability services.
Admission and commitment of persons, H&S §593.008.
Reports, H&S §593.009.
Residential care facilities.
Applications, H&S §593.047.
Conduct of, H&S §593.050.
Dismissal following, H&S §593.051.
Jury trial, H&S §593.049.
Notice, H&S §593.048.
Procedures, H&S §593.049.
Intellectual or developmental disabilities, persons with.
Psychoactive medication, H&S §592.156.
Date, H&S §592.154.
Rights of individuals, H&S §592.019.
Transfer of patients.
See TRANSFER OF PATIENTS.
Mental illness or intellectual disability, children with.
Unfitness to proceed, FAM §55.32.
Restoration hearing, FAM §55.43.
Private mental hospitals and mental health facilities, H&S §577.017.
Protective custody.
Probable cause hearing, H&S §574.025.
Special education.
Due process hearings.
Evaluations pursuant to, ED §29.016.
Limitations period for filing complaint, ED §29.0164.
Representation, ED §29.0162.

HEARSAY.
Sexual offenses.
Admissibility of evidence, CCP §38.072.

HIGHER EDUCATION COORDINATING BOARD.
Child mental health care consortium.
Administrative attachment, H&S §113.0053.

HILL COUNTY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT, H&S §551.009.

HOSPITALS.
Private mental hospitals and mental health facilities, H&S §§577.001 to 577.019.
See PRIVATE MENTAL HOSPITALS AND MENTAL HEALTH FACILITIES.

HOSPITALS —Cont'd
Rural pediatric mental health care access program.
Child mental health care consortium, H&S §113.0181.
Consent, services to minor, H&S §113.0182.
Special education.
Students confined to or educated in, ED §29.014.
State hospitals, H&S §§552.001 to 552.154.
See STATE HOSPITALS.

HOUSING.
Intellectual disability services.
Flexible low-cost housing options, H&S §533A.03551.
Intellectual or developmental disabilities, persons with.
Rights of individuals, H&S §592.016.
Prisons and prisoners.
Pregnant inmates, GOV §501.114.
Single-celling.
Requirements, GOV §501.113.
Triple-celling.
Prohibitions, GOV §501.113.

HUMAN SUBJECT RESEARCH.
Court-ordered mental health services.
Voluntary admission, H&S §574.154.

I

IMMUNITY.
Aging and disability services department.
Intellectual disability services, H&S §591.024.
Peer assistance programs, H&S §467.008.

INCAPACITATED PERSONS.
Children with mental illness, disability, or lack of capacity.
Defenses, PEN §8.08.
Guardianship proceedings.
See GUARDIANSHIP.

INCOMPETENCY TO STAND TRIAL, CCP §§46B.001 to 46b.171.
Admissibility of evidence, CCP §46B.007.
Admission and commitment of persons, CCP §§46B.101 to 46B.117.
Applicability of provisions, CCP §46B.101.
Competency restoration, CCP §46B.073.
Date restoration period begins, CCP §46B.0735.
Competent testimony requirement, CCP §46B.074.
Dismissal of charges, CCP §46B.151.
Hearings.
Intellectual or developmental disabilities, persons with, CCP §46B.103.
Mental illness, persons with, CCP §46B.102.
Maximum period determined by maximum term for offense, CCP §46B.0095.
Placement.
Finding of violence, CCP §46B.104.
Modification of order after placement, CCP §46B.1055.
No finding of violence, CCP §46B.106.
Transfer of patients following, CCP §46B.105.
Redetermination of competency, CCP §46B.108.
Release following, CCP §46B.107.
Supporting commitment information, CCP §46B.083.
Appeals, CCP §46B.011.
Applicability of provisions, CCP §46B.002.
Texas Rules of Evidence, CCP §46B.008.
Attorneys.
Appointment, CCP §46B.006.

INCOMPETENCY TO STAND TRIAL —Cont'd
Attorneys —Cont'd
Competency restoration.
Motions for determinations, CCP §46B.110.
Representation by, CCP §46B.006.
Bail.
Release on.
Felonies, CCP §46B.072.
Misdemeanors, CCP §§46B.072, 46B.0711.
Capital punishment.
Competency for, CCP §46.05.
Competency restoration.
Admission and commitment of persons, CCP §46B.073.
Credible evidence of immediate restoration.
Procedures upon, CCP §46B.0755.
Date restoration period begins, CCP §46B.0735.
Education services, CCP §46B.0805.
Examiners.
Appointment, CCP §46B.111.
Extensions, CCP §46B.080.
Individual treatment programs, CCP §46B.077.
Motions for determinations, CCP §46B.110.
Notice, CCP §46B.079.
Reports, CCP §46B.079.
Requests for determinations, CCP §46B.109.
Subsequent redeterminations, CCP §46B.115.
Subsequent restoration periods prohibited, CCP §46B.085.
With agreement, CCP §46B.112.
Without agreement, CCP §46B.113.
Court-ordered medications, CCP §46B.086.
Court orders, CCP §46B.076.
Credit for time served, CCP §46B.009.
Definitions, CCP §46B.001.
Determinations, CCP §46B.005.
Competency restoration. See within this heading, "Competency restoration."
Finding of competency.
Disposition upon, CCP §46B.116.
Finding of incompetency.
Disposition upon, CCP §46B.117.
Manifest dangerousness, CCP §46B.0831.
Options, CCP §46B.071.
Redetermination of competency, CCP §46B.108.
Dismissal of charges, CCP §46B.078.
Admission and commitment of persons, CCP §46B.151.
Electronic broadcast systems.
Use in proceedings, CCP §46B.013.
Examinations.
Custody status, CCP §46B.023.
Experts.
Appointment, CCP §46B.021.
Compensation, CCP §46B.027.
Qualifications, CCP §46B.022.
Reports, CCP §46B.025.
Time requirements, CCP §46B.026.
Factors considered, CCP §46B.024.
Reimbursement of facilities, CCP §46B.027.
Facility designation, CCP §46B.0021.
Felonies.
Bail.
Release on, CCP §46B.072.
Insanity defense.
Experts.
Concurrent appointment, CCP §46C.103.
Jail-based competency restoration program.
See JAIL-BASED COMPETENCY RESTORATION PROGRAM.

INCOMPETENCY TO STAND TRIAL —Cont'd
Mandatory dismissal of charges, CCP §46B.010.
Manifest dangerousness determinations, CCP §46B.0831.
Misdemeanors.
Bail.
Release on, CCP §§46B.072, 46B.0711.
Mandatory dismissal of charges, CCP §46B.010.
Noncompliance with provisions, CCP §46B.012.
Presumptions, CCP §46B.003.
Raising of issue, CCP §46B.004.
Return to court, CCP §46B.081.
Proceedings, CCP §46B.084.
Transportation of persons, CCP §§46B.082, 46B.114.
Supporting commitment information, CCP §46B.083.
Transcripts, CCP §46B.171.
Transportation of persons.
Administration of medication while in custody of sheriff, CCP §46B.0825.
To court, CCP §§46B.082, 46B.114.
To facilities, CCP §46B.075.
Trial.
Bench trial, CCP §46B.051.
Jury trial, CCP §46B.051.
Procedure after finding of competency, CCP §46B.053.
Procedure after finding of incompetency, CCP §46B.055.
Uncontested incompetency, CCP §46B.054.
Verdict, CCP §46B.052.

INDIGENT DEFENDANTS.
Court costs.
Waiver, CCP §§43.091, 45.0491.
Fines.
Waiver, CCP §§43.091, 45.0491.
Texas indigent defense commission.
Definitions, GOV §79.001.
Policies, GOV §79.034.
Standards, GOV §79.034.

INDIGENT DEFENSE COMMISSION.
Definitions, GOV §79.001.
Policies, GOV §79.034.
Standards, GOV §79.034.

INFORMED CONSENT.
Consent to medical treatment act, H&S §§313.001 to 313.007.
Applicability of provisions, H&S §313.003.
Definitions, H&S §313.002.
Exceptions, H&S §313.003.
Liability for medical treatment costs, H&S §313.006.
Limitation on liability, H&S §313.007.
Prerequisites for consent, H&S §313.005.
Requirements, H&S §313.004.
Short title, H&S §313.001.
Electroconvulsive therapy, H&S §578.003.
Withdrawal of consent, H&S §578.004.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.

INJUNCTIVE RELIEF.
Intellectual disability services, H&S §591.023.
Medical records.
Violations, H&S §181.201.
Mental illness, persons with, H&S §571.022.
Private mental hospitals and mental health facilities, H&S §577.019.

INPATIENT MENTAL HEALTH SERVICES.
Admission and commitment of persons.
Authorization, H&S §575.001.

INPATIENT MENTAL HEALTH SERVICES —Cont'd
Admission and commitment of persons —Cont'd
Chemical dependency, H&S §575.003.
Persons charged with criminal offenses, H&S §575.003.
Private mental hospitals and mental health facilities.
Voluntary mental health services, H&S §575.002.
Court-ordered mental health services.
Discharge of patients, H&S §574.082.
Furloughs, H&S §574.082.
Post-commitment proceedings.
Modification of order, H&S §574.061.
Temporary services, H&S §574.034.
Transfer of patients, H&S §§575.011 to 575.017.
From criminal justice department facility, H&S §575.016.
Intellectual or developmental disabilities, persons with.
To inpatient mental health facilities, H&S §575.012.
To state supported living centers, H&S §575.013.
Medical records, H&S §575.017.
To federal facility, H&S §575.015.
To local mental health authority, H&S §575.011.
To private mental hospital or mental health facility, H&S §575.014.
To state mental health facility, H&S §575.011.
Voluntary mental health services.
Admission and commitment of persons.
Private mental hospitals and mental health facilities, H&S §575.002.

INSANITY DEFENSE, CCP §§46C.001 to 46C.270, PEN §8.01.
Admission and commitment of persons.
Disposition following acquittal, CCP §§46C.251 to 46C.270. See within this heading, "Disposition following acquittal."
Maximum period determined by maximum term for offense, CCP §46C.002.
Aging and disability services department.
Collection and maintenance of information, H&S §533A.0095.
Court-ordered examination and report, CCP §§46C.101 to 46C.107.
Experts.
Appointment, CCP §46C.101.
Choice of defendant, CCP §46C.107.
Compensation, CCP §46C.106.
Incompetency to stand trial.
Concurrent appointment, CCP §46C.103.
Qualifications, CCP §46C.102.
Reports, CCP §46C.105.
Order compelling defendant to submit to examination, CCP §46C.104.
Definitions, CCP §46C.001.
Determination of sanity, CCP §§46C.151 to 46C.160.
Dangerous acquitted persons.
Continuing jurisdiction, CCP §46C.158.
Dangerous conduct of acquitted persons.
Determinations regarding, CCP §46C.157.
Detention pending further proceedings, CCP §46C.160.
Finding of not guilty by reason of insanity considered acquittal, CCP §46C.155.
Judge, CCP §46C.152.
General provisions, CCP §46C.153.
Judgment, CCP §46C.156.
Jury, CCP §46C.151.
General provisions, CCP §46C.153.

INSANITY DEFENSE —Cont'd
Determination of sanity —Cont'd
Jury —Cont'd
Informing jury of consequences of acquittal, CCP §46C.154.
Nondangerous acquitted persons, CCP §46C.159.
Disposition following acquittal.
Dangerous conduct, CCP §§46C.251 to 46C.270.
Advance discharge, CCP §46C.268.
Appeals, CCP §46C.270.
Commitment for evaluation and treatment, CCP §46C.251.
Reports, CCP §§46C.251, 46C.252.
Effect of stabilization on treatment regimen, CCP §46C.254.
Hearings, CCP §46C.253.
Inpatient treatment or residential care.
Order to receive, CCP §46C.256.
Renewal of orders, CCP §46C.261.
Responsibility of facilities, CCP §46C.258.
Jury trial, CCP §46C.255.
Outpatient or community-based treatment and supervision, CCP §46C.263.
After inpatient commitment, CCP §46C.262.
Location of, CCP §46C.264.
Modification or revocation, CCP §46C.266.
Detention pending proceedings, CCP §46C.267.
Order to receive, CCP §46C.257.
Renewal of orders, CCP §46C.261.
Supervisory responsibility, CCP §46C.265.
Status of committed persons, CCP §46C.259.
Termination of jurisdiction, CCP §§46C.268, 46C.269.
Transfer of committed persons to non-maximum security facilities, CCP §46C.260.
Nondangerous conduct, CCP §46C.201.
Detention or release, CCP §46C.202.
Facility designation, CCP §46C.0011.
General provisions, PEN §8.01.
Raising of defense.
Notice of intent, CCP §46C.051.
Effect of failure to give, CCP §46C.052.
State health services department.
Collection and maintenance of information, H&S §533.0095.
Victims of crimes.
Notification of release, CCP §46C.003.

INSPECTIONS.
Aging and disability services department.
Unannounced inspections, H&S §533A.015.
Psychiatric residential youth treatment facilities, H&S §577A.055.
State health services department.
Unannounced inspections, H&S §533.015.

INSPECTOR GENERAL.
State hospitals.
Annual status report, H&S §552.103.
Investigations.
Assisting law enforcement officers, H&S §552.101.
Retaliation.
Prohibitions, H&S §552.104.
Summary report, H&S §552.102.
State supported living centers.
Annual status report, H&S §555.103.
Investigations.
Assisting law enforcement officers, H&S §555.101.
Retaliation.
Prohibitions, H&S §555.104.

INSPECTOR GENERAL —Cont'd
State supported living centers —Cont'd
Summary report, H&S §555.102.

INSURANCE.
Statutory durable power of attorney.
Powers, EST §752.107.

INTELLECTUAL DISABILITY SERVICES, H&S §§591.001 to 591.025.
Admission and commitment of persons, H&S §§593.001 to 593.014.
See ADMISSION AND COMMITMENT OF PERSONS.
Aging and disability services department, H&S §§533A.031 to 533A.043.
Actions against, H&S §591.024.
Behavioral supports, H&S §533A.03552.
Children and minors, H&S §533A.040.
Clients with intellectual disabilities, H&S §533A.038.
Community-based services.
Authority to contract for, H&S §533A.034.
Comprehensive assessment and resource allocation process, H&S §533A.0335.
Continuum of services, H&S §533A.0325.
Definitions, H&S §533A.031.
Duties, H&S §591.011.
Elderly residents.
Evaluations, H&S §533A.042.
Geriatric care proposals, H&S §533A.043.
Flexible low-cost housing options, H&S §533A.03551.
Immunity from liability, H&S §591.025.
Interagency training.
Memorandum of understanding, H&S §533A.0415.
Local intellectual and developmental disability authorities.
Designation, H&S §533A.035.
Duties, H&S §533A.0355.
Planning, H&S §533A.0352.
Long-range planning, H&S §533A.032.
Service programs, H&S §533A.037.
Sheltered workshops, H&S §533A.037.
State agency services standards, H&S §533A.0345.
Community-based intellectual disability services, H&S §§534.101 to 534.124.
See COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES.
Consent.
Adequacy of, H&S §591.006.
Criminal penalties, H&S §591.021.
Definitions, H&S §591.003.
Fees, H&S §§593.071 to 593.082.
Admission and commitment of persons, H&S §593.011.
Adult residents, H&S §593.078.
Applicability of provisions, H&S §593.071.
Child support payments for benefit of residents, H&S §593.077.
Divorced parents, H&S §593.076.
Filing of claims, H&S §593.082.
Inability to pay, H&S §593.072.
Maximum fees, H&S §593.074.
Residential costs, H&S §593.073.
Sliding schedule, H&S §593.075.
Trust exemption, H&S §593.081.
Unpaid fees.
State claims, H&S §593.080.
Fines and civil penalties, H&S §§591.022, 591.023.

INTELLECTUAL DISABILITY SERVICES —Cont'd
Hearings.
Admission and commitment of persons, H&S §§593.006, 593.008.
Reports, H&S §593.009.
Injunctive relief, H&S §591.023.
Least restrictive alternative, H&S §591.005.
Local intellectual and developmental disability authorities.
Designation, H&S §533A.035.
Duties, H&S §533A.0355.
Planning, H&S §533A.0352.
Long-range plan, H&S §591.013.
Public policy, H&S §591.002.
Purpose, H&S §591.002.
Residential care facilities, H&S §§593.041 to 593.056.
Appeals, H&S §593.056.
Applications, H&S §593.041.
Forms, H&S §593.042.
Attorneys, H&S §593.043.
Commitment orders, H&S §593.052.
Not judgment of incompetence, H&S §593.054.
Decisions, H&S §593.053.
Designation of facilities, H&S §593.055.
Hearings.
Applications, H&S §593.047.
Conduct of, H&S §593.050.
Dismissal following, H&S §593.051.
Jury trial, H&S §593.049.
Notice, H&S §593.048.
Procedures, H&S §593.049.
Long-term placement without interdisciplinary team recommendation, H&S §593.0511.
Protective custody.
Detention, H&S §593.045.
Orders, H&S §593.044.
Release, H&S §593.046.
Voluntary mental health services, H&S §593.024.
Rules and regulations, H&S §591.004.
Voluntary mental health services, H&S §593.023.
Short title, H&S §591.001.
Voluntary mental health services, H&S §§593.021 to 593.030.
Admission to, H&S §593.022.
Applications, H&S §593.021.
Residential care services, H&S §593.024.
Emergency admission, H&S §593.027.
Emergency services, H&S §593.0275.
Minors reaching majority, H&S §593.029.
Placement preference, H&S §593.025.
Regular voluntary admission, H&S §593.026.
Residential care services, H&S §593.024.
Respite care, H&S §593.028.
Rules and regulations, H&S §593.023.
Withdrawal from services, H&S §593.030.

INTELLECTUALLY DISABLED CHILDREN.
Juvenile boards, HR §152.00163.
Juvenile justice department.
Care and treatment of children, HR §244.011.
Special education, ED §§29.001 to 29.030.
See SPECIAL EDUCATION.

INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH.
Arrest without warrant.
Release in lieu of arrest, CCP §14.035.
Bail.
Personal bond.
Release on, CCP §17.032.

INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH —Cont'd
Children and minors.
See INTELLECTUALLY DISABLED CHILDREN.
Community supervision.
Conditions of, CCP §42A.506.
Medical release, CCP §§42A.560, 42A.561.
Counties.
Responsibility, H&S §615.001.
Definitions, H&S §531.002.
Discharge of patients, H&S §§594.001 to 594.019.
See DISCHARGE OF PATIENTS.
Diversion of persons, CCP §16.23.
Conditions of pretrial intervention program, reporting, CCP Art 16.24.
Early identification of defendants, CCP §16.22.
Employment opportunities.
Aging and disability services department, H&S §533A.008.
State health services department, H&S §533.008.
Furloughs, H&S §594.002.
Guardianship proceedings.
Determination of necessity, EST §1101.104.
Hearings.
Psychoactive medication, H&S §592.156.
Date, H&S §592.154.
Rights of individuals, H&S §592.019.
Transfer of patients.
See TRANSFER OF PATIENTS.
Institutions.
Bond issues, TX ConstArt III §49-h.
Intellectual disability services, H&S §§591.001 to 591.025.
See INTELLECTUAL DISABILITY SERVICES.
Intellectually disabled children.
See INTELLECTUALLY DISABLED CHILDREN.
Intermediate care facilities.
See INTERMEDIATE CARE FACILITIES.
Medical records, H&S §§595.001 to 595.010.
Confidential information, H&S §595.001.
Exceptions, H&S §595.005.
Past services, H&S §595.007.
Disclosure.
Consent, H&S §595.003.
Name, birth, and date, H&S §595.0055.
Physical or mental condition, H&S §595.010.
Exchange of records, H&S §595.008.
Protection and advocacy system.
Access, H&S §615.002.
Receipt of information by person other than patient or client, H&S §595.009.
Right to personal records, H&S §595.004.
Rules and regulations, H&S §595.002.
Use in criminal proceedings, H&S §595.006.
Personal bond.
Release on, CCP §17.032.
Person first respectful language initiative.
Legislative findings, GOV §392.001.
Use of respectful language, GOV §392.002.
Prisons and prisoners.
See PRISONS AND PRISONERS.
Psychoactive medication, H&S §§592.151 to 592.160.
See PSYCHOACTIVE MEDICATION.
Public policy, H&S §531.001.
Residential care facilities.
Prior law.
Discharge of patients, H&S §593.092.
Psychoactive medication, H&S §592.153.

INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH —Cont'd
Residential care facilities —Cont'd
Transfer of patients, H&S §594.044.
Rights of individuals, H&S §§592.001 to 592.160.
See RIGHTS OF INDIVIDUALS.
Transfer of patients, H&S §§594.001 to 594.045.
See TRANSFER OF PATIENTS.
Voluntary mental health services.
Prior law.
Discharge of patients, H&S §593.092.
Transfer of patients to state mental hospitals, H&S §594.031.
Withdrawal from voluntary services, H&S §592.036.

INTERMEDIATE CARE FACILITIES.
Aging and disability services department.
ICF-MR program.
Information relating to, H&S §533A.066.
Long-term care plan, H&S §533A.062.
Appeals.
Capacity to consent to treatment.
Surrogate consent, H&S §597.053.
Capacity to consent to treatment, H&S §§597.001 to 597.054.
Applicability of provisions, H&S §597.003.
Assessment of, H&S §597.021.
Definitions, H&S §597.001.
Rules and regulations, H&S §597.002.
Surrogate consent, H&S §§597.041 to 597.054.
Appeals, H&S §597.053.
Application for treatment decision, H&S §597.044.
Confidential information, H&S §597.047.
Notice of review, H&S §597.045.
Prereview, H&S §597.046.
Review, H&S §597.048.
Committee.
Establishment, H&S §597.042.
Members, H&S §597.043.
Determination of best interest, H&S §597.049.
Effect of, H&S §597.051.
Notice, H&S §597.050.
Procedures, H&S §597.054.
Scope of consent, H&S §597.052.
Surrogate decision-makers, H&S §597.041.
Designation of essential caregiver by facility resident, TX ConstArt I §35.
Rules and regulations.
Capacity to consent to treatment, H&S §597.002.

INTERPRETERS.
Deaf or hard of hearing persons, CCP §38.31.
Foreign language interpreters, CCP §38.30.

INTERSTATE COMPACT ON MENTAL HEALTH, H&S §§612.001 to 612.007.
Administrator.
Appointment, H&S §612.002.
Powers and duties, H&S §612.004.
Execution, H&S §612.001.
Financial arrangements, H&S §612.006.
Supplementary agreements, H&S §612.005.
Text of, H&S §612.001.
Transfer of patients.
Requirements affecting, H&S §612.007.

INTERSTATE CORRECTIONS COMPACT, CCP §42.19.

INTERVENTION.
Guardianship proceedings, EST §1055.003.

INTERVENTIONS IN MENTAL HEALTH SERVICES.
Restraint and seclusion.
See RESTRAINT AND SECLUSION.

INVESTIGATIONS.
Inspector general.
State hospitals.
Assisting law enforcement agencies, H&S §552.101.
State supported living centers.
Assisting law enforcement agencies, H&S §555.101.
Private mental hospitals and mental health facilities, H&S §577.013.
Licenses, H&S §577.005.

J

JAIL-BASED COMPETENCY RESTORATION PROGRAM.
Pilot program, CCP §46B.090.
Implementation, CCP §46B.091.

JAILS.
Commission on jail standards.
See COMMISSION ON JAIL STANDARDS.
Furlough program, GOV §507.031.
Incompetency to stand trial.
Jail-based competency restoration program.
See JAIL-BASED COMPETENCY RESTORATION PROGRAM.
Jail-based competency restoration program.
See JAIL-BASED COMPETENCY RESTORATION PROGRAM.
Jail diversion programs.
Aging and disability services department.
Powers and duties, H&S §533A.108.
State health services department.
Prioritization of funding, H&S §533.108.
Veterans reentry dorm program, GOV §507.034.

JUDGES.
Constitutional county courts.
Visiting judges.
Assignment.
Guardianship cases, GOV §26.012.
Mental health cases, GOV §26.012.
Probate cases, GOV §26.012.
Court-ordered mental health services.
Associate judges, H&S §574.0085.
Mental illness, persons with.
Availability, H&S §571.012.
Probate courts.
Associate judges.
Applicability of provisions, GOV §54A.202.
Definitions, GOV §54A.201.
De novo hearing before referring court, GOV §54A.216.
Orders issued by, GOV §54A.214.
Powers, GOV §54A.209.

JUDGMENTS.
Effect of adjudication, CPR §31.004.
Justice or municipal courts, CCP §45.041.

JUDICIAL COMMISSION ON MENTAL HEALTH.
Child protective services.
Grants, GOV §22.017.

JURISDICTION.
Community supervision.
Continuing jurisdiction in felony cases, CCP §42A.202.
Transfer of jurisdiction, CCP §42A.151.

JURISDICTION —Cont'd
Guardianship proceedings, EST §§1022.001 to 1022.007.
See GUARDIANSHIP.
Juvenile justice.
Waiver by juvenile court and transfer to district court, FAM §54.02.
Mental illness or intellectual disability, children with, FAM §55.02.
Probate courts, GOV §25.0021.
Guardianship proceedings, EST §1022.001.
Contested guardianship.
Counties with no statutory probate court, EST §1022.004.
Counties with no statutory probate court or county court at law, EST §1022.003.
Statutory county courts, GOV §25.0003.
Probate courts, GOV §25.0021.

JURY TRIAL.
Challenges for cause.
Grounds for, CCP §35.16.
Court-ordered mental health services.
Hearings.
Right to jury, H&S §574.032.
Guardianship proceedings, EST §1055.052.
Incompetency to stand trial, CCP §46B.051.
Insanity defense.
Determination of sanity, CCP §46C.151.
General provisions, CCP §46C.153.
Informing jury of consequences of acquittal, CCP §46C.154.
Disposition following acquittal.
Dangerous conduct, CCP §46C.255.
Intellectual disability services.
Residential care facilities, H&S §593.049.
Intellectual or developmental disabilities, persons with.
Transfer to state mental hospitals.
Hearings, H&S §594.038.
Right to, TX ConstArt I §15.

JUSTICE COURTS.
Juvenile cases.
See JUVENILE JUSTICE.

JUVENILE BOARDS.
Advisory council, HR §152.0010.
Determinate sentences.
Parole, HR §152.00162.
Transfer of children for mental health services, HR §152.00165.
Duties, HR §152.0007.
Examination before discharge, HR §152.00164.
Intellectually disabled children, HR §152.00163.
Mental illness, children with, HR §152.00163.

JUVENILE COURTS.
Mental illness or intellectual disability, children with.
Application for court-ordered mental health services, FAM §55.65.
Jurisdiction, FAM §55.02.

JUVENILE JUSTICE.
Appeals, FAM §56.01.
Attorney, right to, FAM §51.10.
Case managers, CCP §45A.451.
Case managers for juvenile offenders, CCP §45.056.
Children taken into custody, CCP §45.058.
Confidential records, fine only offenses, CCP §45A.462.

JUVENILE JUSTICE —Cont'd
Continuing obligation to appear, offenses occurring while minor, CCP §45A.456.
Correctional office on offenders with medical or mental impairment.
Continuity of care, H&S §614.018.
Programs for, H&S §614.019.
Youth assertive community treatment program, H&S §614.020.
Court costs.
Community service in satisfaction of, CCP §§45.0492, 45A.459, 45A.460.
Determinate sentences.
Evaluations, HR §244.015.
Parole, HR §§152.00162, 245.152.
Referral for transfer, HR §244.014.
Transfer for mental health services, HR §§152.00165, 244.0125.
Electronic transmission of visual material depicting minor.
Justice or municipal court ordering minor to attend educational program, CCP §45A.458.
Expunction of certain conviction records, CCP §45A.463.
Expunction of records relating to failure to attend school, CCP §45A.464.
Failure to pay fine, CCP §45A.461.
Felony offenses.
Special commitment to juvenile justice department, FAM §54.04013.
Finding that offense committed, CCP §45A.457.
Fines.
Community service in satisfaction of, CCP §§45.0492, 45A.459, 45A.460.
Jurisdiction.
Waiver by juvenile court and transfer to district court, FAM §54.02.
Juvenile probation services.
Definitions, HR §142.001.
Post-discharge services, HR §142.007.
Referral of child exiting probation to mental health or mental retardation authority, FAM §54.0408.
Mental examinations, FAM §51.20.
Mental health screening and referral, FAM §51.21.
Physical examinations, FAM §51.20.
Plea by minor and appearance of parent, CCP §45.0215.
Plea by minor and appearances of parent, CCP §45A.452.
Records.
Confidentiality of probation, prosecution and court records, FAM §58.007.
Interagency sharing.
Educational records, FAM §58.0051.
Non-educational records, FAM §58.0052.
School property, conduct on, CCP §45A.454.
Supreme court.
Judicial guidance, GOV §22.0135.
Taking into custody, CCP §45A.453.
Curfew or order violation, CCP §45A.455.
Youth diversion, CCP §§45.301 to 45.313.

JUVENILE JUSTICE DEPARTMENT.
Care and treatment of children.
Caseworkers, HR §244.010.
Report on foster children committed to department, HR §244.0105.
Determinate sentences.
Evaluations, HR §244.015.

JUVENILE JUSTICE DEPARTMENT —Cont'd
Care and treatment of children —Cont'd
Determinate sentences —Cont'd
Referral for transfer, HR §244.014.
Transfer for mental health services, HR §244.0125.
Examinations.
Failure to examine, HR §244.004.
Initial examination, HR §244.001.
Prior to discharge, HR §244.012.
Records, HR §244.003.
Reexamination, HR §244.002.
Family programs, HR §244.007.
Foster care.
Report on foster children committed to department, HR §244.0105.
Rules and regulations, HR §244.0106.
Health care delivery system, HR §244.009.
Infant care and parenting program, HR §244.008.
Intellectually disabled children, HR §244.011.
Mental illness, children with, HR §244.011.
Notice of pending discharge, HR §244.013.
Parental rights, HR §244.052.
Pregnant juveniles, use of restraints, HR §244.0075.
Treatment.
Determination of, HR §244.005.
Records, HR §244.003.
Types permitted, HR §244.006.
Release of children.
Comprehensive reentry and reintegration plan, HR §245.0535.
Determinate sentences.
Parole, HR §245.152.
Identification documents issued to released or discharged child.
Birth certificate and social security card, HR §245.0537.
Drivers license or identification certificate, HR §245.0536.
Information provided to court, HR §245.054.
Reports, HR §245.0535.
Supervision, release under, HR §245.051.
Termination of control, HR §245.151.

JUVENILE PROBATION DEPARTMENTS.
Mental health screening instruments.
Rules and regulations, HR §221.003.
Residential treatment facilities, HR §221.056.
Risk and needs assessment instruments.
Rules and regulations, HR §221.003.
Trauma-informed care training, HR §221.0061.

JUVENILE PROBATION SERVICES.
Definitions, HR §142.001.
Post-discharge services, HR §142.007.
Referral of child exiting probation to mental health or mental retardation authority, FAM §54.0408.

L

LABOR AND EMPLOYMENT.
Aging and disability services department.
Employment records.
Exchange of, H&S §533A.0075.
Exchange of employment records, H&S §533A.0075.
Criminal history record information.
See CRIMINAL HISTORY RECORD INFORMATION.

LABOR AND EMPLOYMENT —Cont'd
Intellectual or developmental disabilities, persons with.
Employment opportunities.
Aging and disability services department, H&S §533A.008.
State health services department, H&S §533.008.
Rights of individuals, H&S §592.015.
Mental illness, persons with.
Employment opportunities.
Aging and disability services department, H&S §533A.008.
State health services department, H&S §533.008.
Public safety employees treatment court program, GOV §§129.001 to 129.007.
See PUBLIC SAFETY EMPLOYEES TREATMENT COURT PROGRAM.
State health services department.
Employment records.
Exchange of, H&S §533.0075.
Exchange of employment records, H&S §533.0075.
State hospitals.
Employees.
Training, H&S §552.052.
State supported living centers.
Employees.
Criminal history record information, H&S §555.021.
Drug testing, H&S §555.022.
Illegal drug use.
Reports, H&S §555.023.
Training, H&S §555.024.

LAW ENFORCEMENT OFFICERS.
Arrest.
Under warrant.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Without warrant.
Authority, CCP §14.03.
Extraterritorial arrest, CCP §14.051.
Taking offender before magistrate, CCP §14.06.
Electronic documents and digital signatures, CCP §2.26.
Emergency detention.
Apprehension without warrant, H&S §573.001.
Notice, H&S §573.002.
Persons deemed to be, CCP §2.12.

LEAVES OF ABSENCE.
Intellectual or developmental disabilities, persons with, H&S §594.002.

LICENSES.
Intermediate care facilities.
See INTERMEDIATE CARE FACILITIES.
Private mental hospitals and mental health facilities.
See PRIVATE MENTAL HOSPITALS AND MENTAL HEALTH FACILITIES.

LIENS.
Aging and disability services department, H&S §533A.004.
State health services department, H&S §533.004.

LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES.
Designation, H&S §533A.035.
Duties, H&S §533A.0355.
Planning, H&S §533A.0352.

LOCAL MENTAL HEALTH AUTHORITIES.
Abuse, neglect, and exploitation.
See ABUSE, NEGLECT, AND EXPLOITATION.

LOCAL MENTAL HEALTH AUTHORITIES —Cont'd
Community-based intellectual disability services.
Contracts.
Compliance, H&S §534.059.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Monitoring and review, H&S §534.060.
Program audits, H&S §534.0601.
Community-based mental health services.
Contracts.
Compliance, H&S §534.059.
Financial audits, H&S §534.0602.
Additional financial audit activity, H&S §534.0603.
Monitoring and review, H&S §534.060.
Program audits, H&S §534.0601.
Discharge of patients.
See DISCHARGE OF PATIENTS.
Hill county local mental health authority crisis stabilization unit, H&S §551.009.
Mental health services.
Best practices clearinghouse, H&S §533.0357.
Designation, H&S §533.035.
Disease management practices, H&S §533.0354.
Governing bodies, H&S §533.0351.
Jail diversion measures, H&S §533.0354.
Local network development plans, H&S §533.03521.
Planning, H&S §533.0352.
Provider of last resort, H&S §533.0358.
Rules and regulations, H&S §533.0359.
Transfer of patients.
Inpatient mental health services, H&S §575.011.
Treatment recommendations, H&S §533.014.
Volunteer programs.
Use of funds, H&S §533A.003.

LONG-TERM CARE.
Aging and disability services department.
ICF-MR program.
Long-term care plan, H&S §533A.062.

M

MAGISTRATES.
Arrest under warrant.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Mental illness, persons with.
Availability, H&S §571.012.
Persons deemed to be, CCP §2.09 (repealed 1/1/2025).

MAINTENANCE.
Statutory durable power of attorney.
Powers, EST §752.111.

MANDATORY SUPERVISION.
Individual treatment plans, GOV §508.152.
Medically recommended intensive supervision, GOV §508.146.
Psychological counseling, GOV §508.223.
Special programs, GOV §508.316.

MANIFEST DANGEROUSNESS DETERMINATIONS.
Court-ordered mental health services.
Administration of medication, H&S §574.1065.
Incompetency to stand trial, CCP §46B.0831.

MEDICAID.
Restraint and seclusion.
Medicaid waiver program, H&S §322.055.

MEDICAL EXAMINATIONS.
Court-ordered mental health services, H&S §574.009.
Certificates, H&S §574.011.

MEDICAL RECORDS, H&S §§181.001 to 181.207.
Access and use.
Complaints.
Reports, H&S §181.104.
Consumer access to health records and filing complaints, H&S §181.105.
Consumer information website, H&S §181.103.
Electronic health records, H&S §181.102.
Training, H&S §181.101.
Applicability of provisions, H&S §181.002.
Federal law, H&S §181.004.
State law, H&S §181.004.
Definitions, H&S §181.001.
Electronic disclosure.
Authorization, H&S §181.154.
Notice, H&S §181.154.
Enforcement, H&S §§181.201 to 181.207.
Audits, H&S §181.206.
Disciplinary action, H&S §181.202.
Exclusion from state programs, H&S §181.203.
Fines and civil penalties, H&S §181.201.
Funding, H&S §181.207.
Injunctive relief, H&S §181.201.
Mitigation, H&S §181.205.
Exemptions, H&S §§181.051 to 181.060.
American Red Cross, H&S §181.056.
Communicable disease in certain long-term care facilities, H&S §181.060.
Educational records, H&S §181.058.
Employee benefit plans, H&S §181.055.
Financial institutions.
Processing of payments, H&S §181.052.
Nonprofit agencies, H&S §181.053.
Offenders with mental impairments, H&S §181.057.
Partial exemption, H&S §181.051.
Victims of crimes.
Compensation, H&S §181.059.
Workers' compensation, H&S §181.054.
Health and human services commission.
Duties, H&S §181.005.
Intellectual or developmental disabilities, persons with, H&S §§595.001 to 595.010.
See INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH.
Mental health records, H&S §§611.001 to 611.008.
See MENTAL HEALTH RECORDS.
Nonpublic health information, H&S §181.006.
Prohibited acts.
Marketing uses of information, H&S §181.152.
Reidentified information, H&S §181.151.
Sale of protected information, H&S §181.153.
Sovereign immunity, H&S §181.003.
Transfer of, H&S §575.017.

MEDICATION, ADMINISTRATION OF.
Court-ordered mental health services, H&S §§574.101 to 574.110.
Appeals, H&S §574.108.
Applicability of provisions, H&S §574.102.
Applications for orders, H&S §574.104.
Costs, H&S §574.107.
Dangerous patients, H&S §574.1065.
Definitions, H&S §574.101.
Effect of order, H&S §574.109.
Expiration of order, H&S §574.110.

MEDICATION, ADMINISTRATION OF —Cont'd
Court-ordered mental health services —Cont'd
Hearings.
Date, H&S §574.104.
Psychoactive medication, H&S §574.106.
Psychoactive medication, H&S §574.106.
Requirements, H&S §574.103.
Rights of individuals, H&S §574.105.
Guardianship proceedings.
Psychoactive medication, EST §1151.054.
Incompetency to stand trial.
Court-ordered medications, CCP §46B.086.
Intellectual or developmental disabilities, persons with.
Unnecessary medication.
Protection against, H&S §592.038.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.

MEETINGS.
Community centers.
Boards of trustees, H&S §534.009.
Correctional office on offenders with medical or mental impairments.
Committee, H&S §614.005.

MEMORANDUM OF UNDERSTANDING.
Emergency detention.
Transportation of individuals, H&S §573.005.
Forensic state supported living center, ED §29.455.
Intellectual disability services.
Aging and disability services department.
Interagency training, H&S §533A.0415.

MENTAL HEALTH AND MENTAL RETARDATION DEPARTMENT.
Abuse, neglect, and exploitation in facilities.
See ABUSE, NEGLECT, AND EXPLOITATION.

MENTAL HEALTH COURT PROGRAMS.
Definitions, GOV §125.001.
Mandatory participation, GOV §125.005.
Procedures, GOV §125.001.
Regional programs, GOV §125.0025.

MENTAL HEALTH FACILITIES.
Benefit funds, H&S §551.004.
Bond issues, TX ConstArt III §49-h.
Building and improvement program, H&S §551.007.
Business managers, H&S §551.026.
Commissioner.
Admission, H&S §551.024.
Conflicts of interest, H&S §551.002.
Definitions, H&S §551.001.
Dental treatment, H&S §551.041.
Executive commissioner.
Admission, H&S §551.024.
Facility standards, H&S §551.006.
Heads, H&S §532.003.
Hill county local mental health authority crisis stabilization unit, H&S §551.009.
Medical treatment, H&S §551.041.
Missing patients or clients.
Duty to report, H&S §551.025.
Occupational therapy, H&S §551.044.
Outpatient clinics, H&S §551.042.
Patient or client funds.
Deposits, H&S §551.003.
Disbursement of, H&S §551.005.
Private mental hospitals and mental health facilities, H&S §§577.001 to 577.019.
See PRIVATE MENTAL HOSPITALS AND MENTAL HEALTH FACILITIES.

MENTAL HEALTH FACILITIES —Cont'd
Psychiatric residential youth treatment facilities, H&S §§577A.001 to 577A.151.
See PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES.
State hospitals, H&S §§552.001 to 552.154.
See STATE HOSPITALS.
State supported living centers, H&S §§555.001 to 555.202.
See STATE SUPPORTED LIVING CENTERS.
Superintendents.
Powers and duties, H&S §551.022.
Transfer of patients.
Inpatient mental health services, H&S §575.011.
Transportation of persons to, CCP §46.04.

MENTAL HEALTH RECORDS, H&S §§611.001 to 611.008.
Confidential information, H&S §611.002.
Persons entitled to claim privilege, H&S §611.003.
Definitions, H&S §611.001.
Disclosure.
Failure to disclose.
Remedies, H&S §611.005.
Improper disclosure.
Remedies, H&S §611.005.
In judicial or administrative proceeding, H&S §611.006.
Other than in judicial or administrative proceeding.
Authorization, H&S §611.004.
Required disclosure, H&S §611.0041.
Prohibitions, H&S §611.002.
Revocation of consent, H&S §611.007.
Protection and advocacy system.
Access, H&S §615.002.
Requests by patients, H&S §611.008.
Right to, H&S §611.0045.

MENTAL HEALTH SERVICES.
Admission to state facility or facility with contracted psychiatric bed.
See STATE HOSPITALS.
Commission on jail standards.
Payment, GOV §511.0098.
Prescription medication for prisoner with mental illness, GOV §511.009.
Community-based mental health services, H&S §§534.051 to 534.071.
See COMMUNITY-BASED MENTAL HEALTH SERVICES.
Court-ordered mental health services, H&S §§574.001 to 574.203.
See COURT-ORDERED MENTAL HEALTH SERVICES.
Declaration for mental health treatment, CPR §§137.001 to 137.011.
See DECLARATION FOR MENTAL HEALTH TREATMENT.
Definitions, H&S §531.002.
Inpatient mental health services.
See INPATIENT MENTAL HEALTH SERVICES.
Local mental health authorities.
Best practices clearinghouse, H&S §533.0357.
Designation, H&S §533.035.
Disease management practices, H&S §533.0354.
Governing bodies, H&S §533.0351.
Jail diversion measures, H&S §533.0354.
Local network development plans, H&S §533.03521.
Planning, H&S §533.0352.
Provider of last resort, H&S §533.0358.

MENTAL HEALTH SERVICES —Cont'd
Local mental health authorities —Cont'd
Rules and regulations, H&S §533.0359.
Outpatient mental health services.
See OUTPATIENT MENTAL HEALTH SERVICES.
Public policy, H&S §531.001.
Reference to certain terms, H&S §531.0021.
Rights of individuals receiving, H&S §§576.001 to 576.027.
See RIGHTS OF INDIVIDUALS.
State health services department, H&S §§533.031 to 533.053.
Children and minors, H&S §533.040.
Commitment options.
Informing courts of, H&S §533.053.
Community-based services.
Authority to contract for, H&S §533.034.
Continuum of services, H&S §533.0325.
Definitions, H&S §533.031.
Elderly residents.
Evaluations, H&S §533.042.
Geriatric care proposals, H&S §533.043.
Extended care proposals, H&S §533.043.
Interagency training.
Memorandum of understanding, H&S §533.0415.
Local behavioral health authorities, H&S §533.0356.
Local mental health authorities. See within this heading, "Local mental health authorities."
Long-range planning, H&S §533.032.
Outpatient mental health services.
Allocation of, H&S §533.051.
Regional allocation of mental health beds, H&S §533.0515.
Required range of services.
Determinations, H&S §533.033.
Service programs, H&S §533.037.
Service providers.
Contracts to provide services and beds, H&S §533.052.
Sheltered workshops, H&S §533.037.
State agency services standards, H&S §533.0345.
Transitional care proposals, H&S §533.043.
Voluntary mental health services, H&S §§572.001 to 572.0051.
See VOLUNTARY MENTAL HEALTH SERVICES.

MENTAL ILLNESS OR INTELLECTUAL DISABILITY, CHILDREN WITH.
Court-ordered mental health services, FAM §§55.12 to 55.17.
Criteria for court-ordered services, FAM §55.05.
Residential intellectual disability services, FAM §55.06.
Expiration, FAM §55.15.
Initiation of proceedings, FAM §55.12.
Juvenile court proceedings.
Application for court-ordered mental health services, FAM §55.65.
Referrals, FAM §55.68.
Services not ordered, FAM §55.17.
Standards of care, FAM §55.15.
Stay of proceedings, FAM §55.16.
Dissolution of stay, FAM §55.17.
Unfitness to proceed, FAM §§55.66, 55.67.
Initiation of proceedings, FAM §55.37.
Defenses, PEN §8.08.
Definitions, FAM §55.01.
Determinations, FAM §55.11.
Discharge prior to 18th birthday, FAM §55.18.

MENTAL ILLNESS OR INTELLECTUAL DISABILITY, CHILDREN WITH —Cont'd
Examinations, FAM §55.11.
Forensic mental examination, FAM §55.04.
Jurisdiction, FAM §55.02.
Juvenile boards, HR §152.00163.
Juvenile court.
Jurisdiction, FAM §55.02.
Juvenile justice department.
Care and treatment of children, HR §244.011.
Lack of responsibility for conduct, FAM §§55.51 to 55.59.
Determinations, FAM §55.51.
Examinations, FAM §55.51.
Information required to be sent to facility or alternative setting, FAM §55.54.
Proceedings following finding of, FAM §55.52.
Reports.
Child having intellectual disability, FAM §55.59.
Child having mental illness, FAM §55.56.
Child not having mental illness, FAM §55.55.
To court, FAM §55.54.
Transportation of children, FAM §55.53.
Special education, ED §§29.001 to 29.030.
See SPECIAL EDUCATION.
Standards of care, FAM §55.03.
Transfer to criminal court on 18th birthday, discretionary, FAM §55.19.
Transportation of patients.
Lack of responsibility for conduct, FAM §55.53.
Unfitness to proceed, FAM §55.34.
Truancy courts.
Initial procedures, FAM §65.065.
Unfitness to proceed, FAM §§55.31 to 55.45.
Application for court-ordered mental health services, FAM §§55.66, 55.67.
Determinations, FAM §55.31.
Examinations, FAM §55.31.
Hearings, FAM §55.32.
Information required to be sent to facility or alternative setting, FAM §55.35.
Initiation of proceedings, FAM §55.37.
Proceedings following finding of, FAM §55.33.
Release or furlough.
Notice, FAM §55.45.
Reports, FAM §55.37.
Hearing on objections, FAM §55.36.
Intellectual disability, unfit to proceed due to, FAM §55.37.
Restoration hearing, FAM §55.43.
Standards of care, FAM §55.45.
Transfer to criminal court on 18th birthday, discretionary, FAM §55.44.
Transportation of children, FAM §55.34.

MENTAL ILLNESS, PERSONS WITH, H&S §§571.001 to 571.026.
Actions.
Notice, H&S §571.024.
Administrative penalties, H&S §571.025.
Admission and commitment of persons.
Conditions.
Effect of, H&S §571.009.
Return to state of residence, H&S §571.008.
Reciprocal agreements, H&S §571.0081.
Children and minors.
See MENTAL ILLNESS OR INTELLECTUAL DISABILITY, CHILDREN WITH.

MENTAL ILLNESS, PERSONS WITH —Cont'd
Commitment of patients.
Conditions.
Effect of, H&S §571.009.
Return to state of residence, H&S §571.008.
Reciprocal agreements, H&S §571.0081.
Community supervision.
Conditions of, CCP §42A.506.
Medical release, CCP §§42A.560, 42A.561.
Correctional office on offenders with medical or mental impairments, H&S §§614.001 to 614.021.
See CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS.
Counties.
Responsibility, H&S §615.001.
Court-appointed personnel.
Compensation, H&S §571.017.
Court costs, H&S §571.018.
Recovery, H&S §571.026.
Court hours, H&S §571.012.
Court records.
Inspections, H&S §571.015.
Criminal law and procedure.
Applicability of provisions, H&S §571.011.
Penalties, H&S §571.020.
Definitions, H&S §§531.002, 571.003.
Diversion of persons, CCP §16.23.
Conditions of pretrial intervention program, reporting, CCP Art 16.24.
Early identification of defendants, CCP §16.22.
Employment opportunities.
Aging and disability services department, H&S §533A.008.
State health services department, H&S §533.008.
Enforcement officers, H&S §571.021.
Extension of detention period, H&S §571.0165.
Filing requirements, H&S §571.014.
Fines and civil penalties, H&S §571.023.
Firearms and other weapons.
Seizure.
Disposition of firearms, CCP §18.191.
Habeas corpus, H&S §571.0167.
Health and human services commission.
Delegation of powers and duties, H&S §571.007.
Powers, H&S §571.006.
Injunctive relief, H&S §571.022.
Interstate compact on mental health, H&S §§612.001 to 612.007.
See INTERSTATE COMPACT ON MENTAL HEALTH.
Judges.
Availability, H&S §571.012.
Least restrictive appropriate setting, H&S §571.004.
Limitation of liability, H&S §571.019.
Magistrates.
Availability, H&S §571.012.
Mental health code information program, H&S §571.005.
Mental health court programs, GOV §§125.001, 125.005.
See MENTAL HEALTH COURT PROGRAMS.
Notice, H&S §571.013.
Personal bond.
Release on, CCP §17.032.
Prescription medication information, H&S §571.0066.
Prisons and prisoners.
See PRISONS AND PRISONERS.

MENTAL ILLNESS, PERSONS WITH —Cont'd
Public policy, H&S §531.001.
Purpose, H&S §571.002.
Records, H&S §§611.001 to 611.008.
See MENTAL HEALTH RECORDS.
Restraint and seclusion, H&S §571.0067.
Service of process.
Agents, H&S §571.010.
Short title, H&S §571.001.
State.
Proceedings on behalf of, H&S §571.0166.
Representation of, H&S §571.016.
State health services department.
Delegation of powers and duties, H&S §571.007.
Powers, H&S §571.006.
Treatment methods, H&S §571.0065.
Veterans treatment court program, GOV §§124.001 to 124.007.
See VETERANS TREATMENT COURT PROGRAM.

MENTALLY RETARDED PERSONS.
See INTELLECTUAL OR DEVELOPMENTAL DISABILITIES, PERSONS WITH.

MILITARY.
Special education.
Military families.
Protection of rights, ED §29.0163.
Veterans.
See VETERANS.

MISDEMEANORS.
Destruction of records, CPR §144.008.
Discharge of inmate, CCP §43.13.
Fines.
Discharge of, CCP §43.09.
Manual labor in lieu of, CCP §43.10.
Incompetency to stand trial.
Bail.
Release on, CCP §§46B.072, 46B.0711.
Mandatory dismissal of charges, CCP §46B.010.

MISSING PERSONS.
Mental health facilities.
Missing patients or clients.
Duty to report, H&S §551.025.
State supported living centers.
Missing patients or clients.
Duty to report, H&S §551.025.

MOTIONS.
Protective custody, H&S §574.021.

MUNICIPAL COURTS.
Juvenile cases.
See JUVENILE JUSTICE.

MUNICIPALITIES.
Classification of functions, TX ConstArt XI §13.
Property held for public purpose.
Forced sale.
Exemptions, TX ConstArt XI §9.
Property taxation.
Exemptions, TX ConstArt XI §9.

N

NEGLECT.
See ABUSE, NEGLECT, AND EXPLOITATION.

NEPOTISM.
Community centers, H&S §534.0115.

NONPROFIT ORGANIZATIONS.
Medical records.
Exemptions, H&S §181.053.

NOTARIES PUBLIC.
Declaration for mental health treatment.
Execution and acknowledgment, CPR §137.003.

NURSES.
Guardianship proceedings.
Determination of necessity.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Modification of.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Restoration of ward's capacity.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.

O

OATHS.
Guardianship proceedings, EST §1105.003.
Private mental hospitals and mental health facilities, H&S §577.014.

OCCUPATIONAL THERAPY.
Mental health facilities, H&S §551.044.

OMBUDSMAN SERVICES.
Foster care.
See FOSTER CARE.
State supported living centers.
Office of independent ombudsman, H&S §§555.051 to 555.061.
See STATE SUPPORTED LIVING CENTERS.

OPTIONS.
Statutory durable power of attorney.
Powers, EST §752.105.

ORDERS.
See COURT-ORDERED MENTAL HEALTH SERVICES.

OUTPATIENT CLINICS, H&S §551.042.

OUTPATIENT MENTAL HEALTH SERVICES.
Court-ordered mental health services, H&S §574.037.
Court of criminal appeals.
Judicial instruction, GOV §22.1106.
Identification of responsible persons, H&S §574.0125.
Post-commitment proceedings.
Modification of order.
Motions, H&S §574.062.
Orders, H&S §574.065.
Temporary services, H&S §574.0345.
Insanity defense.
Disposition following acquittal.
See INSANITY DEFENSE.
State health services department.
Allocation of, H&S §533.051.

P

PAROLE.
Aging and disability services department.
Facilities.
Inmate and parolee care, H&S §533A.085.
Educational and vocational training, early release for participation, GOV §§493.034, 508.1455.

PAROLE —Cont'd
Individual treatment plans, GOV §508.152.
Juvenile justice.
Determinate sentences, HR §§152.00162, 245.152.
Medically recommended intensive supervision, GOV §508.146.
Mental health care.
Civil commitment prior to parole, GOV §501.057.
Psychological counseling, GOV §508.223.
Special programs, GOV §508.316.
State health services department.
Facilities.
Inmate and parolee care, H&S §533.085.

PEACE OFFICERS.
See LAW ENFORCEMENT OFFICERS.

PEER ASSISTANCE PROGRAMS, H&S §§467.001 to 467.008.
See SUBSTANCE USE DISORDERS.

PERMANENT JUDICIAL COMMISSION FOR CHILDREN, YOUTH AND FAMILIES.
Child protective services.
Grants, GOV §22.017.
Judicial guidance, GOV §22.0135.
Juvenile justice.
Judicial guidance, GOV §22.0135.

PERSONAL PROPERTY.
Community centers.
Surplus property, H&S §534.031.
Statutory durable power of attorney.
Powers, EST §752.103.

PERSON FIRST RESPECTFUL LANGUAGE INITIATIVE.
Legislative findings, GOV §392.001.
Use of respectful language, GOV §392.002.

PHYSICIANS AND SURGEONS.
Advance directives.
Patient determined incompetent or incapable of communication.
Physician refusal to honor directive, H&S §166.046.
Aging and disability services department.
Reports of allegations, H&S §533A.006.
Electroconvulsive therapy.
Requirements, H&S §578.005.
Guardianship proceedings.
Determination of necessity.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Modification of.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Restoration of ward's capacity.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Manifest dangerousness determinations.
See MANIFEST DANGEROUSNESS DETERMINATIONS.
Private mental hospitals and mental health facilities.
Physicians in charge.
Requirements, H&S §577.008.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.
Restraint and seclusion.
See RESTRAINT AND SECLUSION.

POLICE.
See LAW ENFORCEMENT OFFICERS.

POWER OF ATTORNEY, EST §§751.001 to 753.002.
See DURABLE POWER OF ATTORNEY.

PREGNANCY.
Pregnant inmates.
Correctional officers.
Training, GOV §493.032.
Educational programming, GOV §501.0215.
Housing requirements, GOV §501.114.
Invasive searches prohibited, GOV §501.0665.
Juvenile justice department.
Pregnant juveniles, use of restraints, HR §244.0075.
Nutrition requirements, GOV §501.0666.
Postpartum recovery requirements, GOV §501.0667.
Restraint and seclusion, GOV §501.066.
Screening for fetal alcohol exposure, GOV §501.059.

PRESCRIPTIONS.
Commission on jail standards.
Prescription medication for prisoner with mental illness, GOV §511.009.
Mental illness, persons with.
Prescription medication information, H&S §571.0066.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.

PRISONS AND PRISONERS.
Aging and disability services department.
Facilities.
Inmate and parolee care, H&S §533A.085.
Arraignment.
Indigent inmate defense, CCP §26.051.
Community justice assistance division.
Prison diversion progressive sanctions program, GOV §509.016.
Comprehensive reentry and reintegration plan.
Annual report, GOV §501.103.
Definitions, GOV §501.091.
Development, GOV §501.092.
Provision of information to inmates, GOV §501.0971.
Reintegration services, GOV §501.097.
Risk and needs assessment instruments, GOV §501.0921.
Task force, GOV §501.098.
Correctional officers, training.
De-escalation, crisis intervention, and behavioral health, GOV §493.0325.
Educational and vocational training pilot program, GOV §493.034.
Early release for participation, GOV §508.1455.
Emergency absence, GOV §501.006.
Foster care.
Information concerning foster care history, GOV §501.023.
Health insurance.
Commission on jail standards.
Prisoner health benefits.
Coverage information, GOV §511.0098.
Housing.
Pregnant inmates, GOV §501.114.
Single-celling.
Requirements, GOV §501.113.
Triple-celling.
Prohibitions, GOV §501.113.
Inmate litigation.
Dismissal of claims, CPR §14.003.
Interstate corrections compact, CCP §42.19.

PRISONS AND PRISONERS —Cont'd
Medical and mental health care.
Civil commitment prior to parole, GOV §501.057.
Consent to health treatments, GOV §501.065.
Contracts, GOV §501.056.
Correctional officers, training.
De-escalation, crisis intervention, and behavioral health, GOV §493.0325.
Expansion of access to telehealth services and on-site medical care, GOV §501.071.
Health care information to inmates, GOV §501.064.
Health care services fee, GOV §501.063.
Intellectual or developmental disabilities, offenders with, GOV §501.069.
Mental health assessment requirement prior to administrative segregation, GOV §501.068.
Pregnant inmates.
Invasive searches prohibited, GOV §501.0665.
Nutrition requirements, GOV §501.0666.
Postpartum recovery requirements, GOV §501.0667.
Restraint and seclusion, GOV §501.066.
Screening for fetal alcohol exposure, GOV §501.059.
Psychiatrists.
Compensation, GOV §501.058.
Sex offenders.
Orchiectomy performed on inmate, GOV §501.061.
Study of rate of recidivism, GOV §501.062.
Trauma history screening, GOV §501.070.
Tuberculosis screening, GOV §501.060.
Pregnant inmates.
Correctional officers.
Training, GOV §493.032.
Educational programming, GOV §501.0215.
Housing, GOV §501.114.
Invasive searches prohibited, GOV §501.0665.
Nutrition requirements, GOV §501.0666.
Postpartum recovery requirements, GOV §501.0667.
Restraint and seclusion, GOV §501.066.
Screening for fetal alcohol exposure, GOV §501.059.
Single-celling.
Requirements, GOV §501.113.
State health services department.
Facilities.
Inmate and parolee care, H&S §533.085.
Triple-celling.
Prohibitions, GOV §501.113.
Veterans.
Verification of veteran status, GOV §501.024.
Veterans services coordinator, GOV §501.025.
Wrongfully imprisoned persons.
Correctional office on offenders with medical or mental impairment.
Services for, H&S §614.021.

PRIVATE MENTAL HOSPITALS AND MENTAL HEALTH FACILITIES, H&S §§577.001 to 577.019.
Admission and commitment of persons.
Court-ordered mental health services, H&S §574.042.
Inpatient mental health services.
Voluntary mental health services, H&S §575.002.
Appeals, H&S §577.018.
Bed capacity.
Changes in, H&S §577.007.
Contracts.
Limitations, H&S §577.009.
Hearings, H&S §577.017.
Injunctive relief, H&S §577.019.
Investigations, H&S §577.013.
Licenses, H&S §577.005.

PRIVATE MENTAL HOSPITALS AND MENTAL HEALTH FACILITIES —Cont'd
Judicial review, H&S §577.018.
Licenses.
Additional license not required, H&S §577.003.
Applications, H&S §577.004.
Denial, suspension, probation, or revocation, H&S §577.016.
Exemptions, H&S §577.002.
Fees, H&S §577.006.
Investigations, H&S §577.005.
Issuance, H&S §577.005.
Requirements, H&S §577.001.
Notice of transfer or referral of patient, H&S §577.0101.
Oaths, H&S §577.014.
Physicians in charge.
Requirements, H&S §577.008.
Records, H&S §577.011.
Destruction of, H&S §577.012.
Reports, H&S §577.011.
Rules and regulations, H&S §577.010.
Standards, H&S §577.010.
Subpoenas, H&S §577.015.
Transfer of patients.
Inpatient mental health services, H&S §575.014.

PROBATE COURTS.
Administration, GOV §25.0022.
Associate judges.
Applicability of provisions, GOV §54A.202.
Definitions, GOV §54A.201.
De novo hearing before referring court, GOV §54A.216.
Orders issued by, GOV §54A.214.
Powers, GOV §54A.209.
Emergency detention.
Notice, H&S §573.0021.
Jurisdiction, GOV §25.0021.
Guardianship proceedings, EST §1022.001.
Contested guardianship.
Counties with no statutory probate court, EST §1022.004.
Counties with no statutory probate court or county court at law, EST §1022.003.

PROBATION.
Juvenile probation services.
Definitions, HR §142.001.
Post-discharge services, HR §142.007.
Referral of child exiting probation to mental health or mental retardation authority, FAM §54.0408.

PROCUREMENT.
Aging and disability services department.
Group purchasing programs, H&S §533A.017.
Purchasing contracts, H&S §533A.017.
Service providers, H&S §533A.016.
State health services department.
Group purchasing programs, H&S §533.017.
Purchasing contracts, H&S §533.017.
Service providers, H&S §533.016.

PROPERTY TAXATION.
Exemptions.
County or municipal property held for public purpose, TX ConstArt XI §9.

PROTECTION OF HEALTH INFORMATION, 45 CFR 164.102 to 45 CFR 164.535.
See HEALTH INFORMATION PRIVACY.

PROTECTIVE CUSTODY, H&S §§574.021 to 574.028.
Attorneys.
Appointment, H&S §574.024.
Detention, H&S §574.027.
Order for continued detention, H&S §574.026.
Release from, H&S §574.028.
Intellectual disability services.
Residential care facilities.
Detention, H&S §593.045.
Orders, H&S §593.044.
Release, H&S §593.046.
Orders.
Apprehension under, H&S §574.023.
Continued detention, H&S §574.026.
Issuance, H&S §574.022.
Motions, H&S §574.021.
Probable cause hearing, H&S §574.025.

PSYCHIATRIC HOSPITALS.
Admission and commitment of persons.
State facility or facility with contracted psychiatric bed.
See MENTAL HEALTH SERVICES.
Discharge from state mental health facility or facility with contracted psychiatric bed.
See DISCHARGE OF PATIENTS.
Psychiatric residential youth treatment facilities, H&S §§577A.001 to 577A.151.
See PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES.

PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES, H&S §§577A.001 to 577A.151.
Admission criteria, H&S §577A.102.
Certification.
Application for certificate, H&S §577A.052.
Fees, H&S §577A.053.
Issuance of certificate, H&S §577A.054.
Minimum standards, H&S §577A.101.
Renewal of certificate, H&S §577A.054.
Voluntary quality standards certification process, H&S §577A.051.
Definitions, H&S §577A.001.
Exemptions from provisions, H&S §577A.002.
Inspections, H&S §577A.055.
Licensing of facility, effect of provisions, H&S §577A.003.
Minimum standards for operation, H&S §577A.101.
Rulemaking to implement provisions, H&S §577A.004.
Violation of provisions, H&S §577A.151.

PSYCHIATRISTS.
Child mental health care consortium.
Child and adolescent psychiatry fellowship, H&S §113.0202.
Child psychiatry access network, H&S §113.0151.
Child psychiatry workforce expansion, H&S §113.0201.
Prisons and prisoners.
Medical and mental health care.
Compensation, GOV §501.058.

PSYCHOACTIVE MEDICATION.
Court-ordered mental health services.
Administration of medication, H&S §574.106.
Family and protective services department.
Children in conservatorship of.
Consent for, FAM §266.0042.
Monitoring use of, FAM §266.011.

PSYCHOACTIVE MEDICATION —Cont'd
Guardianship.
Administration of, EST §1151.054.
Intellectual or developmental disabilities, persons with, H&S §§592.151 to 592.160.
Administration of medication, H&S §592.152.
Residential care facilities, H&S §592.153.
Appeals, H&S §592.158.
Dangerous clients, H&S §592.157.
Definitions, H&S §592.151.
Hearings, H&S §592.156.
Date, H&S §592.154.
Orders, H&S §592.156.
Applications, H&S §592.154.
Effect of, H&S §592.159.
Expiration of, H&S §592.160.
Rights of clients, H&S §592.155.
Mental health services.
Rights of individuals receiving, H&S §576.025.

PSYCHOLOGISTS.
Guardianship proceedings.
Determination of necessity.
Incapacity of certain adults.
Health care provider examinations, EST §1101.103.
Modification of.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.
Restoration of ward's capacity.
Health care provider letter or certificate required, EST §§1202.152, 1202.1521.

PUBLIC OFFICERS OR EMPLOYEES.
Dual office holding.
General prohibition and exceptions, TX ConstArt XVI §40.
Salary or compensation for persons holding more than one public office, TX ConstArt XVI §33.

PUBLIC SAFETY EMPLOYEES TREATMENT COURT PROGRAM, GOV §§129.001 to 129.007.
Authority to establish, GOV §129.003.
Courtesy supervision, GOV §129.007.
Definitions, GOV §§129.001, 129.002.
Duties, GOV §129.004.
Eligibility, GOV §129.003.
Fees, GOV §129.006.
Procedures, GOV §129.002.
Regional programs, GOV §129.005.
Reimbursement fees, GOV §129.006.

R

REAL PROPERTY.
Aging and disability services department.
Leases, H&S §533A.087.
Management of surplus real property, H&S §533A.084.
Community centers.
Acquisition and construction, H&S §534.020.
Approval, H&S §534.021.
Notice, H&S §534.021.
Financing, H&S §534.022.
Sale of, H&S §534.023.
Durable power of attorney.
Recordation, EST §751.151.
Statutory durable power of attorney.
Powers, EST §752.102.

REAL PROPERTY —Cont'd
State health services department.
Leases, H&S §533.087.
Management of surplus real property, H&S §533.084.

RECORDS.
Aging and disability services department.
Client records.
Exchange of, H&S §533A.009.
Employment records.
Exchange of, H&S §533A.0075.
Information relating to conditions, H&S §533A.010.
Insanity defense.
Collection and maintenance of information, H&S §533A.0095.
Court-ordered mental health services.
Admission and commitment of persons, H&S §574.014.
Criminal law and procedure.
Destruction of, CPR §§144.001 to 144.009.
See DESTRUCTION OF RECORDS.
Expunction of records.
Eligibility, CCP §55.01.
Procedure, CCP §55.02.
Destruction of, CPR §§144.001 to 144.009.
See DESTRUCTION OF RECORDS.
Durable power of attorney.
Recordkeeping, EST §751.103.
Juvenile justice.
Confidentiality of probation, prosecution and court records, FAM §58.007.
Interagency sharing.
Educational records, FAM §58.0051.
Non-educational records, FAM §58.0052.
Juvenile justice department.
Care and treatment of children.
Examinations, HR §244.003.
Treatment, HR §244.003.
Medical records, H&S §§181.001 to 181.207.
See MEDICAL RECORDS.
Mental health records, H&S §§611.001 to 611.008.
See MENTAL HEALTH RECORDS.
Mental health services.
Rights of individuals receiving.
Confidential information, H&S §576.005.
Disclosure of name, birth, and dates, H&S §576.0055.
Mental illness, persons with.
Protection and advocacy system.
Access, H&S §615.002.
Private mental hospitals and mental health facilities, H&S §577.011.
Destruction of, H&S §577.012.
Schools and education.
Educational records.
Medical records.
Exemptions, H&S §181.058.
State health services department.
Employment records.
Exchange of, H&S §533.0075.
Information relating to conditions, H&S §533.010.
Insanity defense.
Collection and maintenance of information, H&S §533.0095.
Patient records.
Exchange of, H&S §533.009.

REGISTRY CLEARANCES.
See CRIMINAL HISTORY RECORD INFORMATION.

REPORTS.
Abuse, neglect, and exploitation.
State supported living centers.
Electronic monitoring of residents' rooms.
Reports, H&S §555.158.
Supported decision-making agreements, EST §1357.102.
Aging and disability services department.
Physicians.
Reports of allegations, H&S §533A.006.
Child mental health care consortium, H&S §113.0251.
Commission on jail standards.
Noncompliance, GOV §511.011.
Correctional office on offenders with medical or mental impairments.
Biennial report, H&S §614.009.
Electroconvulsive therapy, H&S §578.007.
Incompetency to stand trial.
Competency restoration, CCP §46B.079.
Examinations.
Experts, CCP §46B.025.
Time requirements, CCP §46B.026.
Insanity defense.
Court-ordered examination and report, CCP §46C.105.
Disposition following acquittal.
Commitment for evaluation and treatment, CCP §§46C.251, 46C.252.
Intellectual disability services.
Admission and commitment of persons, H&S §593.006.
Hearings, H&S §593.009.
Intermediate care facilities.
See INTERMEDIATE CARE FACILITIES.
Medical records.
Access and use.
Complaints, H&S §181.104.
Mental illness or intellectual disability, children with.
Lack of responsibility for conduct, FAM §55.59.
Child having intellectual disability, FAM §55.59.
Child having mental illness, FAM §55.56.
Child not having mental illness, FAM §55.55.
To court, FAM §55.54.
Unfitness to proceed, FAM §§55.37, 55.40.
Hearing on objections, FAM §55.36.
Missing patients or clients.
Duty to report, H&S §551.025.
Peer assistance programs, H&S §467.005.
Prisons and prisoners.
Comprehensive reentry and reintegration plan, GOV §501.103.
Private mental hospitals and mental health facilities, H&S §577.011.
Restraint and seclusion, H&S §322.056.
State supported living centers.
Duty to report, H&S §592.105.
State hospitals.
Illegal drug use, H&S §552.051.
Information management, reporting, and tracking system, H&S §552.053.
Inspector general.
Annual status report, H&S §552.103.
Summary report, H&S §552.102.
Operations, H&S §552.153.
Supported decision-making agreements.
Abuse, neglect, and exploitation, EST §1357.102.
Veterans treatment court program, GOV §124.007.

RESEARCH.
Community centers, H&S §534.032.

RESIDENTIAL CARE FACILITIES.
Intellectual disability services, H&S §§593.041 to 593.056.
See INTELLECTUAL DISABILITY SERVICES.
Intellectual or developmental disabilities, persons with.
Prior law.
Discharge of patients, H&S §593.092.
Psychoactive medication, H&S §592.153.
Transfer of patients, H&S §594.044.
Psychiatric residential youth treatment facilities, H&S §§577A.001 to 577A.151.
See PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES.
Transportation of persons to, CCP §46.04.

RESPITE CARE.
Community-based intellectual disability services, H&S §534.1075.
Intellectual disability services.
Voluntary mental health services, H&S §593.028.
Intermediate care facilities.
See INTERMEDIATE CARE FACILITIES.

RESTRAINT AND SECLUSION, H&S §§322.001 to 322.056.
Adoption of procedures, H&S §322.052.
Definitions, H&S §322.001.
Medicaid waiver program, H&S §322.055.
Mental health services.
Rights of individuals receiving, H&S §576.024.
Mental illness, persons with, H&S §571.0067.
Notice, H&S §322.053.
Pregnant inmates, GOV §501.066.
Procedures.
Adoption, H&S §322.052.
Prohibited practices, H&S §322.051.
Reports, H&S §322.056.
State supported living centers.
Duty to report, H&S §592.105.
Retaliation.
Prohibitions, H&S §322.054.
State supported living centers, H&S §§592.102 to 592.106.
Conflict of laws, H&S §592.106.
Duty to report, H&S §592.105.
Standing orders prohibited, H&S §592.103.
Straitjackets.
Prohibitions, H&S §592.104.
Use of restraints, H&S §592.102.
Wheelchairs.
Self-release seat belts.
Authorization for use, H&S §322.0515.

RETALIATION.
Restraint and seclusion.
Prohibitions, H&S §322.054.
State hospitals.
Inspector general.
Prohibitions, H&S §552.104.
State supported living centers.
Inspector general.
Prohibitions, H&S §555.104.
Office of independent ombudsman.
Prohibitions, H&S §555.060.

RETIREMENT PLANS.
Statutory durable power of attorney.
Powers, EST §752.113.

RIGHTS OF INDIVIDUALS.
Abuse, neglect, and exploitation.
See ABUSE, NEGLECT, AND EXPLOITATION.
Court-ordered mental health services.
Administration of medication, H&S §574.105.
Voluntary admission, H&S §574.153.
Criminal history record information.
See CRIMINAL HISTORY RECORD INFORMATION.
Intellectual or developmental disabilities, persons with, H&S §§592.001 to 592.160.
Bill of rights, H&S §§592.011 to 592.021.
Abuse, neglect, and exploitation.
Protection from, H&S §592.012.
Additional rights, H&S §592.021.
Determination of intellectual disability, H&S §592.018.
Independent determination, H&S §592.020.
Education, H&S §592.014.
Employment, H&S §592.015.
Hearings, H&S §592.019.
Housing, H&S §592.016.
Least restrictive living environment, H&S §592.013.
Rights guaranteed, H&S §592.011.
Services, H&S §592.017.
Treatment, H&S §592.017.
Clients, H&S §§592.031 to 592.040.
General rights, H&S §592.031.
Grievances, H&S §592.039.
Individualized plans, H&S §592.033.
Information about rights, H&S §592.040.
Least restrictive alternative, H&S §592.032.
Mistreatment.
Protection against, H&S §592.037.
Participation in planning, H&S §592.035.
Reevaluations, H&S §592.034.
Review, H&S §592.034.
Unnecessary medication.
Protection against, H&S §592.038.
Withdrawal from voluntary services, H&S §592.036.
Purpose, H&S §592.001.
Residents, H&S §§592.051 to 592.056.
Dental care and treatment, H&S §592.052.
Directors.
Duties, H&S §592.054.
General rights, H&S §592.051.
Medical care and treatment, H&S §592.052.
Standards of care, H&S §592.053.
Trust exemption.
Notice, H&S §592.056.
Unusual or hazardous treatment, H&S §592.055.
Rules and regulations, H&S §592.002.
Mental health services, H&S §§576.001 to 576.027.
Constitution, H&S §576.001.
Guardianship.
Effect on, H&S §576.004.
Habeas corpus, H&S §576.003.
Notice.
Protection and advocacy system, H&S §576.008.
Release, H&S §576.007.
Rights, H&S §576.009.
Trust exemption, H&S §576.010.
Presumption of competency, H&S §576.002.
Records.
Confidential information, H&S §576.005.
Disclosure of name, birth, and dates, H&S §576.0055.
Rights subject to limitation, H&S §576.006.
Statutes, H&S §576.001.

RIGHTS OF INDIVIDUALS —Cont'd
Mental health services —Cont'd
Treatment, H&S §§576.021 to 576.027.
Adequacy of treatment, H&S §576.022.
General rights, H&S §576.021.
Independent evaluations, H&S §576.026.
Lists of medications, H&S §576.027.
Period examinations, H&S §576.023.
Psychoactive medication, H&S §576.025.
Restraint and seclusion, H&S §576.024.
Psychoactive medication.
See PSYCHOACTIVE MEDICATION.

RULES AND REGULATIONS.
Community-based intellectual disability services, H&S §534.052.
Community-based mental health services, H&S §534.052.
Community collaboratives, GOV §547A.0008.
Forensic state supported living center, ED §29.458.
Guardianship, GOV §155.102.
Intellectual disability services, H&S §591.004.
Voluntary mental health services, H&S §593.023.
Intellectual or developmental disabilities, persons with.
Medical records, H&S §595.002.
Rights of individuals, H&S §592.002.
Intermediate care facilities.
Capacity to consent to treatment, H&S §597.002.
Juvenile justice department.
Care and treatment of children.
Foster care, HR §244.0106.
Juvenile probation departments.
Mental health screening instruments, HR §221.003.
Risk and needs assessment instruments, HR §221.003.
Local mental health authorities.
Mental health services, H&S §533.0359.
Private mental hospitals and mental health facilities, H&S §577.010.

RURAL HEALTH CARE SYSTEM.
Child mental health care consortium.
Rural pediatric mental health care access program, H&S §113.0181.
Consent, services to minor, H&S §113.0182.

S

SCHOOL-BASED HEALTH CENTERS.
See SCHOOLS AND EDUCATION.

SCHOOLS AND EDUCATION.
Behavior management.
Forensic state supported living center, ED §29.454.
Dyslexia.
Special education program requirements, ED §§29.0031, 29.0032.
Educational records.
Medical records.
Exemptions, H&S §181.058.
Forensic state supported living center, ED §§29.451 to 29.458.
Applicability of provisions, ED §29.452.
Behavior management, ED §29.454.
Behavior specialists, ED §29.454.
Definitions, ED §29.451.
Failure to agree, ED §29.456.
Funding, ED §29.457.
Memorandum of understanding, ED §29.455.

SCHOOLS AND EDUCATION —Cont'd
Forensic state supported living center —Cont'd
Rules and regulations, ED §29.458.
School district services, ED §29.453.
Intellectual or developmental disabilities, persons with.
Rights of individuals, H&S §592.014.
Records.
Educational records.
Medical records.
Exemptions, H&S §181.058.
Special education, ED §§29.001 to 29.030.
See SPECIAL EDUCATION.
Substance abuse prevention and intervention.
Peer assistance programs.
Students.
Provision of services to, H&S §467.0035.

SECLUSION, H&S §§322.001 to 322.056.
See RESTRAINT AND SECLUSION.

SENIOR CITIZENS.
See ELDERLY PERSONS.

SENTENCING.
Commencement of sentence, CCP §42.09.
Community supervision, CCP §§42A.051 to 42A.561.
See COMMUNITY SUPERVISION.
Credit for time served.
Between arrest and sentencing, CCP §42.03.
Incompetency to stand trial, CCP §46B.009.
Pending appeal, CCP §42.03.
Deferral of final disposition, CCP §45.051.
Discharge of inmate, CCP §43.13.
Juvenile justice.
Determinate sentences.
Evaluations, HR §244.015.
Parole, HR §§152.00162, 245.152.
Referral for transfer, HR §244.014.
Transfer for mental health services, HR §§152.00165, 244.0125.
Termination of control, HR §245.151.
Pronouncement of sentence, CCP §42.03.
Suspension of, CCP §45.051.

SERVICE OF PROCESS.
Guardianship proceedings.
Citation for application of guardianship, EST §1051.103.
Mental illness, persons with.
Agents, H&S §571.010.

SEXUAL OFFENSES.
Hearsay.
Admissibility of evidence, CCP §38.072.
Testimony in corroboration of victim, CCP §38.07.

SIGNATURES.
Durable power of attorney.
Presumptions, EST §751.0022.
Law enforcement officers.
Electronic documents and digital signatures, CCP §2.26.

SOVEREIGN IMMUNITY.
Medical records, H&S §181.003.

SPECIAL EDUCATION, ED §§29.001 to 29.030.
Annual meeting.
Board of trustees or governing body, student performance, ED §29.0012.
Compliance, ED §29.010.
Continuing advisory committee, ED §29.006.

SPECIAL EDUCATION —Cont'd
Contracts for services, ED §29.008.
Day placement programs.
Contracts for services, ED §29.008.
Due process hearings.
Evaluations pursuant to, ED §29.016.
Limitations period for filing complaint, ED §29.0164.
Representation, ED §29.0162.
Dyslexia and related disorders, ED §§29.0031, 29.0032.
Early childhood special education programs.
Public notice, ED §29.009.
Strategic plan to improve and expand, ED §29.0091.
Eligibility, ED §29.003.
Evaluations.
Due process hearings, ED §29.016.
Full individual and initial evaluations, ED §29.004.
Foster care.
Decision-making for children in, ED §29.015.
Grants, ED §29.018.
Hospitals.
Students confined to or educated in, ED §29.014.
Individualized education programs, ED §29.005.
Facilitation, ED §29.019.
Forms, ED §29.0051.
State-administered IEP facilitation, ED §29.020.
Local intellectual and developmental disability authority.
Information regarding, providing to parents or guardians, ED §29.030.
Military families.
Protection of rights, ED §29.0163.
Noneducational community-based support services, ED §29.013.
Parental rights.
Transfer at age of majority, ED §29.017.
Performance indicators, students receiving special education services, ED §29.0012.
Psychological examinations and tests.
Consent, ED §29.0041.
Information, ED §29.0041.
Residential facilities, ED §29.012.
Information regarding state supported living centers, ED §29.0056.
Residential placement, ED §29.008.
Rules, authority to adopt, ED §29.026.
Statewide plan, ED §29.001.
Supervision, ED §29.010.
Surrogate parents.
Appointment, ED §29.0151.
Transition planning, ED §29.011.
Commencement, ED §29.0111.
Driving with disability program, ED §29.0113.
Transition and employment guide, ED §29.0112.
Video surveillance, ED §29.022.

SPECIAL OLYMPICS.
License plates.
Aging and disability services department.
Revenues, H&S §533A.018.
Special Olympics Texas account, H&S §533A.018.

SPECIALTY COURTS.
Advisory council, GOV §772.0061.
Definitions, GOV §121.001.
Mental health court programs, GOV §§125.001, 125.005.
See MENTAL HEALTH COURT PROGRAMS.
Oversight, GOV §121.002.

SPECIALTY COURTS —Cont'd
Presiding judge or magistrate.
Appointment, GOV §121.003.
Jurisdiction and authority, GOV §121.004.
Public safety employees treatment court program, GOV §§129.001 to 129.007.
See PUBLIC SAFETY EMPLOYEES TREATMENT COURT PROGRAM.
Veterans treatment court program, GOV §§124.001 to 124.007.
See VETERANS TREATMENT COURT PROGRAM.

SPEEDY TRIAL.
Trial priorities, CCP §32A.01.

STANDING.
Guardianship proceedings, EST §1055.001.

STATE HEALTH SERVICES DEPARTMENT.
Advisory committees, H&S §532.004.
Commissioner.
Conflict of laws, H&S §533.0002.
Powers and duties, H&S §533.0002.
Criminal history record information.
Use of, H&S §533.007.
Definitions, H&S §§532.001, 533.0001.
Easements, H&S §533.005.
Employees.
Employment opportunities for persons with mental illness or intellectual disabilities, H&S §533.008.
Exchange of employment records, H&S §533.0075.
Facilities, H&S §§533.081 to 533.087.
Budgets, H&S §533.081.
Expansion, closure, or consolidation, H&S §533.083.
Inmate and parolee care, H&S §533.085.
Mental health community services account, H&S §533.0844.
Real property.
Leases, H&S §533.087.
Management of surplus real property, H&S §533.084.
Savings.
Determinations, H&S §533.082.
Forensic director, H&S §532.013.
Gifts, H&S §533.001.
Grants, H&S §533.001.
Inspections.
Unannounced inspections, H&S §533.015.
Jail diversion programs.
Prioritization of funding, H&S §533.108.
Liens, H&S §533.004.
Local authorities and community centers.
Volunteer programs, use of funds for, H&S §533.003.
Medical director, H&S §§532.002, 532.012.
Mental health facilities.
See MENTAL HEALTH FACILITIES.
Mental health services, H&S §§533.031 to 533.053.
See MENTAL HEALTH SERVICES.
Mental illness, persons with.
Delegation of powers and duties, H&S §571.007.
Powers, H&S §571.006.
Procurement.
Group purchasing programs, H&S §533.017.
Purchasing contracts, H&S §533.017.
Service providers, H&S §533.016.
Records.
Employment records.
Exchange of, H&S §533.0075.
Information relating to conditions, H&S §533.010.

STATE HEALTH SERVICES DEPARTMENT —Cont'd
Records —Cont'd
Insanity defense.
Collection and maintenance of information, H&S §533.0095.
Patient records.
Exchange of, H&S §533.009.
Return of patient to state of residence, H&S §533A.011.
Special Olympics Texas account, H&S §533A.018.
State agencies.
Cooperation, H&S §533.012.
Volunteer programs, use of funds for, H&S §533.003.

STATE HOSPITALS, H&S §§552.001 to 552.154.
Carrying handguns in, H&S §552.002.
Definitions, H&S §552.0011.
Discharge and absences from state mental health facility or facility with contracted psychiatric bed.
See DISCHARGE OF PATIENTS.
Employees.
Training, H&S §552.052.
Firearms and other weapons.
Carrying handguns in, H&S §552.002.
Hospital districts, H&S §552.001.
Illegal drug use.
Reports, H&S §552.051.
Indigent and nonindigent patients, H&S §§552.012 to 552.020.
Applicability of provisions, H&S §552.020.
Child support.
Payments for benefit of patients, H&S §552.014.
Classification of patients, H&S §552.012.
Definition of patients, H&S §552.012.
Fees, H&S §552.016.
Sliding schedule, H&S §552.017.
Filing of claims, H&S §552.019.
Means of support.
Investigations, H&S §552.015.
Support of patients, H&S §552.013.
Trust principals, H&S §552.018.
Information management, reporting, and tracking system, H&S §552.053.
Inspector general.
Annual status report, H&S §552.103.
Investigations.
Assisting law enforcement agencies, H&S §552.101.
Retaliation.
Prohibitions, H&S §552.104.
Summary report, H&S §552.102.
Operations.
Plan requirements, H&S §552.152.
Reports, H&S §552.153.
Transition planning, H&S §552.151.
Reports.
Illegal drug use, H&S §552.051.
Information management, reporting, and tracking system, H&S §552.053.
Inspector general.
Annual status report, H&S §552.103.
Summary report, H&S §552.102.
Operations, H&S §552.153.
Risk assessment protocols, H&S §552.054.
Superintendent, H&S §552.154.

STATE JAIL DIVISION.
Furlough program, GOV §507.031.

STATE JAIL DIVISION —Cont'd
Veterans reentry dorm program, GOV §507.034.

STATE SUPPORTED LIVING CENTERS, H&S §§555.001 to 555.202.
Commissioner.
Admission, H&S §551.024.
Criminal history record information, H&S §555.021.
Definitions, H&S §555.001.
Directors.
Powers and duties, H&S §551.0225.
Electronic monitoring of residents' rooms, H&S §§555.151 to 555.162.
Abuse, neglect, and exploitation.
Reports, H&S §555.158.
Civil liability, H&S §555.152.
Covert use of devices, H&S §555.153.
Consent of other residents, H&S §555.156.
Covert use of devices, H&S §555.153.
Criminal liability, H&S §555.152.
Covert use of devices, H&S §555.153.
Definitions, H&S §555.151.
Enforcement, H&S §555.161.
Forms, H&S §555.154.
General provisions, H&S §555.157.
Interference with devices, H&S §555.162.
Notice, H&S §555.160.
Requests.
Forms, H&S §555.156.
Persons entitled to request, H&S §555.155.
Use of recording by agency or court, H&S §555.159.
Video surveillance, H&S §555.025.
Employees.
Criminal history record information, H&S §555.021.
Drug testing, H&S §555.022.
Illegal drug use.
Reports, H&S §555.023.
Training, H&S §555.024.
Executive commissioner.
Admission, H&S §551.024.
Forensic state supported living centers, H&S §555.002.
Heads, H&S §532A.003.
High-risk alleged offender residents.
Determination of status, H&S §555.003.
Inspector general.
Annual status report, H&S §555.103.
Investigations.
Assisting law enforcement officers, H&S §555.101.
Retaliation.
Prohibitions, H&S §555.104.
Summary report, H&S §555.102.
Missing patients or clients.
Duty to report, H&S §551.025.
Office of independent ombudsman, H&S §§555.051 to 555.061.
Appointment, H&S §555.053.
Assistant ombudsman, H&S §555.054.
Communication, H&S §555.057.
Confidential information, H&S §555.057.
Conflicts of interest, H&S §555.055.
Establishment, H&S §555.051.
Independence, H&S §555.052.
Powers and duties, H&S §555.059.
Promotion of awareness of office, H&S §555.058.
Purpose, H&S §555.051.
Reports, H&S §555.056.
Retaliation.
Prohibitions, H&S §555.060.

STATE SUPPORTED LIVING CENTERS —Cont'd
Office of independent ombudsman —Cont'd
Toll-free telephone number, H&S §555.061.
Reports.
Electronic monitoring of residents' rooms.
Abuse, neglect, and exploitation, H&S §555.158.
Employees.
Illegal drug use, H&S §555.023.
Inspector general.
Annual status report, H&S §555.103.
Summary report, H&S §555.102.
Office of independent ombudsman, H&S §555.056.
Restraint and seclusion, H&S §§592.102 to 592.106.
Conflict of laws, H&S §592.106.
Duty to report, H&S §592.105.
Standing orders prohibited, H&S §592.103.
Straitjackets.
Prohibitions, H&S §592.104.
Use of restraints, H&S §592.102.
Right to essential caregiver visits, H&S §§555.201, 555.202.
Designation of essential caregiver by facility resident, TX ConstArt I §35.
Video surveillance, H&S §555.025.

STATUTORY CONSTRUCTION.
Durable power of attorney.
Conflict of laws, EST §751.007.
Remedies under other laws, EST §751.006.
Statutory durable power of attorney, EST §752.101.
Uniformity, EST §751.003.
Interstate corrections compact, CCP §42.19.

STATUTORY COUNTY COURTS.
See COUNTY COURTS.

STATUTORY DURABLE POWER OF ATTORNEY, EST §§752.001 to 752.115.
See DURABLE POWER OF ATTORNEY.

STAY OF PROCEEDINGS.
Mental illness or intellectual disability, children with.
Admission and commitment of persons, FAM §55.16.

STOCKS AND BONDS.
Statutory durable power of attorney.
Powers, EST §752.104.

STRAITJACKETS.
State supported living centers.
Prohibitions, H&S §592.104.

SUBPOENAS.
Private mental hospitals and mental health facilities, H&S §577.015.

SUBSTANCE USE DISORDERS.
Diversion of persons, CCP §16.23.
Conditions of pretrial intervention program, reporting, CCP Art 16.24.
Peer assistance programs, H&S §§467.001 to 467.008.
Applicability of provisions, H&S §467.002.
Assistance to impaired professionals, H&S §467.006.
Confidential information, H&S §467.007.
Definitions, H&S §467.001.
Disclosure of information.
Consent, H&S §467.0075.
Establishment, H&S §467.003.
Funding, H&S §467.004.
State board of dental examiners, H&S §467.0041.
Immunity from liability, H&S §467.008.

SUBSTANCE USE DISORDERS —Cont'd
Peer assistance programs —Cont'd
Reports, H&S §467.005.
Students.
Provision of services to, H&S §467.0035.
State hospitals.
Illegal drug use.
Reports, H&S §552.051.
State supported living centers.
Employees.
Illegal drug use.
Reports, H&S §555.023.

SUPPORTED DECISION-MAKING AGREEMENT ACT, EST §§1357.001 to 1357.102.
See GUARDIANSHIP.

SUPREME COURT.
Child protective services.
Judicial guidance, GOV §22.0135.
Juvenile justice.
Judicial guidance, GOV §22.0135.

T

TAXATION.
Statutory durable power of attorney.
Powers, EST §752.113.

TELEMEDICINE AND TELEHEALTH SERVICES.
Child mental health care consortium.
Rural pediatric mental health care access program, H&S §113.0181.
Consent, services to minor, H&S §113.0182.
Telemedicine and telehealth programs, H&S §113.0151.
Definitions, OCC §§111.001, 113.001.
Patients located outside of state, OCC §113.002.

TEXAS CHILD MENTAL HEALTH CARE CONSORTIUM, H&S §§113.0001 to 113.0252.
See CHILD MENTAL HEALTH CARE CONSORTIUM.

TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS, H&S §§614.001 to 614.021.
See CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS.

TEXAS INDIGENT DEFENSE COMMISSION.
Definitions, GOV §79.001.
Policies, GOV §79.034.
Standards, GOV §79.034.

TEXAS RULES OF EVIDENCE.
Incompetency to stand trial.
Applicability of provisions, CCP §46B.008.

TRANSCRIPTS.
Court-ordered mental health services.
Hearings, H&S §574.047.
Incompetency to stand trial, CCP §46B.171.

TRANSFER OF PATIENTS.
Incompetency to stand trial.
Admission and commitment of persons.
Placement.
Transfer of patients following, CCP §46B.105.
Inpatient mental health services, H&S §§575.011 to 575.017.
From criminal justice department facility, H&S §575.016.
Intellectual or developmental disabilities, persons with.
To inpatient mental health facilities, H&S §575.012.

TRANSFER OF PATIENTS —Cont'd
Inpatient mental health services —Cont'd
Intellectual or developmental disabilities, persons with —Cont'd
To state supported living centers, H&S §575.013.
Medical records, H&S §575.017.
To federal facility, H&S §575.015.
To local mental health authority, H&S §575.011.
To private mental hospital or mental health facility, H&S §575.014.
To state mental health facility, H&S §575.011.
Intellectual or developmental disabilities, persons with, H&S §§594.001 to 594.0301.
Alternative services, H&S §594.019.
Appeals, H&S §594.017.
Applicability of provisions, H&S §594.001.
Approval, H&S §594.013.
Decisions, H&S §594.016.
Furloughs, H&S §594.002.
Habeas corpus.
Effect on, H&S §594.003.
Hearings, H&S §594.015.
Right to, H&S §594.014.
Inpatient mental health services.
To inpatient mental health facilities, H&S §575.012.
To state supported living centers, H&S §575.013.
Leaves of absence, H&S §594.002.
Notice, H&S §594.013.
Committing court, H&S §594.018.
Requests, H&S §594.012.
Service providers, H&S §594.011.
To state mental hospitals, H&S §§594.031 to 594.045.
Court-committed residents, H&S §594.032.
Return of, H&S §594.045.
Definitions, H&S §594.0301.
Discharge, H&S §594.043.
Evaluation of resident upon transfer, H&S §594.033.
Hearings.
Date, H&S §594.035.
Determinations, H&S §594.042.
Jury trial, H&S §594.038.
Location, H&S §594.037.
Medical evidence, H&S §594.041.
Notice, H&S §594.036.
Open hearing, H&S §594.040.
Presence of resident, H&S §594.039.
Orders, H&S §594.034.
Requests, H&S §594.034.
Residential care facilities, H&S §594.044.
Voluntary residents, H&S §594.031.
Interstate compact on mental health.
Requirements affecting, H&S §612.007.
Local mental health authorities.
Inpatient mental health services, H&S §575.011.

TRANSPORTATION OF PERSONS.
Court-ordered mental health services, H&S §574.045.
Acknowledgment of delivery, H&S §574.048.
Discharge of patients.
Transportation plans, H&S §574.089.
Furloughs.
Discharge of patients, H&S §574.089.
List of qualified service providers, H&S §574.0455.
To other state, H&S §574.0456.
Writ of commitment, H&S §574.046.
Emergency detention.
By emergency medical services providers, H&S §573.005.

TRANSPORTATION OF PERSONS —Cont'd
Emergency detention —Cont'd
By guardian, H&S §573.003.
Following detention, H&S §573.026.
Following release, H&S §573.024.
Memorandum of understanding, H&S §573.005.
Incompetency to stand trial.
Administration of medication while in custody of sheriff, CCP §46B.0825.
To court, CCP §§46B.082, 46B.114.
To facilities, CCP §46B.075.
Mental illness or intellectual disability, children with.
Lack of responsibility for conduct, FAM §55.53.
Unfitness to proceed, FAM §55.34.
To mental health facilities, CCP §46.04.
To residential care facilities, CCP §46.04.
Voluntary mental health services.
Transportation of patients to other state, H&S §572.0051.

TRUANCY COURTS.
Initial procedures.
Mental illness, children with, FAM §65.065.

TRUSTS AND TRUSTEES.
Exemptions.
Community centers, H&S §534.0175.
Notice.
Intellectual or developmental disabilities, persons with.
Residents, H&S §592.056.
Mental health services.
Rights of individuals receiving, H&S §576.010.
Intellectual disability services.
Fees, H&S §593.081.
State hospitals.
Trust principals, H&S §552.018.
Statutory durable power of attorney.
Powers, EST §752.108.

V

VENUE.
Guardianship proceedings.
Appointment, EST §1023.001.
Concurrent venue, EST §1023.002.
Transfer for want of venue, EST §1023.002.
Transfer of guardianship, EST §1023.003.

VETERANS.
Jails.
Veterans reentry dorm program, GOV §507.034.
Mental health programs.
Community collaboration, GOV §§434.401, 434.401.
Statewide coordination, GOV §§434.351 to 434.353.
Certification, GOV §434.353.
Definitions, GOV §434.351.
Director.
Eligibility, GOV §434.3525.
Duties, GOV §434.352.
Training, GOV §434.353.
Texas veterans commission, GOV §434.024.
Prisons and prisoners.
Verification of veteran status, GOV §501.024.
Veterans services coordinator, GOV §501.025.
Veterans treatment court program, GOV §§124.001 to 124.007.
See VETERANS TREATMENT COURT PROGRAM.

VETERANS TREATMENT COURT PROGRAM, GOV §§124.001 to 124.007.
Authority to establish, GOV §124.002.
Courtesy supervision, GOV §124.006.
Definitions, GOV §124.001.
Duties, GOV §124.003.
Eligibility, GOV §124.002.
Fees, GOV §124.005.
Procedures, GOV §124.001.
Regional programs, GOV §124.004.
Reimbursement fees, GOV §124.005.
Reports, GOV §124.007.

VICTIMS OF CRIMES.
Compensation.
Medical records.
Exemptions, H&S §181.059.
Insanity defense.
Notification of release, CCP §46C.003.
Sexual offenses.
Testimony in corroboration of victim, CCP §38.07.

VIDEOTAPING.
Court-ordered mental health services.
Applicability of provisions, H&S §574.201.
Testimony permitted, H&S §574.202.
Use of secure electronic communication method, H&S §574.203.
Special education.
Video surveillance, ED §29.022.

VOLUNTARY MENTAL HEALTH SERVICES, H&S §§572.001 to 572.0051.
Admission and commitment of persons, H&S §572.002.
Requests for admission, H&S §572.001.
Restrictions based on available space, H&S §572.0026.
State facility or facility with contracted psychiatric bed.
See MENTAL HEALTH SERVICES.
Assessments, H&S §572.0025.
Court-ordered mental health services.
Applicability of provisions, H&S §574.151.
Applications, H&S §572.005.
Capacity to consent to treatment, H&S §574.152.
Human subject research, H&S §574.154.
Rights of patients, H&S §574.153.
Discharge, H&S §572.004.
Intellectual or developmental disabilities, persons with.
Prior law.
Discharge of patients, H&S §593.092.
Inpatient mental health services.
Admission and commitment of persons.
Private mental hospitals and mental health facilities, H&S §575.002.
Intake, H&S §572.0025.
Intellectual disability services, H&S §§593.021 to 593.030.
See INTELLECTUAL DISABILITY SERVICES.
Intellectual or developmental disabilities, persons with.
Prior law.
Discharge of patients, H&S §593.092.
Transfer of patients to state mental hospitals, H&S §594.031.
Withdrawal from voluntary services, H&S §592.036.
Medication information, H&S §572.0022.
Rights of patients, H&S §572.003.

VOLUNTARY MENTAL HEALTH SERVICES —Cont'd
Transportation of patients to other state, H&S §572.0051.

VOLUNTEERS.
Community centers.
Volunteer programs.
Use of funds, H&S §533A.003.
Local mental health authorities.
Volunteer programs.
Use of funds, H&S §533A.003.

W

WACO CENTER FOR YOUTH.
Admission of juveniles, H&S §554.001.
Definitions, H&S §554.0001.
Services, H&S §554.002.

WARRANTS.
Arrest under warrant.
Arresting officers.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Magistrates.
Duties, CCP §§15.17, 15.171.
Out of county offense, CCP §15.18.
Arrest without warrant.
Intellectual or developmental disabilities, persons with.
Release in lieu of arrest, CCP §14.035.
Law enforcement officers.
Authority, CCP §14.03.
Extraterritorial arrest, CCP §14.051.
Offense within view, CCP §14.01.
Taking offender before magistrate, CCP §14.06.

WARRANTS —Cont'd
Emergency detention.
Apprehension without, H&S §573.001.
Issuance, H&S §573.012.

WHEELCHAIRS.
Self-release seat belts.
Authorization for use, H&S §322.0515.

WITNESSES.
Declaration for mental health treatment, CPR §137.003.
Guardianship proceedings.
Applicability of rules, EST §1055.101.
Supported decision-making agreements, EST §1357.055.

WORKERS' COMPENSATION.
Medical records.
Exemptions, H&S §181.054.

Y

YOUTH DIVERSION, CCP §§45.301 to 45.313.
Agreement, CCP §45.308.
Applicability, CCP §45.302.
Coordinator, CCP §45.307.
Definitions, CCP §45.301.
Eligibility, CCP §45.304.
Intermediate diversion, CCP §45.309.
Judicial diversion, CCP §45.310.
Local administrative fee, CCP §45.312.
Plan for diversion, CCP §45.306.
Records, CCP §45.313.
Referral to court, CCP §45.311.
Strategies for diversion, CCP §45.305.
Transfer to juvenile courts, CCP §45.303.