

Forensic Commitment of Individuals with Intellectual Disabilities in Texas

Understanding Legal Pathways For Forensic Commitment of Individuals with Intellectual Disabilities

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COMMITMENT FOR RESTORATION TO COMPETENCY

46B.073

- COMMITMENT IS ONLY FOR COMPETENCY RESTORATION
- Applies only IF:
 - Person is likely to be restored
 - Not released on bail
- Committed to:
 - Mental Health Facility
 - SSLC
 - JBCR
- Length of Commitment – Begins on Date Restoration Services Starts
 - 60 days misdemeanor – 60 day extension
 - 120 days felony - 60 day extension

Expiration of Restoration Period

46B.079

- 15th day before the restoration period is to expire, head of Program Submits to Court whether:
 - defendant has attained competency to stand trial
 - Trial Resumes
 - defendant is has not attained competency and/or won't in the foreseeable future.
 - Proceed under
 - Subchapter E – Charges not Dismissed
 - Subchapter F – Charges Dismissed

SUBCHAPTER E. CIVIL COMMITMENT: CHARGES PENDING

The Purpose of this Commitment is no longer solely for Restoration Treatment, but for mental health and/or rehabilitation

Proceed under

Art. 46B.102. CIVIL COMMITMENT HEARING: MENTAL ILLNESS.

Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL DISABILITY.

Article 46B.103 Procedures for Commitment

46B.103(b) Proceedings for commitment of the defendant to a residential care facility are governed by Subtitle D, Title 7, Health and Safety Code – TEX. HEALTH & SAFETY CODE §593.041 *et sec*

Some people are familiar with involuntary commitment standards for mental health proceedings, but the standards and processes are not the same.

Application and IDT Report for Commitment To Court

§ 593.041

- ✓ The Application includes
 - Requesting an IDT Report; and
 - Recommendation that person is in need of SSLC

- ✓ A person may not be committed to the department for SSLC placement - In re A.W., 443 S.W.3d 405, 411–13 (Tex. App.—Eastland 2014, no pet.)
 - Unless an IDT report recommending placement has been completed
 - IDT report must be no more than 6 months old

- ✓ If no IDT Report, court must order the report.

IDT Composition

§ 591.003(8)



Who Must Participate in the IDT

- The individual
 - The individual's legally authorized representative (LAR), if any
 - Qualified professionals with special training and experience in ID (e.g., psychologist, psychiatrist, social worker)
 - May include service providers, school reps, or others at request
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- In re A.W., 443 S.W.3d 405, 411–13 (Tex. App.—Eastland 2014, no pet.)

What the IDT Report Must Contain

- Interview the person and the person's parent/guardian
- Review:
 - medical and social history
 - medical assessment (audiological, neurological, vision)
 - psychological and social assessment
 - adaptive behavior levels
- Determine and obtain any needed additional assessments (education, vocational)
- Identify the person's service preferences and needs
- Recommend services that meet the person's needs and consider the person's preferences
- Prepare and distribute written report of findings and recommendations, signed by all team members

Statutory Criteria for Involuntary SSLC Commitment

§ 593.052

- To commit someone, court must find:

1. Person has an intellectual disability and BECAUSE of the ID

2. Poses a substantial risk of harm or cannot meet basic needs

3. Less restrictive alternatives are unavailable or unable to meet the individual's identified needs

4. SSLC can meet their needs

- All four findings must be proven **beyond a reasonable doubt** § 593.050(d)

Key Definitions

§ 591.003

- Intellectual Disability: Subaverage intellectual functioning + adaptive deficits from developmental period
- Residential Care Facility: Is only SSLCs
- Least Restrictive Alternative: Least confining, least intrusive setting appropriate to the individual

Person Has An Intellectual Disability

§ 593.003 - 593.010

- Only an “authorized provider” can make this determination
 - a physician licensed to practice in this state;
 - a psychologist licensed to practice in this state;
 - a professional licensed to practice in this state and certified by the department; or
 - a provider certified by the department before September 1, 2013.
- Right to an Admin Hearing and Appeal to contest the findings

Defining 'Substantial Risk'

26 TAC § 904.25(d)

► Risk exists if:

- ✓ IQ is 4+ SDs below mean (severe/profound ID)
- ✓ ICAP Level 1–4, or
- ✓ ICAP Level 5–6 with:
 - 180+ min/week nursing needs OR
 - Dangerous behaviors needing intensive staff support

Duration of Forensic Commitment

§ 594.011

- No set term limits

- Release when:

- ✓ Criteria no longer met

- O'Connor* Court held that it is not enough that a defendant's "[initial] confinement was founded upon a constitutionally adequate basis . . . because even if his involuntary confinement was initially permissible, it could not continue . . . after that basis no longer existed. see *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975)

- ✓ IDT recommends

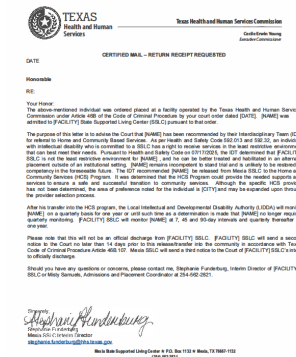
Notification of Possible Release of Defendant After Civil Commitment

46B.107

- Head of Facility notifies court 14 days before defendant is to be released

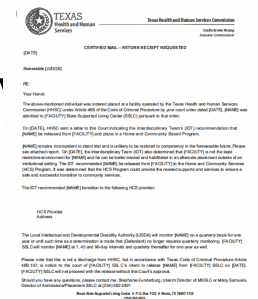
- First Letter

- Individual remains incompetent, and ready for discharge



- Second Letter

- Individual remains incompetent and have identified an appropriate community placement



Hearing on Release From SSLC

- Required to Follow Subtitle D, Title 7, Health and Safety Code - 593.041 *et seq.*
 - Slides 7-14 apply
 - “Commit-or-Release rule“ - requires the release of individuals who do not meet civil commitment criteria. *Harris v. Clay Cnty., Mississippi*, 47 F.4th 271, 278–79 (5th Cir. 2022), cert. dismissed sub nom. *Huffman v. Harris*, 143 S. Ct. 1074 (2023).

No Out-Patient Commitment or Conditions

- **No Bail or Bond Provisions Allow Court to Issue Conditions**
 - Article 17.032 “Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disabilities,” Applies only to defendants who are BOTH
 - not charged with violent offenses and
 - who are nonetheless “competent to stand trial.” See TEX. CODE CRIM. PRO. art. 17.032(a); (b)(3)(A).
 - Bail Decision – see article 17.028(j) Applies only to a defendant who is able to execute an affidavit of indigency, otherwise, the court should evaluate the case under Article 16.22.
 - Article 16.22 – is pre-incompetency determination.
- **Statutory Language of 46B and Health & Safety Code Don’t allow Conditions**

Compare Plain Language of Statutes

Subtitle D, Title 7, Health & Safety Code

Persons with an Intellectual Disability Act (PIDA)

- **No** → Outpatient/Community Commitment
 - **Subchapter C.** Commitment to Residential Care Facility
- **No** → Conditions

Subtitle C, Title 7, Health & Safety Code

Mental Health Code

- **Yes** → Outpatient/Community Treatment Commitment
 - **Sec. 574.0345/.0355.** Order For Temp/Extended Outpatient Mental Health Services - severe and persistent mental illness and as a result of the mental illness
 - **Sec. 574.061.** Modification of Order for Inpatient Treatment. (a) assess the appropriateness of transferring the patient to outpatient mental health services.
- **Yes** → Conditions
 - **Sec. 574.037.** Court-Ordered Outpatient Services - general treatment program
- **BUT** → failure to comply with the program is not grounds for punishment or contempt

Code of Criminal Procedure Chapter 46C. Insanity Defense

- **Yes** → Outpatient/Community Treatment
- **Yes** → Conditions
 - **Art. 46C.257.** Order to Receive Outpatient or Community-Based Treatment and Supervision
 - **Art. 46C.263.** Court-Ordered Outpatient or Community-Based Treatment and Supervision
 - (d) The court may order that supervision of the acquitted person be provided by the appropriate community supervision and corrections department...
 - (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.
 - **Art. 46C.266.** Modification or Revocation of Order for Outpatient or Community-Based Treatment and Supervision

Release from SSLC

- Sample Transfer Order

THE STATE OF TEXAS

VS.

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CAUSE NO.

IN THE ____TH DISTRICT COURT

OF

____ COUNTY, TEXAS

ORDER TRANSITIONING DEFENDANT FROM RESIDENTIAL PLACEMENT TO COMMUNITY LIVING

On [DATE], the above numbered and styled cause was heard, pursuant to Article 46B of the Texas Code of Criminal Procedure, for a determination of whether the Defendant, [NAME], continues to meet criteria for long-term placement in a residential care facility under Article 46B.103 of the Texas Code of Criminal Procedure and whether the Court should approve [FACILITY] State Supported Living Center's proposed Community Living Discharge Plan and intent to release the Defendant from residential placement to community placement.

The Defendant was previously found incompetent to stand trial and was committed to a state supported living center. The Court has received notice from the administrator of [FACILITY] State Supported Living Center informing the Court that the Defendant is still incompetent to stand trial and unlikely to be restored to competence within the foreseeable future.

In addition, the Court has been informed that the Interdisciplinary Team at [FACILITY] State Supported Living Center has determined that the Defendant no longer meets commitment criteria under Subtitle D, Title 7, Health and Safety Code since his placement at the state supported living center is no longer appropriate and is no longer the least restrictive environment for the Defendant. [FACILITY] State Supported Living Center has provided the Court with the updated Interdisciplinary Team's Community Living Discharge Plan (CLDP). Now before this Court for its consideration is [FACILITY] State Supported Living Center's notice of the Interdisciplinary Team's recommendation that Defendant be released to HCS provider [HCS PROVIDER NAME AND ADDRESS], and the proposed Community Living Discharge Plan.

On [DATE], the Defendant appeared through his attorney, [ATTORNEY], and the State appeared through her Assistant Criminal District Attorney, [ATTORNEY]. Neither party had an objection to the Community Living Discharge Plan, and neither party opposed the Defendant's transition to [HCS NAME]. Moreover, neither party requested a hearing.

Both sides announced ready, and there being a status update regarding trial competency dated _____ on filed with the Court from [DOCTOR NAME] who practiced at [FACILITY] State Supported Living Center, as well as a Community Living Discharge Plan dated [DATE], from members of the Interdisciplinary Team at [FACILITY] State Supported Living Center. Both parties agreed to the opinions and conclusions stated in the status update regarding trial competency of [DOCTOR NAME] dated _____, stating that the Defendant is incompetent to stand trial and agreed to the supports and services identified in the CLDP dated February 26, 2025. All matters of fact and law were submitted to the Court.