TEXAS JUDICIAL COUNCIL

CIVIL JUSTICE Committee

REPORT
AND
RECOMMENDATIONS

2024

Background

In November 2023, the Texas Judicial Council charged the Civil Justice Committee with:

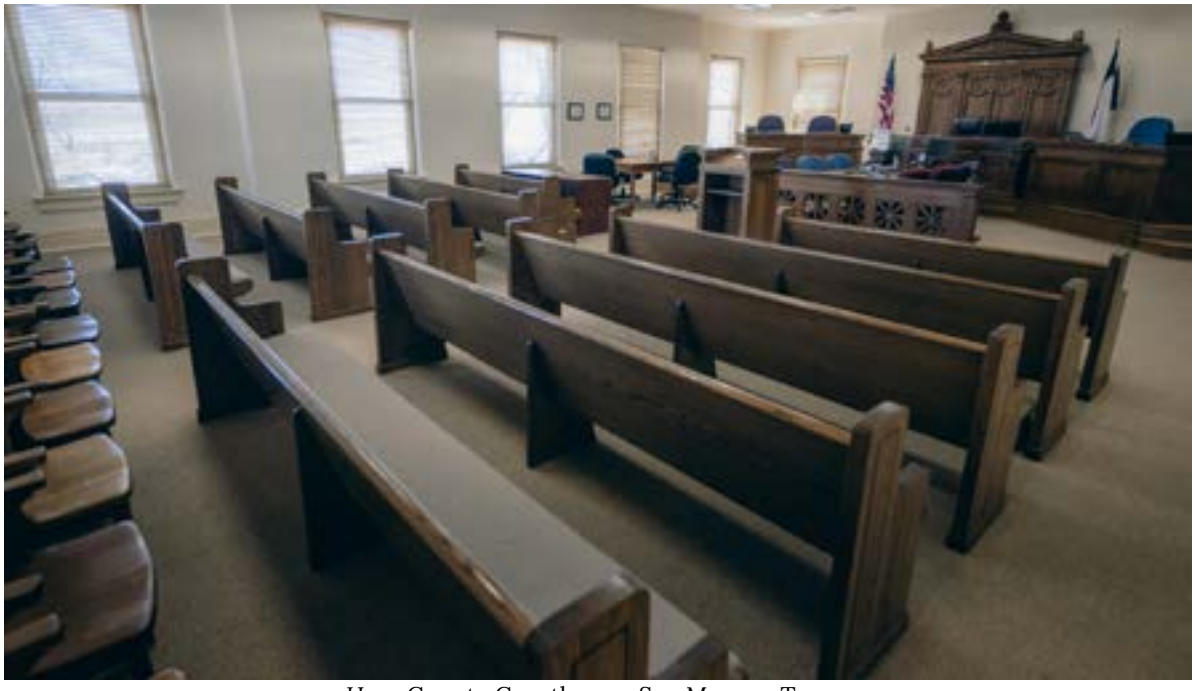
- Monitoring implementation of the Texas Business Court.
- Studying the use of Artificial Intelligence in Texas Courts across the board —management, procedure, evidence, filings, security, etc.— and recommending any necessary reforms. (Joint Charge with Data Committee)
- Studying ways to improve court efficiency and recommending any necessary reforms. (Joint Charge with the Criminal Justice Committee)
- Monitoring the legislatively mandated study being conducted by the Office of Court Administration of the court personnel workload of the district and statutory county courts and making recommendations regarding any increased need for additional court staff. (Joint Charge with Public Trust and Confidence and Criminal Justice Committees)
- Studying ways to simplify the jurisdiction of the courts of Texas and to make jurisdiction uniform by court level and across the State.
- Studying whether extending judicial terms from 4 to 6 years for trial courts and from 6 to 8 years for appellate courts would materially improve the courts' ability to discharge their judicial function, would provide greater stability in the judiciary, and would allow greater participation by voters because of the decrease in the number of judicial positions up for election at any given time. (Joint Charge with the Criminal Justice and Public Trust and Confidence Committees)
- Continuing to study the landscape of the Texas Civil Justice System and recommending any necessary reforms to improve access to justice in Texas Courts.

Cover photo: Hays County Courthouse, San Marcos, Texas.

Members of the Committee are:

Honorable Emily Miskel, Chair
Ms. Zina Bash
Mr. Kevin Bryant
Honorable Jenn Caughey
Honorable Jon Gimble
Honorable Claudia Laird
Representative Jeff Leach
Honorable Valencia Nash
Ms. Rachel Racz
Senator Judith Zaffirini

The Texas Judicial Council's Civil Justice Committee met on April 1, June 18, and September 9, 2024.



Hays County Courthouse, San Marcos, Texas.

Recommendations in Brief

Artificial Intelligence in Texas Courts

Recommendation 1: The Texas Supreme Court should consider adopting rules requiring local courts to ensure the acceptable use of AI by court staff is included in existing policies.

Recommendation 2: The Court of Criminal Appeals, as part of its judicial education administration, should advance education for judges, clerks, and court staff focusing on basic AI concepts, the potential benefits of and risks of AI use (AI bias, AI deepfakes, AI hallucinations, etc.), and how to identify and operate AI applications in court-based settings.

Recommendation 3: The Office of Court Administration should seek funding to expand the use of robotic process automation across the state to improve the electronic filing process.

Recommendation 4: The Office of Court Administration should conduct an inventory study across the judiciary to see what AI tools are currently in use or planned for use.

Recommendation 5: The Texas Supreme Court should consider studying what changes might be necessary to its rules or to statutes to address the manipulation of evidence through AI.

Supporting Court Personnel

Recommendation: The Legislature should establish a grant fund to enhance court efficiency similar to the grant program established by the 88th Legislature in Senate Bill 22 to provide financial assistance to rural law enforcement and prosecutors.

Courts and the ADA

Recommendation: The Office of Court Administration should develop an ADA bench book for use by courts and clerks and should develop model ADA standards for adoption by courts and clerks.

Improving Court Efficiency

Recommendation 1: To streamline the overlapping jurisdictions of courts, the Legislature should remove specific amounts-in-controversy from Article 5 of the Constitution and instead define the jurisdictional amount by statute.

Recommendation 2: To streamline the overlapping jurisdictions of courts, the Legislature should raise the minimum amount in controversy for civil cases originally filed in district courts.

Recommendation 3: The Legislature should raise the amount in controversy ceiling for all statutory county courts from $250,000 to $325,000.

Recommendation 4: The Office of Court Administration should enhance the leadership of Local Administrative Judges and court administrators by establishing an annual convening of those serving in leadership positions.

Recommendation 5: The Legislature should amend Government Code Section 74.091 and Section 74.0911 to require that a Local Administrative Judge serve in their role for a minimum term of two years to improve the continuity of local judicial administration.

Recommendation 6: A task force should be created to develop a manual for Local Administrative Judges on their role and responsibilities.

Recommendation 7: The Local Administrative Judge supplement should be increased to match their responsibilities.

Texas Children's Commission Legislative Recommendations

Recommendation: The Texas Judicial Council should continue to work with the Texas Children's Commission on the Commission's legislative recommendations.[1]

Texas Judicial Commission on Mental Health Legislative Recommendations

Recommendation: The Texas Judicial Council should continue to work with the Texas Judicial Commission on Mental Health on the Commission's legislative recommendations.[2]

1 On September 27, 2024, the Texas Judicial Council adopted the recommendations of the Texas Children's Commission's Legislation and Policy Resource Committee.

2 On September 27, 2024, the Texas Judicial Council adopted the recommendations of the Texas Judicial Commission on Mental Health.

Recommendations in Detail

Artificial Intelligence in Texas Courts

Background

Few current topics capture the imagination like artificial intelligence (AI). Today, "AI" is an umbrella term that covers many current and emerging technologies. It can power autonomous vehicles, generate music, produce art, and it is increasingly surfacing in the judiciary through a variety of applications. AI might be applied to caseflow triage, to assist self-represented litigants through the legal process including preparation of legal documents, to automate research, and even to assist judges in making adjudicative decisions. In Tarrant County, for example, robotic processing automation (RPA) implemented into the eFiling system reviews, processes, verifies, and accepts electronic filings. The RPA reduces manual document review, minimizes data entry errors, and flattened the eFile intake period from days to minutes. So effective are the RPA robots that Tarrant County instructed them to take nights and weekends off to give upstream staff a chance to catch up with them. Other applications of AI in the law warrant greater care, particularly in the use of generative AI (GenAI). As the National Center for State Courts' AI Rapid Response Team has highlighted, GenAI has in the past "hallucinated" fictitious legal citations that some lawyers have uncritically accepted and submitted in legal briefs.[3] And to top it off, any bias lurking in the system can be accentuated by GenAI. In short, great opportunities and risks await with AI in Texas courts.

Recommendations

Recommendation 1: The Texas Supreme Court should consider adopting rules requiring local courts to ensure the acceptable use of AI by court staff is included in existing policies.

Recommendation 2: The Court of Criminal Appeals, as part of its judicial education administration, should advance education for judges, clerks, and court staff focusing on basic AI concepts, the potential benefits of and risks of AI use (AI bias, AI deepfakes, AI hallucinations, etc.), and how to identify and operate AI applications in court-based settings.

Recommendation 3: The Office of Court Administration should seek funding to expand the use of robotic process automation across the state to improve the electronic filing process.

3 Nat'l Cnt. For St. Cts., *Artificial Intelligence (AI) Interim Guidance* (Feb. 2024), https://www.ncsc.org/__data/assets/pdf_file/0029/98255/RRT-AI-talking-points-February-2024.pdf

Recommendation 4: The Office of Court Administration should conduct an inventory study across the judiciary to see what AI tools are currently in use or planned for use.

Recommendation 5: The Texas Supreme Court should consider studying what changes might be necessary to its rules or to statutes to address the manipulation of evidence through AI.

Hays County Courthouse, San Marcos, Texas.

Supporting Court Personnel

Background

House Bill 1 of the 88th Legislature Regular Session included in the Office of Court Administration's appropriation a Rider mandating a study of court personnel across the state. The study aims to determine appropriate staffing needs for the state's courts and court clerk's offices, and to develop a formula that can be used by courts and court clerk's offices to determine the staff resources needed to provide effective and efficient support for court operations in a given jurisdiction. The primary beneficiaries of the study include district courts, statutory county courts, statutory probate courts, specialty children's courts, and court clerk's offices. Although the study's final report is not due until late 2024, preliminary study findings suggest that court personnel resources are not consistent throughout state.

Recommendations

Recommendation: The Legislature should establish a grant fund to enhance court efficiency similar to the grant program established by the 88th Legislature in Senate Bill 22 to provide financial assistance to rural law enforcement and prosecutors.

Senate Bill 22 created grant assistance programs for rural sheriff's offices, constable's offices, and prosecutor's offices to ensure professional law enforcement and prosecutorial services throughout the state.[4] A similar grant program for court personnel would both complement these programs and ensure that courts across Texas are operating effectively and efficiently.

4 Acts 2023, 88th R.S., ch. 370, sec. 1 (S.B. 22, 88 R.S.).

Courts and the ADA

Background

Title II of the American with Disabilities Act (ADA) requires state and local governments to provide people with disabilities an equal opportunity to benefit from their programs, services, and activities, including access to courts. Per federal law, courts must provide free, appropriate auxiliary aids and services to parties, their companions, witnesses, jurors, and spectators. In determining what accommodations are reasonable, courts can consider whether the accommodation is unduly burdensome and whether the accommodation would fundamentally alter the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered. Although Texas counties have ADA plans, there is not a statewide, Texas-based benchbook offering support to courts in ADA matters.

Recommendations

Recommendation: The Office of Court Administration should develop an ADA benchbook for use by courts and clerks and should develop model ADA standards for adoption by courts and clerks.

Benchbooks are quick reference guides that provide at-a-glance information on a given topic. The creation of an ADA benchbook for court and clerks would provide much-needed guidance in navigating ADA standards and accommodation requests in courts. This benchbook should provide a general overview of Title II of the ADA as it concerns courts, considerations for granting or denying an accommodation, and examples of accommodations courts can provide.

Improving Court Efficiency

Background

Article 5 of the Texas Constitution vests the judicial power of the state in many courts, authorizes the Legislature to establish other courts as it deems necessary, and allows the Legislature to "conform the jurisdiction of the district and other inferior courts thereto."[5] To improve access to justice by addressing the increasing costs of civil litigation across court levels, the 86th Legislature raised the amount in controversy for jurisdiction in certain statutory county courts, in constitutional county courts, and in justice courts.[6] The Civil Justice Committee believes access to justice concerns will again arise if these limits are not periodically revised.

In 1985 the 69th Legislature enacted the Court Administration Act, which in part aimed to improve local court administration "to provide all citizens of [Texas] a prompt, efficient, and just hearing and disposition of all disputes before the various courts[.]"[7] This included the adoption of local rules of administration by district and statutory county courts, overseen by a local administrative judge (LAJ).[8] Today, there is a local administrative district judge in each county and a local administrative statutory county court judge in each county that has a statutory county court.[9] Where a county has more than one district court or more than one statutory county court, the applicable LAJ cannot serve as LAJ for more than two years.[10] The Civil Justice Committee believes the intent of the Court Administration Act would be furthered through greater judicial administration continuity and LAJ leadership development, and the Committee recommends that the LAJ statutes in the Government Code be amended to set a term floor rather than a term ceiling for LAJ service.

Recommendations

Recommendation 1: To streamline the overlapping jurisdictions of courts, the Legislature should remove specific amounts-in-controversy from Article 5 of the Constitution and instead define the jurisdictional amount by statute.

5 Tex. Const. art. V, § 1, and art. V, § 8.
6 Acts 2019, 86th R.S., ch. 696 (S.B. 2342).
7 Acts 1985, 69th R.S., Ch. 732, Sec. 1 (H.B. 1658).
8 Acts 1985, 69th R.S., Ch. 732, Secs. 5.001-5.006 (H.B. 1658).
9 Gov't Code §§ 74.091(a), 74.0911(a).
10 Gov't Code §§ 74.091(b), 74.0911(b).

In coming years, the Texas Judicial Council and the Office of Court Administration will be able to tap into case level data for a granular view of the number of cases pressing against amount in controversy requirements. This more dynamic view of data warrants a more flexible approach to setting amount in controversy levels, and the Committee believes the Legislature should statutorily tend to these levels on a regular basis, informed by real data. This will require the removal of specific amounts-in-controversy requirements from Article 5 of the Constitution.

Recommendation 2: To streamline the overlapping jurisdictions of courts, the Legislature should raise the minimum amount in controversy for civil cases originally filed in district courts.

At present, the minimum amount-in-controversy for civil cases in district courts sits at or very near that for constitutional county courts and statutory county courts.[11] To streamline jurisdiction, the Legislature should raise the minimum amount-in-controversy for district courts to differentiate trial court caseload.

Recommendation 3: The Legislature should raise the amount in controversy ceiling for all statutory county courts from $250,000 to $325,000.

In coming years, the Texas Judicial Council and the Office of Court Administration will be able to tap into case level data for a granular view of the number of cases pressing against amount in controversy requirements. In the interim, an analysis of amount in controversy limits against Consumer Price Index adjustments suggests the upper dollar amount for statutory county court amount in controversy would be $323,204 by Fiscal Year 2027. The Civil Justice Committee recommends the current $250,000 figure in statutory county courts be raised to $325,000.

Recommendation 4: The Office of Court Administration should enhance the leadership of Local Administrative Judges and court administrators by establishing an annual convening of those serving in leadership positions.

Recommendation 5: The Legislature should amend Government Code Section 74.091 and Section 74.0911 to require that Local Administrative Judges serve as a Local Administrative Judge for a minimum term of two years to improve the continuity of local judicial administration.

Under current law, Local Administrative Judges (LAJs) term lengths are capped. Because Government Code Section 74.092 imposes a wide variety of responsibilities on LAJs, these judges frequently find that their term

11 *See* Tex. Const. art. V, § 8 and § 16, and Gov't Code §§ 24.007(b), 25.0003(c)(1), 26.042(a).

runs just as they begin to master these responsibilities. Practically, this makes administrative continuity difficult. Requiring minimum terms rather than capping the terms would improve LAJ administrative skills and provide leadership continuity, thereby improving local court administration.

Recommendation 6: A task force should be created to develop a manual for Local Administrative Judges on their role and responsibilities.

Government Code Section 74.092 imposes a wide variety of responsibilities on Local Administrative Judges, but there is not a corresponding manual for use by LAJs to assist them in the carrying out of these responsibilities. The creation of a manual by a task force would improve local court administration by giving LAJs a ready resource to consult.

Recommendation 7: The Local Administrative Judge supplement should be increased to match their responsibilities.

The duties and responsibilities placed upon LAJs is akin to a part-time job on top of a full-time job. LAJs should receive an increased supplement to match these responsibilities.

Caldwell County Courthouse, Lockhart, Texas.

Texas Children's Commission Legislative Recommendations

Background

The Supreme Court of Texas Children's Commission is a statewide, multi-disciplinary, collaborative body that includes high-level membership from the executive, judicial, and legislative branches of Texas government, along with child welfare stakeholders in the public and private sectors. The Supreme Court established the Children's Commission in 2007 with the overall goal of strengthening the child welfare system by increasing public awareness about the challenges facing children, youth, and families through encouraging judicial leadership, supporting best judicial and legal practices through training and education, and informing policy and practice affecting child welfare in Texas.

The Children's Commission is a leading collaborative partner in most every aspect of child welfare system improvement in Texas and is recognized nationally as a leader in establishing long-standing and meaningful relationships with child welfare stakeholders to create a child welfare system that better supports and serves children, youth, and families. The Children's Commission's Legislation and Policy Resource Committee Recommendations for the Judicial Council is appended to this report.

Recommendations

Recommendation: The Texas Judicial Council should continue to work with the Texas Children's Commission on the Commission's legislative recommendations.[12]

12 On September 27, 2024, the Texas Judicial Council adopted the recommendations of the Texas Children's Commission's Legislation and Policy Resource Committee.

Texas Judicial Commission on Mental Health Legislative Recommendations

Background

The Texas Judicial Commission on Mental Health (JCMH) was created in 2018 by the Supreme Court of Texas and the Texas Court of Criminal Appeals to examine the justice system and its intersection with people who have mental health and substance use disorders, and intellectual and developmental disabilities. The goal is to improve these encounters and the resulting outcomes for all court participants. As an important part of its work, the JCMH's Legislative Research Committee studies and recommends improvements to laws and rules relating to mental health and intellectual and developmental disabilities. The committee's membership represents Texas state courts, law enforcement, physicians, mental health providers, and judges who are experts in their fields.[1] The Civil Justice Committee has considered Recommendations A through D of the JCMH's 2024 Legislative Recommendations and Report. The JCMH's complete Legislative Recommendations and Report is appended to this report.

Recommendations

Recommendation: The Texas Judicial Council should continue to work with the Texas Judicial Commission on Mental Health on the Commission's legislative recommendations.[2]

1 See *Order of the Supreme Court of Texas and the Texas Court of Criminal Appeals Establishing the Legislative Research Committee of the Judicial Commission on Mental Health* (Sup. Ct. Misc. Docket No. 19-9095) (Ct. of Crim. Apps. Misc. Docket No. 19-010) (2019).
2 On September 27, 2024, the Texas Judicial Council adopted the recommendations of the Texas Judicial Commission on Mental Health.

Appendix

Children's Commission®

SUPREME COURT OF TEXAS PERMANENT JUDICIAL COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Children's Commission Legislation and Policy Resource Committee Recommendations for the Texas Judicial Council (89th Texas Legislature)

1. *Clarify that the required finding for termination of parental rights that requires a description in writing of the reasonable efforts to return the child to the parent is to be made by a judge, not a jury.*

History

HB 1087 (88th Leg. Session) by Rep. Hull added subsections (f) and (g) to Tex. Fam. Code § 161.001.

Rationale

Pursuant to Tex. Fam. Code § 161.001(f), a court may not order termination of parental rights unless the court finds by clear and convincing evidence that reasonable efforts were made by the Department of Family and Protective Services (DFPS). Presumably, this determination would be made by the finder of fact; the judge in a bench trial or the jury in a jury trial. Subsection (g) states that the court shall include in a separate section in the order the reasonable efforts made by DFPS. Since the term "court" is utilized in both sections it leaves courts without resolution regarding who is responsible for the threshold determination about whether reasonable efforts were made, and if so, which efforts will be specified in the court order. The specificity required is a more appropriate responsibility for the judge in creating the final order.

Recommendation

Amend Tex. Fam. Code § 161.001(f) and (g)

(f) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court finds by clear and convincing evidence ~~and describes in writing with specificity in a separate section of the order~~ that:

(1) the department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or

(2) reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Section 262.2015.

(g) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the trier of fact found that the department made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home.

2. *Add authorization to conduct hearings remotely to Child Protection Court judges.*

History

SB 870 (88th Leg. Session) by Senator West added Tex. Fam. Code § 201.1045.

Rationale

To give associate judges for child protection cases the same ability to conduct hearings remotely as associate judges for Title IV-D cases.

Recommendation

Add new section Tex. Fam. Code § 201.2043.

(a) In this section, "remote communication" includes teleconferencing, videoconferencing, and any similar technology.

(b) Unless a party or an attorney ad litem for a child files a written objection and except as provided by Subsection (d), an associate judge appointed under this subchapter may conduct a proceeding or perform a judicial action authorized under Section 201.204 from any location in this state using remote communication.

(c) Except as provided by Subsection (d), an associate judge appointed under this subchapter may require or authorize a party to participate in a proceeding authorized under Section 201.204 using a method of remote communication available to the party.

(d) A respondent is entitled to appear in person at a final hearing that may result in the termination of parental rights under Chapter 161 or awarding the department permanent managing conservatorship of a child. The respondent may waive the right to appear in person at the hearing in writing or on the record. Unless the respondent waives that right, the associate judge must also appear at the hearing in person.

3. *Clarify that the triggering date to terminate parental rights under ground (M) is the date DFPS was granted Permanent Managing Conservatorship (PMC) not Temporary Managing Conservatorship (TMC).*

History

HB 2924 (87th Leg. Session) by Rep. Dutton added subsection (d-1) to Tex. Fam. Code § 161.001.

Rationale

The current statute is ambiguous as to the date when a prior termination of parental rights can be used as a ground to terminate parental rights in a current case. The statute refers to the date the DFPS is granted managing conservatorship but does not specify if that is when DFPS receives TMC at the outset of the case or PMC at the end of a case. Since endangerment findings under Tex. Fam. Code § 161.001 (b)(1)(D) or (E) trigger the applicability of ground (M), the more relevant date is when DFPS is granted PMC.

Recommendation

Amend Tex. Fam. Code § 161.001

(d-1) The court may not order termination under Subsection (b)(1)(M) unless the petition for the termination of the parent-child relationship is filed not later than the first anniversary of the date the department or an equivalent agency in another state was granted permanent managing conservatorship of a child in the case that resulted in the termination of the parent-child relationship with respect to that child based on a finding that the parent's conduct violated Subsection (b)(1)(D) or (E) or substantially equivalent provisions of the law of another state.

4. *In a court ordered services case, require the calculation for the dismissal date to begin the date the order is rendered rather than the date the order is signed.*

History

HB 567 (87th Leg. Session) by Rep. Frank added Tex. Fam. Code § 264.203(q).

Rationale

The date the order is rendered is used to calculate deadlines and extensions of deadlines under Tex. Fam. Code Chapters 262 and 263 and this recommendation brings Chapter 264 in line for consistency. It also addresses a concern about a court ordered services case remaining open longer than intended if the order is not submitted to the judge.

Recommendation

Amend Tex. Fam. Code § 264.203

(q) An order rendered under this section expires on the 180th day after the date the order is rendered ~~signed~~ unless the court extends the order as provided by Subsection (r) or (s).

5. *Reconciling the conflicting directives at permanency hearings before a final order.*

History

HB 567 of the 87th Legislative Session by Rep. Frank amended Tex. Fam. Code § 263.002.

Rationale

Tex. Fam. Code § 263.002 applies generally to hearings that review a child's placement. During the 87th Legislative Session, HB 567 changed the findings required to return a child home at permanency hearings. Under Tex. Fam. Code § 263.002, at a permanency hearing before a final order the court must order DFPS to return the child to the parent unless the court finds with respect to each parent that there is a continuing danger to the child's physical health or safety and returning the child is contrary to their welfare. However, Tex. Fam. Code § 263.306 specifies different findings that the court must make to return a child home at permanency hearings before a final order. This recommendation would update the findings in Tex. Fam. Code § 263.306 to create a consistent standard with the language in Tex. Fam. Code § 263.002.

Recommendation

Amend Tex. Fam. Code § 263.306

(a-1)(6) determine whether to return the child to the child's parents ~~if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest~~, pursuant to Tex. Fam. Code § 263.002 (b).

6. *Clarify that reinstatement of parental rights is not limited to cases where termination of parental rights is involuntary.*

History

HB 2926 (87th Leg. Session) by Rep. Parker added Tex. Fam. Code Chapter 161, Subchapter D.

Rationale

To be eligible for reinstatement of parental rights, there has been uncertainty around whether the word involuntary applies to a parent who voluntarily signs an irrevocable affidavit of relinquishment under Tex. Fam. Code § 161.001(b)(1)(K) instead of proceeding to a contested trial. Removing the term "involuntary" could help to ensure the reinstatement statute does not become a barrier to settling cases. Also, because circumstances can change, this recommendation would allow for greater utilization of the statute when appropriate.

Recommendation

Amend Tex. Fam. Code Chapter, Subchapter D

Reinstatement of Parental Rights After ~~Involuntary~~ Termination

Amend Tex. Fam. Code § 161.302

(a) The following persons may file a petition under this subchapter requesting the court to reinstate the parental rights of a former parent whose parental rights were ~~involuntarily~~ terminated under Section 161.001 or 161.003:

(1) the department;

(2) the single source continuum contractor under Subchapter B-1, Chapter 264, with responsibility for the child who is the subject of the petition;

(3) the attorney ad litem for the child who is the subject of the petition; or

(4) the former parent whose parental rights were ~~involuntarily~~ terminated.

7. *Allow all parties to request extensions in Court Ordered Services cases.*

History

HB 567 (87th Leg. Session) by Rep. Frank amended Tex. Fam. Code 264.203.

Rationale

Tex. Fam. Code § 264.203 establishes deadlines for how long a court ordered services case could last, similar to the deadlines established for removal cases by Tex. Fam. Code § 263.401. However unlike Tex. Fam. Code § 263.401, Tex. Fam. Code § 264.203 specifies that only certain parties can request

certain extensions of the deadline. There is no clear rationale for restricting who can request extensions and due process suggests that each party have the same legal options available to them.

Recommendation

Amend Tex. Fam. Code § 264.203

(r) The court may extend an order rendered under this section on a showing ~~by the department~~ of a continuing need for the order, after notice and hearing. Except as provided by Subsection (s), the court may extend the order only one time for not more than 180 days.

(s) The court may extend an order rendered under this section for not more than an additional 180 days only if ~~(1)~~ the court finds that:

~~(A)~~ (1) the extension is necessary to allow the person required to participate in services under the plan of service time to complete those services;

~~(B)~~ (2) the department made a good faith effort to timely provide the services to the person;

~~(C)~~ (3) the person made a good faith effort to complete the services; and

~~(D)~~ (4) the completion of the services is necessary to ensure the physical health and safety of the child~~; and~~.

~~(2) the extension is requested by the person or the person's attorney~~.

TEXAS JUDICIAL COMMISSION
ON MENTAL HEALTH

THE SUPREME COURT OF TEXAS

THE TEXAS COURT OF CRIMINAL APPEALS

Legislative Recommendations and Report

August 2024

Judicial Commission on Mental Health
Recommendations and Report

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I. Introduction

The Texas Judicial Commission on Mental Health (JCMH) was created in 2018 by the Supreme Court of Texas and the Texas Court of Criminal Appeals to examine the justice system and its intersection with people who have mental health and substance use disorders, and intellectual and developmental disabilities. The goal is to improve these encounters and the resulting outcomes for all court participants. As an important part of its work, the JCMH's Legislative Research Committee studies and recommends improvements to laws and rules relating to mental health and intellectual and developmental disabilities. The committee's membership represents Texas state courts, law enforcement, physicians, mental health providers, and judges who are experts in their fields.[1] This committee is led by JCMH Vice-Chair, the Honorable Bill Boyce, and the drafting committee was led by Professor Brian Shannon at the Texas Tech School of Law.

Proposals include amendments to emergency detention, civil commitment, early identification and referral to treatment, specialty courts, and competency restoration laws.

The JCMH offers these proposals to the Texas Judicial Council in preparation for the 89th Legislative Session. The Supreme Court of Texas and the Texas Court of Criminal Appeals are grateful for the work of the many who contributed to this effort.

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

II. Legislative Research Committee

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Texas Court of Criminal Appeals
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Hon. Rebeca A. Huddle
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IV. Legislative Recommendations

Emergency Detention

Emergency Detention is a 48-hour hold for a preliminary examination for individuals with mental illness based on evidence of a substantial risk of serious harm to themselves or others or severe emotional distress and deterioration. Emergency detention may be initiated by peace officers, guardians, or a warrant from a judge. If a written order for protective custody is obtained, the detention is extended for consideration of involuntary civil commitment. Emergency detention can be an important diversionary tool, but it is used inconsistently in some areas of the state.

A. Emergency detention form updates

This proposal improves the form required by Health and Safety Code § 573.002(d) for peace officers carrying out emergency detentions without a warrant. The current form lacks prompts to elicit necessary information. The proposed modifications add areas for officers to explain the bases for affirmative declarations of evidence of mental illness, substantial risk of harm, and the need for temporary restraint.

Proposed changes to the statutory form are shown in Appendix A.

B. Clarification of peace officer's duties upon presentment to a facility for examination

Currently, when a peace officer presents an individual at a facility for an emergency detention authorized by warrant, the peace officer may then return to their community duties. However, an apparent oversight from a past legislative session requires peace officers presenting an individual without a warrant to remain at the facility, often for hours. Clarification for a peace officer's duties relating to Emergency Detention by a Judge's Warrant was enacted in 2023 as part of S.B. 2479 (Sec. 3), but that legislation did not include a parallel provision for when a peace officer initiated the emergency detention under Health and Safety Code § 573.002. To make the two provisions consistent, this proposal adds subsection (f) to § 573.002 to state that a peace officer has no duty to remain at a facility or an emergency room once the officer presents a person for emergency mental health services under an Apprehension by a Peace Officer Without a Warrant and completes the required documentation. This language largely parallels the 2023 addition of § 573.012(d-1).

Proposed statutory changes are shown in Appendix B.

Civil Commitment

Civil commitment, also known as court-ordered mental health services in the Texas Health and Safety Code, can be a lifesaving tool for people with untreated serious mental illness who meet the statutory criteria. The civil commitment process can connect people to mental health treatment rather than criminal justice involvement.

C. Clarification of court-ordered mental health services venue law

Some counties have rejected an application for court-ordered mental health services because of

unclear language in the existing statute regarding jurisdiction. This proposal amends Health and Safety Code § 574.001(b) to clarify the appropriate venue for filing an Application for Court-ordered Mental Health Services and Order of Protective Custody.

This proposal deletes unclear language regarding where the person "is found," and revises it to where the person "is located at the time the application is filed" or "was apprehended under chapter 573." This adjustment clarifies that venue is proper in either the county where the person was apprehended by a peace officer or the county where the person is located when the application is filed.

Proposed statutory changes are shown in Appendix C.

D. Civil commitment – deterioration language

This proposal amends provisions of Health and Safety Code §§ 573-574 to improve access to mental health care when a person has anosognosia, a neurological condition that causes people to be unaware of their psychiatric condition and can be diagnosed in connection with psychotic disorders, including schizophrenia and bipolar disorder. Family members of a loved one with severe mental illness and anosognosia are often left without help until the individual threatens harm. For instances when an individual is seriously mentally ill, exhibiting signs of deterioration, and lacking the capacity to acknowledge these serious risks, earlier intervention for treatment is one solution.[2] A national judicial task force explains: "If there are no other pathways to treatment, these persons are more likely to experience homelessness, poverty, serious health consequences, and involvement in the criminal justice system."[3]

This proposal adds a lack of capacity standard for inpatient court-ordered mental health treatment. It applies when it is shown that persons with mental illness lack the capacity to recognize their symptoms of a serious mental illness and are thereby unable to make a rational and informed treatment decision or appreciate the risks or benefits of treatment, and, in the absence of treatment, are likely to experience a relapse or deterioration resulting in risks of serious harms to self or others. The proposal also clarifies that evidence of severe emotional distress and deterioration "may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment."

The workgroup also developed model legislation on emergency interventions, civil commitment, and other areas. This JCMH proposal is drawn from the work of the model group and legislation in other states, notably Michigan and Arizona.

Proposed statutory changes are shown in Appendix D.

Early Identification and Referral to Treatment

To address overrepresentation of people with mental illness in the criminal justice system, diversion programs connect people to the appropriate community-based treatment and support services outside of the criminal justice system.

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[2] *See* Brian D. Shannon, *Model Legal Processes for Court Ordered Mental Health Treatment – A Modern Approach*, 18 FIU L. REV. 113 (2023).

[3] NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURTS' RESPONSE TO MENTAL ILLNESS, STATE COURTS LEADING CHANGE: REPORT AND RECOMMENDATIONS 30 (2022), https://www.ncsc.org/__data/assets/pdf_file/0031/84469/MHTF_State_Courts_Leading_Change.pdf.

E. Expand law enforcement diversion capabilities and require agencies to report their expansion plan to the Texas Commission on Law Enforcement

Code of Criminal Procedure article 16.23 currently requires law enforcement to make a good faith effort to divert a person suffering a mental health crisis to a treatment center in the agency's jurisdiction.

This proposal amends article 16.23 to allow law enforcement to develop and implement a more flexible diversion plan tailored to the county's available or nearby resources, including a regional diversion center. This amendment would permit diversion to a mental health treatment program such as a Mobile Crisis Outreach Team, where the current statute requires a "treatment center"—often interpreted as requiring a brick-and-mortar location. This change also eliminates the requirement that such a place or program be located within the jurisdiction of the law enforcement agency, because many rural jurisdictions do not have such a facility or program.

This amendment would also require law enforcement agencies to report their article 16.23 plan to the Texas Commission on Law Enforcement, thereby facilitating collaboration within counties to provide guidance for diversion to their law enforcement agencies.

Proposed statutory changes are shown in Appendix E.

Specialty Courts

Specialty Courts are also known as problem-solving or treatment courts, and work by combining a collaborative approach including intensive community-based treatment services and regular contact with a court, with the goals of reducing recidivism, preventing incarceration, and promoting recovery amongst its participants.

Texas Specialty Courts offer several programs, which include:[4]

- Adult Drug Courts
- Juvenile Drug Courts
- Veterans Treatment Courts
- Mental Health Courts
- Family Drug Courts
- Commercially Sexually Exploited Persons Courts
- Public Safety Employees Treatment Courts

Specialty courts are considered the most successful justice intervention for people with substance use and mental health disorders. For three decades, treatment courts have proven that a combination of treatment and compassion can lead people with substance use and/or mental health disorders into lives of stability, health, and recovery.[5]

[4] *Specialty Courts in Texas*, TEXAS JUDICIAL BRANCH, https://www.txcourts.gov/about-texas-courts/specialty-courts/#:~:text=Specialty%20Courts%20in%20Texas,in%20civil%20or%20family%20cases (last visited July 12, 2024).
[5] *About Treatment Courts*, ALL RISE, https://allrise.org/about/treatment-courts/ (last visited July 12, 2024).

F. Clarify that Assisted Outpatient Treatment courts are recognized as a type of specialty court

This proposal would expand the definition of a "mental health court program" in Government Code § 125.001 to include civil courts operating an Assisted Outpatient Treatment program if they otherwise meet the statutory criteria. The definition currently includes only criminal mental health courts, so the suggested language would allow both criminal and civil courts to be recognized as mental health court programs where appropriate.

One goal of the proposal is to create collaboration between criminal and civil mental health court programs. Many participants in Assisted Outpatient Treatment Courts are low-level offenders or individuals at high risk for offending in the future if they do not receive treatment for their serious mental illness. It would be beneficial for the civil and criminal courts to work together more seamlessly to avoid further justice involvement where possible. Texas is home to one of the nation's pioneering Assisted Outpatient Treatment programs (established in Bexar County in 2005), as well as several newer programs established since 2016 in counties such as Harris, Travis, Tarrant, Smith, Johnson, and El Paso.

Another goal of the amendment would be to open funding opportunities to civil Assisted Outpatient Treatment court programs. To qualify for funding from the Office of the Governor, a court must meet the definition of a specialty court program. Allowing civil courts to apply for that funding would support momentum in Texas to create more Assisted Outpatient Treatment courts, which provide earlier intervention in the lives of the individuals before they commit serious crimes.

Proposed statutory changes are shown in Appendix F.

G. Allow county courts to have jurisdiction over certain felony cases in specialty court programs

County court-at-law judges who oversee a specialty court program would like to have the authority to admit individuals charged with felony offenses into their specialty court. Although this has been a routine practice for specialty court dockets, it generally has been addressed by local administrative orders. This proposal would codify this type of authorization for specialty court programs. This amendment would not expand authority outside of specialty courts. For example, it would not allow county courts-at-law to have regular felony dockets but rather would only allow more flexibility with the specialty court dockets.

This proposal would modify Government Code Chapter 121 to ensure that specialty court programs presided over by a County Court-at-Law Judge could have jurisdiction to preside over both misdemeanor and felony cases when those defendants are admitted to a specialty court program overseen by the County Court-at-Law Judge.

Proposed statutory changes are shown in Appendix G.

Competency Restoration

Under the Sixth Amendment of the U.S. Constitution, criminal defendants have the right to understand the nature and consequences of the proceedings against them and to assist in their own defense. When there is reason to question a defendant's competency to exercise these rights—typically due to mental illness or intellectual disability—the court will order a competency evaluation.[6]

After an evaluation, if the court finds the defendant incompetent to stand trial, the state must restore competency before proceeding with the case. If the incompetency finding is due to mental illness, the defendant is typically committed to a state psychiatric hospital for restoration efforts. In recent years, there has been a dramatic increase in the number of nonviolent defendants found to require competency restoration.[7] This has led to increasing numbers of state psychiatric beds being occupied to serve this population, leaving fewer available for those in psychiatric crisis who are not justice-involved.[8]

Alternative approaches to inpatient competency restoration have been authorized, including jail-based competency restoration and outpatient competency restoration, but availability in those programs remains limited. The legislature has also provided funding for additional inpatient facilities, but there is still a significant need to pursue alternative options to inpatient competency restoration for nonviolent offenders.

H. Amend Texas Code of Criminal Procedure to limit inpatient competency restoration for nonviolent misdemeanors to extraordinary circumstances

This proposal would amend Code of Criminal Procedure Chapter 46B to limit the use of inpatient competency restoration services for people charged with nonviolent misdemeanors[9] to extraordinary circumstances. This amendment also sets out the procedures for what to do when a defendant is deemed unlikely to be restored to competency.

The current wait for inpatient competency restoration services from the time of arrest can exceed the maximum sentence for misdemeanor offenses. In these cases, when the defendant must wait for competency restoration services for a length of time greater than their maximum sentence, or when the period of attempted restoration reaches the maximum sentence for the charged offense, articles 46B.0095 and 46B.010 mandate the dismissal of the misdemeanor charge. That is, many people charged with misdemeanors who are incompetent "time out" and must be released before ever receiving competency restoration services. The current process results in defendants waiting in jails for lengthy periods, never receiving a bed at the state hospital, receiving minimal or no mental health

[6] TREATMENT ADVOCACY CENTER, DISMISS UPON CIVIL COMMITMENT WITH AOT: ONE ALTERNATIVE TO THE COMPETENCY RESTORATION CRISIS 1 (2024), https://www.treatmentadvocacycenter.org/wp-content/uploads/2024/03/Dismiss-Upon-Civil-Commitment-with-AOT-Handbook.pdf.
[7] *Id*. citing TREATMENT ADVOCACY CENTER, DORIS FULLER, ET. AL, GOING, GOING, GONE: TRENDS AND CONSEQUENCES OF ELIMINATING STATE HOSPITAL BEDS (2016) https://www.treatmentadvocacycenter.org/wp-content/uploads/2023/11/Going-Going-Gone.pdf.
[8] *Id*.
[9] The proposed non-violent offenses are Class B misdemeanors and Class A misdemeanor offenses that did not result in bodily injury to another person. The limitation also requires that the defendant has not been convicted in the preceding two years of an offense that resulted in bodily injury to another person.

treatment while in custody, and returning to the community without treatment or services, and ultimately receiving the dismissal of the charge that put them in custody in the first place.

This recommendation proposes that when a defendant found to be incompetent to stand trial is charged with a Class B misdemeanor or a nonviolent Class A misdemeanor and has not been convicted in the previous two years of an offense that resulted in bodily injury to another person, then the default procedure would be to order outpatient competency restoration services. If there is no outpatient competency restoration program available, either because the community does not offer the program or the defendant cannot be placed in a program within 14 days of the Judge's order, then the matter would be set for a referral to civil commitment under Code of Criminal Procedure 46B subchapter F—*Civil Commitment Charges Dismissed*. Note that some other states have attempted to the solve this problem (e.g., New York and Michigan) by creating laws that prohibit orders for inpatient competency restoration for *any* misdemeanor charges.

The proposed limitation on inpatient competency restoration for people charged with non-violent misdemeanors will reduce the waitlist for persons charged with offenses that result in placement in a non-maximum security unit (non-MSU), which, by numbers, is the largest category of persons found incompetent to stand trial.[10] The proposed change would reduce wait times for this non-MSU forensic population as well as provide additional capacity for persons who are non-justice involved civil admissions who vie for the very same non-MSU inpatient beds. This added capacity is also crucial for admission of persons under Chapter 46B, Subchapter F (civil commitment: charges dismissed).

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

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

Proposed statutory text can be found in Appendix H.

I. Expand jail-based competency restoration to allow inclusion of some defendants who are charged with violent or alleged deadly weapon offenses

This proposal would allow some people charged with violent or deadly weapon offenses to receive competency restoration services from a local jail-based competency restoration program instead of being ordered to an inpatient maximum-security unit operated by the state.

Article 46B.073 currently requires that defendants who are found to be incompetent to stand trial and who are charged with a violent offense under article 17.032 or involving an affirmative finding of a deadly weapon under article 42A.054(c) or (d), must be ordered to competency restoration services at a facility designated by the state commission, i.e., a maximum-security state inpatient facility.

[10] *Joint Committee on Access and Forensic Services, April 30, 2024, Meeting*, TEXAS HEALTH AND HUMAN SERVICES https://www.hhs.texas.gov/about/communications-events/meetings-events/2024/04/30/joint-committee-access-forensic-services-jcafs-agenda) (last visited July 15, 2024) (*see* JCAFS Dashboard Review for specific state hospital waitlist data).

Some of the offenses included in this manifestly dangerous category are misdemeanor-level family violence assault cases. On its face, the statute does not permit the court to order incompetent defendants in such cases to jail-based competency restoration.

Although there has been an interpretation of the law to allow individuals charged with one of these violent offenses into a jail-based program on a case-by-case basis, the plain language of the statute states otherwise. This proposal would specifically provide courts with the option to order jail-based competency restoration for these defendants.

Jails with competency restoration programs provide considerable security within the jail for their efforts. This proposal could therefore reduce the state hospital waitlist, jail days at the local level, and expenses on both the state and local levels.

Proposed statutory changes are shown in Appendix I.

J. Create procedures to address a defendant's deteriorating mental condition after competency restoration services

Currently, Texas Code of Criminal Procedure 46B.084 does not address individuals who deteriorate between competency restoration and the resumption of adjudicative proceedings. This proposal would amend article 46B.084 to clarify a process for identifying and evaluating recently restored defendants whose mental health has deteriorated while in custody awaiting disposition of their case and provides similar guidance on issues pertaining to defendants under civil commitment orders who have charges pending.

Proposed statutory language can be found in Appendix J.

K. Allow Outpatient Civil Commitment for defendants with Intellectual and Developmental Disabilities after unsuccessful 46B competency restoration

This proposal would amend Code of Criminal Procedure article 46B.1055 to permit people with intellectual and developmental disabilities and pending nonviolent criminal charges who have not successfully had competency restored under 46B to participate in court-ordered community-based living plans. This allows the criminal court to maintain oversight and helps to decrease the forensic waitlist by freeing a bed at a state facility.

When someone is found incompetent to stand trial, they typically undergo competency restoration services. When initial restoration efforts are unsuccessful, the next step is typically to attempt civil commitment procedures under Subchapter E or F of Chapter 46B. Under Subchapter F, charges are dismissed, and the case is transferred to a probate court for civil commitment proceedings. Under Subchapter E, charges remain pending, and the criminal court can commit the defendant to inpatient or outpatient mental health services, or only to a residential care facility if the defendant has intellectual and developmental disabilities. Proceeding under Subchapter E with charges pending allows the prosecutor to maintain the charges against the defendant and the criminal court to maintain oversight of the defendant.

However, the law currently excludes individuals with intellectual and developmental disabilities from outpatient civil commitment while charges are pending, meaning they can never be stepped down to

a court-ordered, outpatient, community-based living plan. This discrepancy creates a conflict if the residential care facility reports the defendant no longer meets criteria for placement in a residential care facility. The court must then decide whether to overrule the recommendation of the facility and continue to occupy a state facility bed to maintain court oversight and keep the person in a residential care facility indefinitely, or to release the person back into the community without criminal court oversight.

This proposal creates the opportunity for judges to order a stepdown plan for a person with intellectual and developmental disabilities charged with a nonviolent offense from a residential care facility into court-ordered community-based services after an unsuccessful attempt at 46B competency restoration, allowing the criminal court to maintain oversight. Additionally, this procedure would decrease the forensic competency restoration waitlist by freeing a bed at a state facility.

Proposed statutory changes are shown in Appendix K.

L. Permit Class C misdemeanor dismissal when the defendant lacks capacity

This proposal would amend Code of Criminal Procedure Chapter 45A to create a process for a court to consider dismissing a Class C misdemeanor when the judge has probable cause to believe that the charged individual lacks the capacity to understand the criminal proceedings or to assist in the defendant's defense and is unfit to proceed.

Individuals who may be incompetent but who are charged with only class C misdemeanors are not permitted to be court-ordered to competency restoration services of any type because Chapter 46B is inapplicable. However, as a matter of constitutional law, the State is not allowed to proceed with the prosecution of a case against an individual who is not competent. This situation leaves courts with a subset of stagnant criminal cases on their dockets.

The proposed addition would permit the state, the defendant, a person standing in a parental relation to the defendant, or the Court to move to dismiss the Class C misdemeanor charge because the defendant lacks the capacity to understand the criminal proceedings or to assist in the defendant's own defense and is unfit to proceed.

Proposed statutory language can be found in Appendix L.

Court-Ordered Medication

Consistent use of psychiatric medications is an essential part of treating mental illness. But, as former U.S. Surgeon General C. Everett Koop observed, "Drugs don't work in patients who don't take them."[11] Under Health and Safety Code § 574.106 and Code of Criminal Procedure article 46B.086, patients who are under civil commitment for inpatient mental health services and defendants undergoing or awaiting transfer for competency restoration services while in jail may be involuntarily administered medication by court order. Appropriate medication can be an effective tool to assist with the mental stability of certain defendants awaiting transfer for competency restoration services. Stabilizing defendants while at the county jail may decrease the time spent in a state facility, in competency restoration, or even avoid the need for competency restoration services at all.

M. Expand who can apply and testify for court-ordered medications

Under Health & Safety Code § 574.104, a treating physician must file the application for court-ordered medications, and Criminal Code of Procedure Article 46B.086(d) requires two different physicians to testify at a medication hearing under that statute.

In Texas, all but eight of our 254 counties are considered Mental Health Professional Shortage Areas, with two of those eight considered to be partial shortage areas.[12] Most communities in Texas, therefore, do not have access to psychiatrists or physicians with mental health expertise for these statutory requirements. Rural jurisdictions, in particular, have significant difficulty finding physicians who are able and willing to participate in medication hearings. Additionally, due to this shortage, physicians authorized by statute to write the applications and testify are typically not the primary medical professionals providing services to the patient.

This proposal creates a definition of Primary Care Provider for court-ordered medications in the Health and Safety Code to include physicians, advance practice registered nurses (APRNs), and physician's assistants (PAs) who are providing health care services to persons receiving court-ordered inpatient mental health services.

This allows the medical professional who is actually providing services to make an application to the court for court-ordered medications, rather than only a supervising physician who may not have regular direct contact with the patient. This proposal would also make similar changes to Code of Criminal Procedure article 46B.086 and extend deadlines for certain medication orders for persons who are recommitted as unrestored to competency under Chapter 46B.

Proposed statutory changes are shown in Appendix M.

[11] Christopher W. Ponder, *Drugs Don't Work in Patients Who Don't Take Them,* TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION (Sept. 2017), https://www.tdcaa.com/journal/drugs-dont-work-in-patients-who-dont-take-them/.

[12] *Health Professional Shortage Areas: Mental Health, by County, April 2024 – Texas*, RURAL HEALTH INFORMATION HUB, https://www.ruralhealthinfo.org/charts/7?state=TX (last visited July 15, 2024).

V. Appendices of Proposed Statutory Text

Appendix A

Amend Health and Safety Code 573.002(d) as follows:

(d) The peace officer shall provide the notification of detention on the following form:

Notification--Emergency Detention

NO. _____ DATE: _____ TIME:_____

THE STATE OF TEXAS

FOR THE BEST INTEREST AND PROTECTION OF:_____ *(name of person to be detained)*

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~~.~~; and

☐ ~~2. I have reason to believe and do believe that the above-named person evidences~~ Is a substantial risk of serious harm to ~~him~~self~~/herself~~ or others based upon ~~the following:~~

_____

_____

_____

_____

_____

_____ the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition is to the extent that the person cannot remain at liberty; and

☐ ~~3.~~ ~~I have reason to believe and do believe that the above~~ Is an imminent risk of serious harm ~~is imminent~~ unless ~~the above-named person is~~ immediately restrained.

1. ~~4.~~ My 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 for 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 AND OLDER: ☐ **YES** ☐ **NO** ***If yes, age:*** _____

MINOR CHILD ☐ **YES** ☐ **NO** (Person Younger than 18) ***If yes, age:*** _____

Minor Child *(if yes)*: My belief that the minor child is at risk of imminent serious harm unless immediately removed from the parents' custody is based on the following facts showing the parents/guardians are presently unable to protect the child from imminent serious harm:

Check one:

☐ I provided notice to the parents/guardians of the minor child of my intention to file this Notification.

☐ I was not able to provide notice to the parents/guardians of the minor child of intent 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

☐ Detained Individual's Safety

☐ Other: _____

CALL ORIGINATED AT:

☐ Public Area ☐ Residence ☐ School/University ☐ Group Home

☐ Hospital ☐ Other _____

OBSERVATIONS/HISTORY

If YES to any question below, then provide clarifying information.

	YES	NO	UNK	Notes
Harm to self or stating an intention to do so?				
Prior Attempt to take his/her life?				
Harming others or stating an intention to do so?				
Previously seriously injured/ harmed others?				
Prior psychiatric hospital treatment?				
Any reported diagnosis?				
Any prescriptions for psychiatric medications?				
Currently taking these psychiatric medications?				
Difficulty sleeping?				
Substance Use Disorder issues?				

FIREARMS/WEAPOINS

If YES to any question below, then provide clarifying information.

	YES	NO	UNK	Notes
Possession of firearms(at) time of contact?				
If yes, was firearm seized and written receipt provided per CCP 18.191?				

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.

~~6. Was the person restrained in any way? Yes ☐ No ☐~~

PEACE OFFICER'S SIGNATURE _____

Print name: _____ Telephone:_____ Badge #:_____

Address: _____ Zip Code:_____

EMERGENCY MEDICAL SERVICES (EMS) PERSONNEL SIGNATURE *(if transported by)*

_____

Print name: _____ Telephone:_____ Badge #:_____

Address: _____ Zip Code:_____

A mental health facility or hospital emergency department may not require a peace officer or EMS 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~~, 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, Health and Safety Code~~.

CASE NO. _____

DATE: _____ **TIME:** _____

THE STATE OF TEXAS
FOR THE BEST INTEREST AND PROTECTION OF: _____ *(name of person to be detained)*

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 based upon: (all three required)

- ☐ Evidences mental Illness; and
- ☐ Is a substantial risk of serious harm to self or others based on the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition is to the extent that the person cannot remain at liberty; and
- ☐ Is an imminent risk of serious harm unless immediately restrained.

1. My 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 for additional information):

_____
_____
_____
_____
_____

2. The names, addresses, phone numbers, and relationship to the above-named person of those who reported or observed recent behavior, acts, attempts, statements, or threats (if applicable):

_____
_____
_____
_____
_____

ADULT 65 YEARS AND OLDER ☐ **YES** ☐ **NO** *If yes, age:* _____

MINOR CHILD ☐ **YES** ☐ **NO** (person younger than 18) *If yes, age:* _____

Minor Child *(if yes)*: My belief that the minor child is at risk of imminent serious harm unless immediately removed from the parents' custody is based on the above facts showing the parents/guardians are presently unable to protect the child from imminent serious harm. Check one:

- ☐ I provided notice to the parents/guardians of the minor child of my intention to file this Notification.
- ☐ I was not able to provide notice to the parent/guardian of the minor child of intent 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 ☐ Individual's Safety

☐ Other:_____

CALL ORIGINATED AT:

☐ Public Area ☐ Residence ☐ School/University ☐ Group Home

☐ Hospital ☐ Other_____

OBSERVATIONS/HISTORY

If YES to any question below, provide clarifying information.

	YES	NO	UNK	NOTES
Harm to self or stating an intention to do so?				
Prior Attempt to take his/her life?				
Harming others or stating an intention to do so?				
Previously seriously injured/ harmed others?				
Prior psychiatric hospital treatment?				
Any reported diagnosis?				
Any prescriptions for psychiatric medications?				
Currently taking these psychiatric medications?				
Difficulty sleeping?				
Substance Use Disorder issues?				

FIREARMS/WEAPONS

If YES to any question below, provide clarifying information.

	YES	NO	UNK	NOTES
Possession of firearm(s) at time of contact?				
If yes, was firearm seized and written receipt provided per CCP 18.191?				

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 Signature _____

Print Name:_____ Telephone: _____ Badge # _____

Address: _____ Zip Code: _____

Emergency Medical Services (EMS) Personnel Signature *(if transported by)* _____

Print Name:_____ Telephone: _____ Badge # _____

Address: _____ Zip Code: _____

A mental health facility or hospital emergency department may not require a peace officer or EMS personnel to execute any form other than this form as a predicate for accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

Appendix B

Amend Health and Safety Code 573.002 by adding new subsection 573.002(f), as follows:

(f) A peace officer who has transported an apprehended person to a facility in accordance with Section 573.001, or emergency medical services personnel of an emergency medical services provider who have transported 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:

(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 notification of detention required by this Section and completed by the peace officer has been provided to the facility.

Appendix C

Section 1. Amend Section 574.001(b) Health & Safety Code, is amended to read as follows:

(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 ~~is found~~; ~~or~~

(3) was apprehended under Chapter 573; or

(4) is receiving mental health services by court order or under Subchapter A, Chapter 573.

Appendix D

Section 1. Amend Section 573.001(b)(2), Health & Safety Code, as follows:

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the person cannot remain at liberty.

Section 2. Amend Section 573.003(b)(2), Health & Safety Code, as follows:

(b) A substantial risk of serious harm to the ward or others under Subsection (a)(2) may be demonstrated by:

(1) the ward's behavior; or

(2) evidence of severe emotional distress and deterioration in the ward's mental condition which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the ward cannot remain at liberty.

Section 3. Amend Section 573.012(c)(2), Health & Safety Code, as follows:

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the person cannot remain at liberty.

Section 4. Amend Section 573.022(a)(3), Health & Safety Code, as follows:

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment 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).

Section 5. Amend Section 574.011(a)(7)(B) and (d), Health & Safety Code, as follows:

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:

****

(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:

(i) is likely to cause serious harm to the person or to others;

(ii) ~~or~~ is:

(a) ~~(i)~~ suffering severe and abnormal mental, emotional, or physical distress;

(b) ~~(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

(c) ~~(iii)~~ not able to make a rational and informed decision as to whether to submit to treatment; ~~.~~ or

(iii) lacks the capacity to recognize that the person is experiencing symptoms of a serious mental illness and therefore is unable to:

(a) make a rational and informed decision regarding voluntary treatment; or

(b) appreciate the risks or benefits of treatment or understand, use, weigh, or retain information relevant to making informed treatment decisions; and

(c) in the absence of treatment is likely to experience a relapse or deterioration of condition that would meet the criteria in subsections (i) or (ii).

(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 which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the examined person cannot remain at liberty.

Section 6. Amend Section 574.022(b), Health & Safety Code, as follows:

(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 which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the proposed patient cannot remain at liberty.

Section 7. Amend Section 574.034(a)(2), Health & Safety Code, as follows:

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; ~~or~~

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

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

(D) lacks the capacity to recognize that the person is experiencing symptoms of a serious mental illness and therefore is unable to:

(i) make a rational and informed decision regarding voluntary inpatient treatment; or

(ii) appreciate the risks or benefits of treatment or understand, use, weigh, or retain information relevant to making informed treatment decisions; and

(iii) in the absence of court-ordered temporary mental health services is likely to experience a relapse or deterioration of condition that would meet the criteria in subsections (A), (B), or (C).

Section 8. Amend Section 574.035(a)(2), Health & Safety Code, as follows:

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; ~~or~~

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

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

(D) lacks the capacity to recognize that the person is experiencing symptoms of a serious mental illness and therefore is unable to:

(i) make a rational and informed decision regarding voluntary inpatient treatment; or

(ii) appreciate the risks or benefits of treatment or understand, use, weigh, or retain information relevant to making informed treatment decisions; and

(iii) in the absence of court-ordered extended mental health services is likely to experience a relapse or deterioration of condition that would meet the criteria in subsections (A), (B), or (C);

Section 9. Amend Section 574.064(a-1), Health & Safety Code, as follows:

(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, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). The determination that the patient presents a substantial risk of serious harm to the patient or others may be demonstrated by:

(1) the patient's behavior; or

(2) evidence of severe emotional distress and deterioration in the patient's mental condition which may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment to the extent that the patient cannot live safely in the community.

Appendix E

Article 16.23, Code of Criminal Procedure, is amended to read as follows:

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 place or program where the person can receive treatment or services for the person's condition. [~~proper treatment center in the agency's jurisdiction if:~~]

(b) Under this article, diversion is appropriate 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;

(2)[~~(3)~~] the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(3)[~~(4)~~] the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(c)[~~(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, 49.065, 49.07, or 49.08, Penal Code.

(d) Each law enforcement agency shall report to its governing body a diversion plan meeting the requirements of this article on an annual basis with a first report occurring no later than January 1, 2026. Such report shall be provided to and recorded by the Texas Commission on Law Enforcement.

Appendix F

Section 1. The heading to Section 125.001, Texas Government Code, is amended to read as follows:

Sec. 125.001. MENTAL HEALTH COURT PROGRAMS [~~DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS~~].

Section 2. Section 125.001, Texas Government Code, is amended to read as follows:

(a) In this chapter, "mental health court program" means either a program under the supervision and direction of a court with criminal jurisdiction or an assisted outpatient treatment (AOT) court program for persons subject to court-ordered outpatient mental health services if authorized under the provisions of Chapter 574 of the Health and Safety Code and under the supervision and direction of a court with probate jurisdiction, and 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 or attorneys representing persons in court-ordered outpatient civil commitment proceedings to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in a [~~the~~] program;

(4) access to mental illness treatment services and intellectual disability services;

(5) ongoing judicial interaction with program participants;

(6) diversion or potential diversion of a defendant[~~s~~] in a pending criminal case who has [~~potentially have~~] a mental illness or an intellectual disability to needed services as an alternative to subjecting the person [~~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 with a pending criminal case successfully completes a mental health court program, after notice to the attorney representing the state in the pending criminal case 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.

Section 3. The heading to Section 125.002, Texas Government Code, is amended to read as follows:

Sec. 125.002. AUTHORITY TO ESTABLISH PROGRAMS.

Section 4. Section 125.002, Texas Government Code, is amended to read as follows:

The commissioners court of a county may establish [~~a~~] mental health court programs for persons who:

(a) (1) have been arrested for or charged with a misdemeanor or felony; and

(2) are suspected by a law enforcement agency or a court of having a mental illness or an intellectual disability; or

(b) have mental illness, have demonstrated an inability to participate in outpatient mental health treatment services effectively and voluntarily, and meet the criteria for court-ordered outpatient mental health services under the provisions of Chapter 574 of the Health and Safety Code.

Section 5. Section 125.005, Texas Government Code, is amended to read as follows:

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 the supervision and direction of a court with criminal jurisdiction 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 me l 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.

Appendix G

Section 1. Chapter 121 is amended by adding Section 121.005, as follows:

Sec. 121.005. JURISDICTION AND AUTHORITY OF JUDGE OR MAGISTRATE IN A SPECIALTY COURT PROGRAM. (a) The judge or magistrate of a specialty court program for a case properly transferred to the program may:

(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) enter orders for dismissal and expunction for a defendant who successfully completes the program; or

(4) return the case to the originating trial court for final disposition on a defendant's successful completion of or removal from the program.

(b) A visiting judge assigned to preside over a specialty court program has the same authority as the judge or magistrate appointed to preside over the program.

Appendix H

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

(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;

(3) [~~, including~~] whether the defendant is likely to be restored to competency in the initial restoration period authorized under Subchapter D, including any possible extension under Article 46B.080 [~~foreseeable future~~]; and

(4) [~~(3)~~] prospective treatment options, if any, appropriate for the defendant.

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

Art. 46B.055. PROCEDURE AFTER FINDING OF INCOMPETENCY. If the defendant is found incompetent to stand trial, the court shall:

(1) proceed under Subchapter D if the court has determined that the defendant is likely to be restored to competency in the restoration period authorized under that subchapter, including any possible extension under Article 46B.080; or

(2) for a defendant unlikely to be restored to competency as described by Subdivision (1):

(A) proceed under Subchapter E or F; or

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

Section 3. Article 46B.071(a), Code of Criminal Procedure, is amended to read as follows:

(a) On [~~Except as provided by Subsection (b), on~~] a determination under Article 46B.055(1) that a defendant is incompetent to stand trial and is likely to be restored to competency in the period authorized under this subchapter including any possible extension under Article 46B.080, the court shall:

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

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

(B) if an outpatient competency restoration program is unavailable or the defendant cannot be placed in an outpatient competency restoration program before the 14th day after the date of the court's order:

(i) on the motion of the attorney representing the

state, dismiss the charge and proceed under Subchapter F; or

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

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

(b) dismiss the charge and proceed under Subchapter F on a finding that an outpatient competency restoration program is unavailable or that the defendant cannot be placed in an outpatient competency restoration program before the 14th day after the date of the court's order; 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 that resulted in bodily injury to another person or any higher category of offense or if the defendant is charged with an offense punishable as a Class A misdemeanor that did not result in bodily injury to another person and the defendant has been convicted in the preceding two years of an offense that resulted in bodily injury to another person:

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

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

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

Art. 46B.0711. RELEASE ON BAIL: CERTAIN OFFENSES NOT INVOLVING BODILY INJURY [~~FOR CLASS B MISDEMEANOR~~].

Section 5. Article 46B.0711(b), Code of Criminal Procedure, is amended to read as follows:

(b) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant charged with an offense punishable as a Class B misdemeanor, or charged under the circumstances described by Article 46B.071(a)(1) with an offense punishable as 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 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.

Section 6. The heading to Article 46B.072, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.072. RELEASE ON BAIL: FELONIES; CERTAIN OFFENSES INVOLVING

BODILY INJURY [~~FOR FELONY OR CLASS A MISDEMEANOR~~].

Section 7. Article 46B.072(a-1), Code of Criminal Procedure, is amended to read as follows:

(a-1) Subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, [~~if~~] the court may release on bail, or continue the release on bail of, [~~determines that~~] a defendant charged with an offense punishable as a felony, or charged under the circumstances described by Article 46B.071(a)(2) with an offense punishable as [~~or~~] a Class A misdemeanor and found incompetent to stand trial if the court determines 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 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~~].

Section 8. Articles 46B.073(a), (b), and (d), Code of Criminal Procedure, are amended to read as follows:

(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(a)(2)(B) [~~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 Class A misdemeanor; or

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

(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 commission [~~local mental health authority or local intellectual and developmental disability authority~~] or to a jail-based competency restoration program. The court may enter an order committing the defendant [~~A defendant may be committed~~] to a jail-based competency restoration program only if the program provider has informed the court that [~~determines~~] the defendant will begin to receive competency restoration services not later than the third business day after the date of the order [~~within 72 hours of arriving at the program~~].

Section 9. Article 46B.077(a), Code of Criminal Procedure, is amended to read as follows:

(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 period authorized under this subchapter, including any possible extension under Article 46B.080 [~~foreseeable future~~]; and

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

Section 10. Articles 46B.079(b) and (b-1), Code of Criminal Procedure, are amended to read as follows:

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

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

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

(3) the defendant is not likely to attain competency in the period authorized under this subchapter, including any possible extension under Article 46B.080 [~~foreseeable future~~].

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

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

(2) the defendant is not likely to attain competency in the period authorized under this subchapter, including any possible extension under Article 46B.080 [~~foreseeable future~~].

Section 11. Article 46B.091(i), Code of Criminal Procedure, is amended to read as follows:

(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 to competency in the period authorized under this subchapter, including any possible extension under Article 46B.080 [~~foreseeable future~~]:

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

(2) the court shall:

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

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

Section 12. Article 46B.101, Code of Criminal Procedure, is amended to read as follows:

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 46B.0855 or according to the court's appropriate determination under

Article 46B.055(2) [~~46B.071~~].

Section 13. Article 46B.151(a), Code of Criminal Procedure, is amended to read as follows:

(a) If a court is required by Article 46B.084(f) or 46B.0855 or by its appropriate determination under Article 46B.055(2) [~~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.

Section 14. The following provisions are repealed:

(1) Article 46B.071(b), Code of Criminal Procedure;
(2) Articles 46B.073(e) and (f), Code of Criminal Procedure; and
(3) Sections 574.035(d) and 574.0355(b), Health and Safety Code.

Appendix I

Section 1. Articles 46B.073(c), (d), Code of Criminal Procedure, are amended to read as follows:

(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 or to a jail-based competency restoration program.

(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 designated by the commission [~~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~~].

Section 2. Articles 46B.091(d), (g), (j), and (j-1), Code of Criminal Procedure, are amended to read as follows:

(d) A jail-based competency restoration program provider 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 to oversee the defendant's medication management;

(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 the program in the jail in a designated space that is separate from the space used for the general population of the jail;

(6) ensure coordination with the jail's behavioral health provider regarding the defendant's treatment plan [~~of general health care~~];

(7) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(8) ensure the provision of [~~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.

(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. The psychiatrist or psychologist performing the evaluation is not required to be appointed by the court as a disinterested expert pursuant to Article 46B.021.

(j) Based on a review of the defendant's progress toward achieving

competency, if the provider [~~If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article~~] believes that a defendant 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~~] by Article 46B.073(b), including any extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at [~~a facility~~] an inpatient mental health facility or residential treatment facility appropriate for the defendant is available or the provider believes that the defendant is clinically ready and can be safely transferred to an outpatient competency restoration program, 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) that space at an inpatient mental health facility or residential treatment facility appropriate for the defendant is available, the defendant shall be transferred without unnecessary delay to the appropriate mental health facility or [~~,~~]residential care facility[~~, or outpatient competency restoration program~~] for the remainder of the period permitted by [~~this subchapter~~] Article 46B.073(b), including any extension that may be ordered under Article 46B.080 if an extension has not previously been ordered under that article. If the provider believes that the defendant is clinically ready and can be safely transferred to an outpatient competency restoration program, the provider must promptly notify the court for the court to consider whether to order the transfer of the defendant to an outpatient competency restoration program and making the determinations required by subsection (m) of this 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 felony or 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.

Section 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.

Appendix J

Section 1. Articles 46B.084(a-1) and (b), Code of Criminal Procedure, are amended to read as follows:

(a-1)(1) Following the defendant's return to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based only on the most recent report that is filed under Article 46B.079(c) and based on notice under that article, other than notice under Subsection (b)(1) of that article, and on other medical information or personal history information relating to the defendant. A party may object in writing or in open court to the findings of the most recent report not later than the 15th day after the date on which the court received the applicable notice under Article 46B.079. If no party objects to the findings of the most recent report within that period, the [~~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, if no party objects to the findings of the most recent report within the period specified by that subdivision, 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 as provided by [~~under~~] Subsection (a-1) and raises a suggestion that the defendant may no longer be competent to stand trial, the court shall determine, by informal inquiry not later than the fifth day after the date of the objection, whether there exists any evidence from a credible source that the defendant may no longer be competent. If, after an informal inquiry, the court determines that evidence from a credible source exists to support a finding of incompetency, the court shall order a further examination under Subchapter B to determine whether the defendant is incompetent to stand trial. Following receipt of the expert's report under that subchapter, the issue shall be set for a hearing not later than the 10th day after the date the report is received by the court. 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.

Section 2. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Article 46B.0855 to read as follows:

Art. 46B.0855. RAISING ISSUE OF INCOMPETENCY WHEN CRIMINAL PROCEEDINGS ARE NOT TIMELY RESUMED. If the court has found the defendant competent to stand trial under Article 46B.084, but the criminal proceedings against the defendant were not resumed within the period specified by Subsection (d) of that article, the court shall, on motion of either party suggesting that the defendant may no longer be competent to stand trial, follow the procedures provided under Subchapters A and B,

except any subsequent court orders for treatment must be issued under Subchapter E or F. If, following the end of the period specified by Article 46B.084(d), the court suspects that the defendant may no longer be competent to stand trial, the court may make that suggestion under this article on its own motion.

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

Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. (a) A defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the facility designated by the commission if:

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

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

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

(c) For a defendant whose initial commitment is under this subchapter as provided by Article 46B.055(2), the court shall:

(1) provide to the facility copies of the following items made available to the court during the incompetency trial:

(A) reports of each expert;

(B) psychiatric, psychological, or social work reports that relate to the current mental condition of the defendant;

(C) documents provided by the attorney representing the state or the defendant's attorney that relate to the defendant's current or past mental condition;

(D) copies of the indictment or information and any supporting documents used to establish probable cause in the case;

(E) the defendant's criminal history record information; and

(F) the addresses of the attorney representing the state and the defendant's attorney; and

(2) direct the court reporter to promptly prepare and provide to the facility transcripts of all medical testimony received by the jury or court.

Section 4. Article 46B.109(b), Code of Criminal Procedure, is amended to read as follows:

(b) The head of the facility or outpatient treatment provider shall provide with the request a written statement that in their opinion the defendant is competent to stand trial and shall file with the court as provided by Article 46B.025 a report stating the reason why the facility or provider believes the defendant has been restored to competency. The head of the facility or outpatient treatment provider must include with the report a list of the types and dosages of medications prescribed for the defendant while the defendant was receiving services in the facility or through the outpatient treatment program. The court shall provide copies of the written statement and report to the attorney representing the state and the defendant's attorney. Either party may object to the findings in the written statement or report as provided by Article 46B.1115.

Section 5. Subchapter E, Chapter 46B, Code of Criminal Procedure, is amended by adding

Article 46B.1115 to read as follows:

Art. 46B.1115. PROCEEDINGS TO DETERMINE RESTORATION OF COMPETENCY. The periods for objecting to the written statement and report filed under Article 46B.109(b) and for conducting a hearing on the defendant's competency under this subchapter are the same as those specified under Article 46B.084.

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

Art. 46B.114. TRANSPORTATION OF DEFENDANT TO COURT. (a) If the hearing is not conducted at the facility to which the defendant has been committed under this chapter or conducted by means of an electronic broadcast system as described by this subchapter, an order setting a hearing to determine whether the defendant has been restored to competency shall direct that [~~, as soon as practicable but not earlier than 72 hours before the date the hearing is scheduled,~~] the defendant be placed in the custody of the sheriff of the county in which the committing court is located or the sheriff's designee for prompt transportation to the court. [~~The sheriff or the sheriff's designee may not take custody of the defendant under this article until 72 hours before the date the hearing is scheduled.~~]

(b) If before the 15th day after the date on which the court received notification under Article 46B.109 that a defendant committed to a facility or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under this subchapter, the head of the facility or outpatient treatment provider 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 commission or outpatient treatment 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.

Appendix K

Section 1. Article 46B.1055(c)(2), Code of Criminal Procedure, is amended as follows:

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 mental health facility to which the defendant is committed, or the attorney representing the state may request that the court modify an order for inpatient mental health treatment ~~or residential care~~ to order the defendant to participate in an outpatient treatment program.

(c) The defendant, the head of the residential care facility to which the defendant is committed, or the attorney representing the state may request that the court modify a commitment to a residential care facility.

~~(c)~~ (d) 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 mental health treatment ~~or residential care~~ in accordance with Subtitle C, Title 7, Health and Safety Code.

(e) If the head of the residential care facility to which the defendant is committed makes a request under Subsection (c), 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 commitment to a residential care facility in accordance with art. 46B.1075.

~~(d)~~ (f) 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)~~ (g) 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)~~ (h) 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)~~ (i) 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 mental health treatment ~~or residential care~~; or

(2) the 91st day after the date of the court's previous determination.

~~(h)~~ (j) 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)~~ (k) 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.

Section 2. Article 46B.103(c)(2), Code of Criminal Procedure, is amended as follows:

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

(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~~46B.1075.

Section 3. Article 46B.107, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.107. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT: MENTAL ILLNESS. (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.

Section 4. Article 46B.1075, Code of Criminal Procedure, is added to read as follows:

Art. 46B.1075. RELEASE OF DEFENDANT AFTER CIVIL COMMITMENT TO A RESIDENTIAL CARE FACILITY: INTELLECTUAL DISABILITY. (a) This article applies to a defendant who has been committed under Article 46B.103.

(b) The release of a defendant committed under this chapter from a residential care facility is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the residential care facility that a criminal charge remains pending against the defendant.

(c) If the head of the residential care facility determines that the defendant should be released from the facility, he or she 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 residential care facility intends to release the defendant. The written statement shall include an opinion as to whether the defendant has attained competency to stand trial and must be accompanied by an interdisciplinary team recommendation as described in Section 593.013, Health and Safety Code.

(d) The defendant, the head of the residential care facility to which the defendant is committed, or the attorney representing the state may request that the court approve the release of the defendant or approve release of the defendant and require the defendant's participation in a community-based living plan as defined in 26 Texas Administrative Code §904.107.

(e) If the head of the residential care facility to which the defendant is committed makes a request under Subsection (d), not later than the 14th day after the date of the request the court shall hold a hearing in accordance with the due process protections contained within Chapter 593, Subchapter C, Health and Safety Code to determine whether the court should deny the request, grant the request to release the defendant from the residential care facility, or grant the request to release the defendant from the residential care facility and require the defendant's participation in a community-based living plan.

(f) 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.

(g) On receipt of a request to release the defendant under Subsection (d), the court shall require the residential care facility to submit:

(1) a report indicating that:

(a) the defendant's placement at the residential care facility is no longer appropriate to the defendant's individual needs;

(b) the defendant can be adequately and appropriately habilitated in another setting; and

(c) appropriate community-based services are available to the defendant; and

(2) a community living discharge plan that will serve as the basis of the community-based living plan.

(h) If, after a hearing, the preponderance of evidence shows that the requirements of Subsection (g)(1) have been met, the court shall enter an order that grants the release of the defendant from the resident care facility. The court may also require the defendant to participate in a community-based living plan identified by the residential care facility. If the court requires the defendant to participate in a community-based living plan, the court shall designate the local intellectual and developmental disability authority responsible for supervising the court-ordered community living plan.

(i) The community living discharge plan referenced in (g)(2) must be incorporated into the court order. The community-based living plan may be amended by residential care facility or the local intellectual

and developmental disability authority to address the defendant's on-going needs without court approval.

(j) The court shall rule on a request made under Subsection (d) as soon as practicable after a hearing on the request, but not later than the 14th day after the date of the request. If a hearing is not held during this time frame, the request to release the defendant is automatically granted.

(k) An order authorizing the release of the defendant and requiring the defendant to participate in a community-based living plan must provide for a period not to exceed 12 months, and the court may not order the defendant to participate in any subsequent community-based living plan in connection with the same offense.

(l) If a request under Subsection (d) 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 91st day after the date of the court's previous determination.

(m) Proceedings for granting the release of the defendant and requiring the defendant's participation in a community-based living plan 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 regardless of whether the criminal court is also the county court.

(n) A defendant is entitled to an appeal from an order denying the defendant's release or requiring the defendant's participation in a community living plan, and appeals from the criminal court proceedings are to the court of appeals as in the proceedings for court-ordered residential care under Subtitle D, Title 7, Health and Safety Code.

(o) The person responsible for coordinating the services shall inform the court if the defendant must return to the residential care facility at any time during the period referenced in subsection (k) above.

Section 5.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.

Appendix L

Chapter 45A, Code of Criminal Procedure, is amended by adding Article 45A.xxx to read as follows:

Art. 45A.xxx. DISMISSAL BASED ON DEFENDANT'S LACK OF CAPACITY. (a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a justice or judge shall determine whether probable cause exists to believe that a defendant, including a defendant who is a child as defined by Article 45.058(h) and a defendant with a mental illness or developmental disability, lacks the capacity to understand the proceedings in criminal court or to assist in the defendant's own defense and is unfit to proceed.

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

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 45A.202.

Appendix M

Section 1. Section 574.101, Health and Safety Code, is amended by adding subsection (3) and amending subsection (4) to read as follows:

(3) "Primary Care Provider" means a health care professional who provides mental health care services to a defined population of patients subject to court-ordered inpatient mental health services. 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.

(4) [~~(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.

Section 2. The heading to Section 574.104 is amended to read as follows:

PRIMARY CARE PROVIDER'S [~~PHYSICIAN'S~~] APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING.

Section 3. Section 574.104, Health and Safety Code, is amended to read as follows:

(a) A primary care provider [~~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 primary care provider [~~physician~~] believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the primary care provider [~~physician~~] determines that the medication is the proper course of treatment for the patient;

(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed for the patient; and

(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the primary care provider [~~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 primary care provider [~~physician~~] wants the court to compel the patient to take;

(3) whether an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed;

(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5) the primary care provider's [~~physician's~~] diagnosis of the patient; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034 or 574.035 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under Section 574.034 or 574.035 and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Section 4. Subsection 574.106(a) and (a-1), Health and Safety Code, are amended to read as follows:

(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 ~~w~~as 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 illness [~~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 illness [~~disorder or mental defect~~] as determined under Section 574.1065.

Section 5. Section 574.1065, Health and Safety Code, is amended to read as follows:

In making a finding under Section 574.106(a-1)(2) that, as a result of a mental illness [~~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.

Section 6. Section 574.107, Health and Safety Code, is amended to read as follows:

(a) The costs for a hearing under this subchapter for a patient committed under this chapter 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 a person under the jurisdiction of a criminal court [~~:~~

~~(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)~~].

Section 7. Section 574.110, Health and Safety Code, is amended to read as follows:

(a) [~~Except as provided by Subsection (b), a~~] An order issued under Section 574.106 for a patient that is committed under this chapter 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 subject to a court order for inpatient mental health services or jail-based competency restoration program under Chapter 46B, Code of Criminal procedure, who is returned to court or is returned to a correctional facility, as defined by Section 1.07, Penal Code, as recommended competent under Article 46B.079(b)(2) or 46B.109, Code of Criminal Procedure 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 court or 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.

(c) An order issued under Section 574.106 for a patient subject to a court order for inpatient mental health services or jail-based competency restoration program under Chapter 46B, Code of Criminal procedure, who is recommitted as unrestored to competency is extended 30 days beyond the expiration of the prior order of the criminal court, during which time a new order for psychoactive medication may be sought from a court with probate jurisdiction. Each subsequently issued order for psychoactive medication for a person described by this subsection is extended 30 days beyond the expiration of the commitment by the criminal court, during which time a new order for psychoactive medication may be sought from a court with probate jurisdiction.

(d) An order issued under Section 574.106 for a patient subject to a court order for inpatient mental health services under chapter 46C, Code of Criminal Procedure, who is recommitted is extended 30 days beyond the expiration of the prior order of the criminal court, during which time a new order for psychoactive medication may be sought from a court with probate jurisdiction. Each subsequently issued order for psychoactive medication for a person described by this subsection is extended 30 days beyond the expiration of the commitment by the criminal court, during which time a new order for psychoactive medication may be sought from a court with probate jurisdiction.

Section 8. Article 46B.086, Code of Criminal Procedure, is amended to read as follows:

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 primary care provider as defined in Section 574.101, Health and Safety Code [~~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 representing the state may file a written motion to compel medication. The motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 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~~] a primary care provider as defined in Section 574.101, Health and Safety Code [~~physicians~~], [~~one of whom~~] who is the primary care provider [~~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~~] the primary care provider [~~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 primary care provider [~~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.

Section 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.

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