SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

SHORT TITLE
Sec.571.001. This subtitle may be cited as the Texas Mental Health Code.

PURPOSE
Sec.571.002. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:
(1) facilitating treatment in an appropriate setting;
(2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;
(3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;
(4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;
(5) defining the criteria the state must meet to order involuntary care and treatment;
(6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;
(7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and
(8) safeguarding the rights of the person who voluntarily requests inpatient care.

DEFINITIONS
Sec.571.003. In this subtitle:
(1) "Board" means the Texas Board of Mental Health and Mental Retardation.
(2) "Commissioner" means the commissioner of mental health and mental retardation.
(3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.
(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.
(5) "Department" means the Texas Department of Mental Health and Mental Retardation.
(6) "Facility administrator" means the individual in charge of a mental health facility.
(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat physically ill persons.
(8) "Hospital administrator" means the individual in charge of a hospital.
(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:
   (A) a facility operated by the department;
   (B) a private mental hospital licensed by the Texas Department of Health;
   (C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;
   (D) a local mental health authority or a facility operated by or under contract with a local mental health authority;
   (E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health; or
   (F) a hospital operated by a federal agency.
(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.
(11) "Local mental health authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in...
the most appropriate and available setting to meet individual needs in one or more local service areas.

12) "Mental health facility" means:
   (A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;
   (B) a community center or a facility operated by a community center; or
   (C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.

13) "Mental hospital" means a hospital:
   (A) operated primarily to provide inpatient care and treatment for persons with mental illness; or
   (B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

14) "Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:
   (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or
   (B) grossly impairs behavior as demonstrated by recent disturbed behavior.

15) "Non-physician mental health professional" means:
   (A) a psychologist licensed to practice in this state and designated as a health-service provider;
   (B) a registered nurse with a master's or doctoral degree in psychiatric nursing;
   (C) a licensed clinical social worker;
   (D) a licensed professional counselor licensed to practice in this state; or
   (E) a licensed marriage and family therapist licensed to practice in this state.

16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

18) "Physician" means:
   (A) a person licensed to practice medicine in this state;
   (B) a person employed by a federal agency who has a license to practice medicine in any state; or
   (C) a person authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

21) "State mental hospital" means a mental hospital operated by the department.

**LEAST RESTRICTIVE APPROPRIATE SETTING**

Sec.571.004. The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

1) is available;
2) provides the patient with the greatest probability of improvement or cure; and
3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.
Sec. 571.005. (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.
   (b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.
   (c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

DEPARTMENT POWERS

Sec. 571.006. The department may:
   (1) adopt rules as necessary for the proper and efficient treatment of persons with mental illness;
   (2) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;
   (3) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;
   (4) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and
   (5) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

TREATMENT METHODS

Sec. 571.0065. (a) The board by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.
   (b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the board.
   (c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the board.
   (d) – repealed by S.B. 71, 82nd Leg., R.S.

PRESCRIPTION MEDICATION INFORMATION

Sec. 571.0066. (a) The board by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.
   (b) At a minimum, the required information must:
       (1) identify the major types of prescription medications; and
       (2) specify for each major type:
           (A) the conditions the medications are commonly used to treat;
           (B) the beneficial effects on those conditions generally expected from the medications;
           (C) side effects and risks associated with the medications;
           (D) commonly used examples of medications of the major type; and
           (E) sources of detailed information concerning a particular medication.
   (c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

RERAINT AND SECLUSION

Sec. 571.0067. A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

DELEGATION OF POWERS AND DUTIES

Sec. 571.007. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.
   (b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.
(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE

Sec. 571.008. (a) The department may return a nonresident patient committed to a department mental health facility to the proper agency of the patient's state of residence.

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

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

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient.

EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT

Sec. 571.009. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, senility, alcoholism, or mental deficiency.

AGENT FOR SERVICE OF PROCESS

Sec. 571.010. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

APPLICATION TO PERSONS CHARGED WITH CRIME

Sec. 571.011. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

COURT HOURS; AVAILABILITY OF JUDGE OR MAGISTRATE

Sec. 571.012. The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574.

METHOD OF GIVING NOTICE

Sec. 571.013. Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

FILING REQUIREMENTS
Sec.571.014. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

1. the date on which the paper is filed;
2. the docket number; and
3. the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this code would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for an extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This section does not affect another provision of this code requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

INSPECTION OF COURT RECORDS

Sec.571.015. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

1. the use, inspection, or copying is justified and in the public interest; or
2. the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

REPRESENTATION OF STATE

Sec.571.016. Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

1. the county attorney shall represent the state; or
2. if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

EXTENSION OF DETENTION PERIOD

Sec.571.0165. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.
This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

**PROCEEDINGS ON BEHALF OF THE STATE**

Sec. 571.0166. All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

**HABEAS CORPUS PROCEEDINGS**

Sec. 571.0167. (a) A petition for a writ of habeas corpus arising from a commitment order must be filed in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a state inpatient mental health facility or a physician employed by a state inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

**COMPENSATION OF COURT-APPOINTED PERSONNEL**

Sec. 571.017. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b) The compensation paid shall be taxed as costs in the case.

**COSTS**

Sec. 571.018. (a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1) the county that initiates emergency detention procedures under Subchapter A or B, Chapter 573; or

(2) if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b) The county responsible for the costs of a hearing or proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The costs shall be billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-appointed personnel listed under Section 571.017;

(4) expenses of transportation to a mental health facility or to a federal agency not to exceed $50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(5) costs and salary supplements authorized under Sections 574.031(i) and (j); and

(6) prosecutor's fees authorized under Section 574.031(k).

(d) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the patient; or

(2) a person or estate liable for the patient's support in a department mental health facility.

(e) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).
(h) The state or a county may not pay any costs for a patient committed to a private mental hospital unless:

(1) a public facility is not available; and
(2) the commissioners court of the county authorizes the payment, if appropriate.

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or
(2) the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j) When an inpatient mental health facility as defined under Section 571.003(9)(B) or (E) files an affidavit with the clerk of the court certifying that it has received no compensation or reimbursement for the treatment of a person for whom court costs have been paid or advanced, the judge of the probate court shall order the clerk of the court to refund the costs.

LIMITATION OF LIABILITY

Sec. 571.019. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and
(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

CRIMINAL PENALTIES

Sec. 571.020. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;
(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or
(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;
(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or
(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.
ENFORCEMENT OFFICERS

Sec. 571.021. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

INJUNCTION

Sec. 571.022. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

CIVIL PENALTY

Sec. 571.023. (a) A person is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this statute. In determining the amount of the civil penalty, the court shall consider:

1. the person's or facility's previous violations;
2. the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
3. whether the health and safety of the public was threatened by the violation;
4. the demonstrated good faith of the person or facility; and
5. the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

1. combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or
2. file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

NOTICE OF SUIT

Sec. 571.024. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

ADMINISTRATIVE PENALTY

Sec. 571.025. (a) The board may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.
(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:
   (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
   (2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;
   (3) the history of previous violations;
   (4) the amount necessary to deter future violations;
   (5) efforts to correct the violation; and
   (6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure Act (V.C.T.A. Government Code, Section 2001.001 et seq.) must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 2001.144, Administrative Procedure Act (V.C.T.A. Government Code, Section 2001.001 et seq.), the person shall:
   (1) pay the amount of the penalty;
   (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
   (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:
   (1) stay enforcement of the penalty by:
       (A) paying the amount of the penalty to the court for placement in an escrow account; or
       (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or
   (2) request the court to stay enforcement of the penalty by:
       (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
       (B) giving a copy of the affidavit to the commissioner by certified mail.
(l) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:
   (1) is instituted by filing a petition as provided by Section 2001.171, Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.); and
   (2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.).

RECOVERY OF COSTS

Sec.571.026. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

ADVISORY COMMITTEE ON INPATIENT MENTAL HEALTH SERVICES

Sec.571.027. (a) The board shall appoint an advisory committee on inpatient mental health services to advise the board on:
   (1) issues and policies related to the provision of mental health services in a facility described by Section 571.003(9)(B) or (E);
   (2) coordination and communication between the department, the Texas Department of Health, and facilities described by Section 571.003(9)(B) or (E) to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and
   (3) training for inpatient mental health facility surveyors or investigators.

(b) The board shall appoint to the committee:
   (1) three representatives of hospitals, at least two of whom represent a facility described by Section 571.003(9)(B) or (E);
   (2) three consumers of mental health services, each of whom has received treatment in a facility described by Section 571.003(9)(B) or (E);
   (3) two physicians licensed under Chapter 162 Occupations Code, who practice psychiatry and are board certified in psychiatry, at least one of whom is board certified in child and adolescent psychiatry; and
   (4) one family member of a person who has been a consumer of mental health services provided by a facility described by Section 571.003(9)(B) or (E).
(c) The Texas Board of Health shall provide the advisory committee with two persons to represent the Texas Department of Health. The representatives may address the advisory committee on any issue relevant to a matter before the advisory committee, but the representatives may not vote on any matter. The Texas Board of Health shall consider designating an inpatient mental health facility surveyor or investigator to be a representative under this subsection.

(d) Except for persons who represent the Texas Department of Health designated under Subsection (c), members of the advisory committee serve staggered four-year terms. A member's term expires on August 31 of the fourth year following the member's appointment.

(e) The board shall fill vacancies on the board in the same manner as the original appointment.

(f) The committee shall meet not fewer than four times each calendar year.

(g) Section 2110.008, Government Code, does not apply to the advisory committee.

CHAPTER 572. VOLUNTARY INPATIENT MENTAL HEALTH SERVICES

REQUEST FOR ADMISSION

Sec. 572.001. (a) A person 16 years of age or older or a person younger than 16 years of age who is or has been married may request admission to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age who is not and has not been married may request the admission of the person to an inpatient mental health facility by filing a request with the administrator of the facility to which admission is requested.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age only with the person's consent.

(d) The administrator of an inpatient mental health facility may admit a minor who is 16 years of age or older or a person younger than 16 years of age who is or has been married to an inpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

1. the person's discharge; or
2. the period prescribed by Section 572.004.

ADMISSION

Sec. 572.002. The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient services is filed if the administrator or the designee determines:

1. from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient services;
2. that the person has been informed of the person's rights as a voluntary patient; and
3. that the admission was voluntarily agreed to:
   (A) by the person if the person is:
      (i) 16 years of age or older; or
      (ii) younger than 16 years of age and is or has been married; or
   (B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age and is not and has not been married.

INFORMATION ON MEDICATIONS

Sec. 572.0022. (a) A mental health facility shall provide to a patient in patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.
INTAKE, ASSESSMENT, AND ADMISSION

Sec.572.0025. (a) The board shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

1. reviewing a prospective patient's finances and insurance benefits;
2. explaining to a prospective patient the patient's rights; and
3. explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by board rules.

(d) The rules governing the assessment process shall prescribe:

1. the types of professionals who may conduct an assessment;
2. the minimum credentials each type of professional must have to conduct an assessment; and
3. the type of assessment that professional may conduct.

(e) In accordance with board rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

1. the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order, the order must be from:
   - an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within 72 hours of the admission; or
   - a consulting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within 72 hours of the admission; and
2. the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician before admission.

(h) In this section:

1. "Admission" means the formal acceptance of a prospective patient to a facility.
2. "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.
3. "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

RIGHTS OF PATIENTS

Sec.572.003. (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

1. to be reviewed periodically to determine the person's need for continued inpatient treatment; and
to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The department by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

**DISCHARGE**

**Sec. 572.004.** (a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1) a written withdrawal of the request for discharge is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.
A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

APPLICATION FOR COURT-ORDERED TREATMENT

Sec. 572.005. (a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

1. A request for release of the patient has been filed with the facility administrator;
2. In the opinion of the physician responsible for the patient's treatment opinion, the patient meets the criteria for court-ordered mental health services and:
   A. Is absent from the facility without authorization;
   B. Is unable to consent to appropriate and necessary psychiatric treatment; or
   C. Refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:
      i. There is no reasonable alternative to the treatment recommended by the physician; and
      ii. The patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

APPREHENSION BY PEACE OFFICER WITHOUT WARRANT

Sec. 573.001. (a) A peace officer, without a warrant, may take a person into custody if the officer:

1. Has reason to believe and does believe that:
   A. The person is mentally ill; and
   B. Because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
2. Believes that there is not sufficient time to obtain a warrant before taking the person into custody.

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

1. The person's behavior; or
2. Evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

1. From a representation of a credible person; or
2. On the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:
(1) the nearest appropriate inpatient mental health facility; or
(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.
(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

**PEACE OFFICER'S APPLICATION FOR DETENTION**

Sec. 573.002. (a) A peace officer shall immediately file an application for detention after transporting a person to a facility under Section 573.001.

(b) The application for detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;
(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;
(3) a specific description of the risk of harm;
(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;
(6) a detailed description of the specific behavior, acts, attempts, or threats; and
(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

**TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN**

Sec. 573.003. (a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is mentally ill; and
(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others

unless the ward is immediately restrained.

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

(1) the ward's behavior; or
(2) evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

**GUARDIAN’S APPLICATION FOR EMERGENCY DETENTION**

Sec. 573.004. (a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;
(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;
(3) a specific description of the risk of harm;
(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;
(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and
(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

[Sections 573.005-573.010 reserved for expansion]

SUBCHAPTER B. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY APPREHENSION AND DETENTION

APPLICATION FOR EMERGENCY DETENTION

Sec. 573.011. (a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:
   (1) that the applicant has reason to believe and does believe that the person evidences mental illness;
   (2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;
   (3) a specific description of the risk of harm;
   (4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;
   (5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;
   (6) a detailed description of the specific behavior, acts, attempts, or threats; and
   (7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

ISSUANCE OF WARRANT

Sec. 573.012. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:
   (1) presented personally to the court; or
   (2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:
   (1) the person evidences mental illness;
   (2) the person evidences a substantial risk of serious harm to himself or others;
   (3) the risk of harm is imminent unless the person is immediately restrained; and
   (4) the necessary restraint cannot be accomplished without emergency detention.

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:
   (1) the person's behavior; or
   (2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(d) The magistrate shall issue to an on duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:
   (1) the nearest appropriate inpatient mental health facility; or
   (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.
If there is more than one court with probate jurisdiction in a county, an administrative order regarding a presentation of an application must be jointly issued by all of the judges of those courts.

A judge or magistrate may permit an applicant who is a physician to present an application by:

1. e-mail with the application attached as a secure document in a portable document format (PDF); or
2. secure electronic means, including:
   a. satellite transmission;
   b. closed-circuit television transmission; or
   c. any other method of two-way electronic communication that:
      i. is secure;
      ii. is available to the judge or magistrate; and
      iii. provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

1. electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or
2. by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

[Sections 573.013-573.020 reserved for expansion]

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

PRELIMINARY EXAMINATION

Sec.573.021. (a) A facility shall temporarily accept a person for whom an application for detention is filed.

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person’s guardian.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

EMERGENCY ADMISSION AND DETENTION

Sec.573.022. (a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:
(1) is acceptable to the facility;
(2) states that after a preliminary examination it is the physician's opinion that:
   (A) the person is mentally ill;
   (B) the person evidences a substantial risk of serious harm to himself or others;
   (C) the described risk of harm is imminent unless the person is immediately restrained; and
   (D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and
(3) includes:
   (A) a description of the nature of the person's mental illness;
   (B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and
   (C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

RELEASE FROM EMERGENCY DETENTION
Sec. 573.023. (a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(2) no longer applies.

TRANSPORTATION AFTER RELEASE
Sec. 573.024. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:
   (1) the location of the person's apprehension;
   (2) the person's residence in this state; or
   (3) another suitable location.
(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.
(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.
(d) The county in which the person was apprehended shall pay the costs of transporting the person.

RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION
Sec. 573.025. (a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:
   (1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;
   (2) to a reasonable opportunity to communicate with and retain an attorney;
   (3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention unless the person is arrested or objects;
   (4) to be released from a facility as provided by Section 573.023;
   (5) to be advised that communications with a mental health professional may be used in proceedings for further detention; and
to be transported in accordance with Sections 573.026 and 574.045, if the person is
detained under Section 573.022 or transported under an order of protective custody under
Section 574.023.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle
shall be informed of the rights provided by this section:
   (1) orally in simple, nontechnical terms, within 24 hours after the time the person is
       admitted to a facility, and in writing in the person's primary language if possible; or
   (2) through the use of a means reasonably calculated to communicate with a hearing or
       visually impaired person, if applicable.

TRANSPORTATION AFTER DETENTION

Sec. 573.026. A person being transported after detention under Section 573.022 shall be
transported in accordance with Section 574.045.

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.001. (a) A county or district attorney or other adult may file a sworn written application
for court-ordered mental health services. Only the district or county attorney may file an application that is
not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the
county in which the proposed patient:
   (1) resides;
   (2) is found; or
   (3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may,
on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the
application to that county.

(d) An application may be transferred to the county in which the person is being detained under
Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer
under this subsection does not preclude the proposed patient from filing a motion to transfer under
Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the
appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F
Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state
that all charges have been dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Youth
Commission may be filed in the county in which the child's commitment to the commission was ordered.

FORM OF APPLICATION

Sec. 574.002. (a) An application for court-ordered mental health services must be styled using the
proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health
services. An application for extended inpatient mental health services must state that the person has
received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E,
Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.
An application for extended outpatient mental health services must state that the person has received:
   (1) court-ordered inpatient mental health services under this subtitle or under Subchapter
   D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during
   the preceding 12 months; or
(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;
(2) the proposed patient's county of residence in this state;
(3) a statement that the proposed patient is mentally ill and meets the criteria in Section 574.034 or 574.035 for court-ordered mental health services; and
(4) whether the proposed patient is charged with a criminal offense.

**APPOINTMENT OF ATTORNEY**

Sec.574.003. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

**DUTIES OF ATTORNEY**

Sec.574.004. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;
(2) interview supporting witnesses and other witnesses who will testify at the hearing; and
(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and
(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

(1) the application is dismissed;
(2) an appeal from an order directing treatment is taken;
(3) the time for giving notice of appeal expires by operation of law; or
(4) another attorney assumes responsibility for the case.
SETTING ON APPLICATION

Sec. 574.005. (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

NOTICE

Sec. 574.006. (a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

(1) parent, if the proposed patient is a minor;
(2) appointed guardian, if the proposed patient is the subject of a guardianship; or
(3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

DISCLOSURE OF INFORMATION

Sec. 574.007. (a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;
(2) the reasons voluntary outpatient services are not considered appropriate for the proposed patient;
(3) the name, address, and telephone number of each witness who may testify at the hearing;
(4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and
(5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.
(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

1. orally and in the presence of the court; or
2. in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

COURT JURISDICTION AND TRANSFER

Sec. 574.008. (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

ASSOCIATE JUDGES

Sec. 574.0085. (a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioner's court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioner's court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioner's courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to
appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge’s report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(l) An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

REQUIREMENT OF MEDICAL EXAMINATION
Sec.574.009. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two Certificates of Medical Examination for Mental Illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY
Sec.574.010. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS
Sec.574.011. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;
(2) the name and address of the person examined;
(3) the date and place of the examination;
(4) a brief diagnosis of the examined person's physical and mental condition;
(5) the period, if any, during which the examined person has been under the care of the examining physician;
(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
(7) the examining physician's opinion that:
   (A) the examined person is mentally ill; and
   (B) as a result of that illness the examined person is likely to cause serious harm to himself or to others or is:
      (i) suffering severe and abnormal mental, emotional, or physical distress;
      (ii) experiencing substantial mental or physical deterioration of his ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health or safety; and
      (iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

RECOMMENDATION FOR TREATMENT

Sec.574.012. (a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

LIBERTY PENDING HEARING

Sec.574.013. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

COMPILATION OF MENTAL HEALTH COMMITMENT RECORDS

Sec.574.014. (a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Texas Judicial Council each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Texas Judicial Council shall make the reported information available to the department annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

[Sections 574.015-574.020 reserved for expansion]
SUBCHAPTER B. PROTECTIVE CUSTODY

MOTION FOR ORDER OF PROTECTIVE CUSTODY

Sec. 574.021. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.
(b) The motion may be filed by the county or district attorney or on the court’s own motion.
(c) The motion must state that:
   (1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and
   (2) the belief is derived from:
      (A) the representations of a credible person;
      (B) the proposed patient’s conduct; or
      (C) the circumstances under which the proposed patient is found.
(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.
(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate’s duty under this section is in addition to the magistrate’s duties prescribed by other law.

ISSUANCE OF ORDER

Sec. 574.022. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:
   (1) that a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill; and
   (2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.
(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient’s behavior or by evidence of severe emotional distress and deterioration in the proposed patient’s mental condition to the extent that the proposed patient cannot remain at liberty.
(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.
(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.
(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

APPREHENSION UNDER ORDER

Sec. 574.023. (a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.
(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.
(c) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.
(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

APPOINTMENT OF ATTORNEY
Sec. 574.024. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

1. that the proposed patient has been placed under a protective custody order;
2. the grounds for the order; and
3. the time and place of the hearing to determine probable cause.

PROBABLE CAUSE HEARING

Sec. 574.025. (a) A hearing must be held to determine if:

1. there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that he cannot be at liberty pending the hearing on court-ordered mental health services; and
2. a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the master serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

ORDER FOR CONTINUED DETENTION

Sec. 574.026. (a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ____ day of ______________________, 20__, the undersigned hearing officer heard evidence concerning the need for protective custody of ______________________ (hereinafter
referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on ________________ (date of notice).

I have examined the certificate of medical examination for mental illness and ________________ (other evidence considered).

Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself (yes ___ or no ___) or others (yes ___ or no ___) such that (s)he cannot be at liberty pending final hearing because ________________

(reasons for finding; type of risk found)

DETENTION IN PROTECTIVE CUSTODY

Sec.574.027. (a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

RELEASE FROM DETENTION

Sec.574.028. (a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location of the person's apprehension;
(2) the person's residence in this state; or
(3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;
(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or
(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.
GENERAL PROVISIONS RELATING TO HEARING

Sec.574.031. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.  
(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.  
(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.  
(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.  
(e) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.  
(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.  
(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.  
(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payments of costs under Section 571.018.  
(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.  
(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.  
(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

RIGHT TO JURY

Sec.574.032. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.  
(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.  
(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.  
(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.  
(e) A court may not require a jury fee.  
(f) In a hearing before a jury, the jury shall determine if the proposed patient is mentally ill and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.
RELEASE AFTER HEARING

Sec.574.033. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is mentally ill and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

ORDER FOR TEMPORARY MENTAL HEALTH SERVICES

Sec.574.034. (a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is mentally ill; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) is:

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

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

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

(b) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

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

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

(A) the proposed patient is mentally ill;

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

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

and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient services; and

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

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

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under this Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the proposed patient's deterioration of ability to function.

(e) To be clear and convincing under Subsection (b)(2), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:
(f) The proposed patient and the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient and the proposed patient's attorney do not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony. In addition, the court may consider the testimony of a non-physician mental health professional as provided by section 547.031(f).

(g) An order for temporary inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 90 days. The order may not specify a shorter period.

(h) A judge may not issue an order for temporary inpatient or outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) A judge may advise, but may not compel, the proposed patient to:
   (1) receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan;
   (2) participate in counseling; and
   (3) refrain from the use of alcohol or illicit drugs.

ORDER FOR EXTENDED MENTAL HEALTH SERVICES

Sec. 574.035. (a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:
   (1) the proposed patient is mentally ill;
   (2) as a result of that mental illness the proposed patient:
      (A) is likely to cause serious harm to himself;
      (B) is likely to cause serious harm to others; or
      (C) is:
         (i) suffering severe and abnormal mental, emotional, or physical distress;
         (ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and
         (iii) unable to make a rational and informed decision as to whether or not to submit to treatment;
   (3) the proposed patient's condition is expected to continue for more than 90 days; and
   (4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:
   (1) the judge finds that appropriate mental health services are available to the patient; and
   (2) the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:
      (A) the proposed patient is mentally ill;
      (B) the nature of the mental illness is severe and persistent;
      (C) as a result of the mental illness, the proposed patient will, if not treated, continue to:
(i)suffer severe and abnormal mental, emotional, or physical distress; and

(ii)experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient services; and

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

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

(ii)specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

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

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed under Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) or (b)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the proposed patient's deterioration of ability to function.

(f) To be clear and convincing under Subsection (b)(2), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the proposed patient's distress;

(2) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(g) The court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(h) An order for extended inpatient or outpatient mental health services shall state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(i) A judge may not issue an order for extended inpatient or outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) A judge may advise, but may not compel, the proposed patient to:

(1) receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan;

(2) participate in counseling; and

(3) refrain from the use of alcohol or illicit drugs.

ORDER OF CARE OR COMMITMENT
Sec. 574.036. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be mentally ill and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

1. Committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or
2. Committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(b) or 574.035(b).

COURT-ORDERED OUTPATIENT SERVICES

Sec. 574.037. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall identify a person who is responsible for those services. The person identified must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located.

(b) The person responsible for the services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The person responsible for the services shall inform the court of:

1. The patient's failure to comply with the court order; and
2. Any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

[Sections 574.038-574.040 reserved for expansion]

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT

DESIGNATION OF FACILITY

Sec. 574.041. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

1. A mental health facility deemed suitable by the local mental health for the area;
2. A private mental hospital under Section 574.042;
3. A hospital operated by a federal agency under Section 574.043; or
4. An inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.
INFORMATION ON MEDICATIONS

Sec. 574.0415. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with board rules information relating to prescription medication ordered by the patient's treating physician.
(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

COMMITMENT TO PRIVATE FACILITY

Sec. 574.042. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:
(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and
(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

COMMITMENT TO FEDERAL FACILITY

Sec. 574.043. (a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.
(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.
(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.
(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

COMMITMENT TO FACILITY OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec. 574.044. The court shall commit an inmate patient to an inpatient mental health facility of the institutional division of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist for the institutional division under Section 500.057, Government Code.

TRANSPORTATION OF PATIENT

Sec. 574.045. (a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:
(1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;
(2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;
(3) a relative or other responsible person who has a proper interest in the patient's welfare and expenses;
(4) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;
(5) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located; or
(6) the sheriff or constable.
(a-1) A person who under Subsection (a)(1), (2), or (6) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is
included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient’s physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

LIST OF QUALIFIED TRANSPORTATION SERVICE PROVIDERS

Sec. 574.0455. (a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The Department of State Health Services shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

WRIT OF COMMITMENT

Sec. 574.046. The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

TRANSCRIPT

Sec. 574.047. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.
(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

ACKNOWLEDGMENT OF PATIENT DELIVERY
Sec. 574.048. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:
(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and
(2) file a copy of the statement with the clerk of the committing court.

[Sections 574.049-574.060 reserved for expansion]

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS
MODIFICATION OF ORDER FOR INPATIENT TREATMENT
Sec. 574.061. (a) The facility administrator of a facility to which a patient is committed for inpatient mental health services may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient mental health services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the request.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall identify a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may not extend beyond the term of the original order.

MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT
Sec. 574.062. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on the agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

ORDER FOR TEMPORARY DETENTION
Sec.574.063. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

1. the patient meets the criteria described by Section 574.065(a); and
2. detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

1. that the patient has been placed under a temporary detention order;
2. the grounds for the order; and
3. the time and place of the modification hearing.

APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER
Sec.574.064. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

1. the nearest appropriate inpatient mental health facility; or
2. a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(b) A patient may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

1. the patient meets the criteria described by Section 574.065(a); and
2. detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

1. after a probable cause hearing held within 72 hours after the patient's detention begins; or
2. after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a non-medical facility used to detain persons charged with or convicted of a crime.

ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES
Sec.574.065. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:
(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or
(2) providing for commitment to an inpatient mental health facility.

(c) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES

Sec. 574.066. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

MOTION FOR REHEARING

Sec. 574.067. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and
2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

REQUEST FOR REEXAMINATION

Sec. 574.068. (a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

1) require that the patient be reexamined;
2) schedule a hearing on the request; and
3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.
(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

**HEARING ON REQUEST FOR REEXAMINATION**

Sec.574.069. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

1. A certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or
2. A certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

1. Appoint an attorney to represent a patient who does not have an attorney; and
2. Give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

**APPEAL**

Sec.574.070. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

1. Stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and
2. If the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

[Sections 574.071-574.080 reserved for expansion]

**SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED MENTAL HEALTH SERVICES**

**CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE**
Sec. 574.081. (a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(b) The physician shall prepare the plan as prescribed by department rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:
   (1) the need for sufficient medication on furlough or discharge to last until the patient can see a physician; and
   (2) the person or entity that is responsible for providing and paying for the medication.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:
   (1) the services are provided by:
       (A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or
       (B) any other provider that agrees to accept the referral; and
   (2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

PASS OR FURLOUGH FROM INPATIENT CARE

Sec. 574.082. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER

Sec. 574.083. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:
(1) the patient is absent without authority from the facility;
(2) the patient has violated the conditions of a pass or furlough; or
(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:
   (A) may not be detained in the facility for more than 24 hours; and
   (B) must be isolated from all persons charged with or convicted of a crime; and
(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

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**REVOCATION OF FURLOUGH**

Sec. 574.084. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:
   (1) a written notation of the decision; and
   (2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

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**DISCHARGE ON EXPIRATION OF COURT ORDER**

Sec. 574.085. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

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**DISCHARGE BEFORE EXPIRATION OF COURT ORDER**

Sec. 574.086. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:
   (1) a furlough under Section 574.082; or
   (2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.
(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

CERTIFICATE OF DISCHARGE

Sec. 574.087. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES

Sec. 574.088. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

1. the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
2. the person's mental history;
3. the person's criminal history; and
4. the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

1. the person is no longer likely to act in a manner dangerous to public safety; and
2. removing the person's disability to purchase a firearm is in the public interest.

TRANSPORTATION PLAN FOR FURLOUGH OR DISCHARGE

Sec. 574.089. (a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

1. who is responsible for transporting the person;
2. when the person will be transported; and
3. where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER ORDER FOR INPATIENT MENTAL HEALTH SERVICES

DEFINITIONS

Sec. 574.101. In this subchapter:

1. "Capacity" means a patient's ability to:
   (A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and
   (B) make a decision whether to undergo the proposed treatment.

2. "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:
   (A) imminent probable death or substantial bodily harm to the patient because the patient:
      (i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or
      (ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or
   (B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

3. "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system.
nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;
(B) antidepressants;
(C) agents for control of mania or depression;
(D) antianxiety agents;
(E) sedatives, hypnotics, or other sleep-promoting drugs; and
(F) psychomotor stimulants.

APPLICATION OF SUBCHAPTER

Sec. 574.102. This subchapter applies to the application of medication to a patient subject to an order for inpatient mental health services under this chapter or other law.

ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.103. (a) In this section “ward” has the meaning assigned by Section 601, Texas Probate Code.

(b) A person may not administer a psychoactive medication to a patient who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;
(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or
(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

PHYSICIAN’S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING

Sec. 574.104. (a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;
(2) the physician determines that the medication is the proper course of treatment for the patient;
(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed for the patient; and
(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

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

(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;
(2) each medication the physician wants the court to compel the patient to take;
(3) whether an application for court-ordered mental health services under Section 574.034 or 574.035 has been filed;
(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;
(5) the physician's diagnosis of the patient; and
(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.
(c) An application filed under this section is separate from an application for court-ordered mental health services.

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

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

RIGHTS OF PATIENT

Sec. 574.105. A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION

Sec. 574.106. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is under a court order to receive inpatient mental health services; or

(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as determined under Section 574.1065.
For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

1. authorizes the initiation of any mental health treatment for the patient and 
2. does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

1. the patient's expressed preferences regarding treatment with psychoactive medication;
2. the patient's religious beliefs;
3. the risks and benefits, from the perspective of the patient, of taking psychoactive medication;
4. the consequences to the patient if the psychoactive medication is not administered;
5. the prognosis for the patient if the patient is treated with psychoactive medication;
6. alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and
7. less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.
FINDING THAT PATIENT PRESENTS A DANGER

Sec. 574.1065. In making a finding under Section 574.106 (a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

1. an assessment of the patient's present mental condition;
2. whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and
3. whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

COSTS

Sec. 574.107. (a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

1. a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or
2. a patient who:
   (A) is awaiting trial after having been determined to be competent to stand trial; and
   (B) was ordered to receive mental health services as described by Section 574.106(a)(2).

APPEAL

Sec. 574.108. (a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

EFFECT OF ORDER

Sec. 574.109. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

EXPIRATION OF ORDER

Sec. 574.110. (a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

1. the 180th day after the date the defendant was returned to the correctional facility;
2. the date the defendant is acquitted, is convicted, or enters a plea of guilty; or
3. the date on which charges in the case are dismissed.

SUBCHAPTER H. VOLUNTARY ADMISSION FOR CERTAIN PERSONS FOR WHOM MOTION FOR COURT-ORDERED SERVICES HAS BEEN FILED

APPLICABILITY

Sec. 574.151. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034 or 574.035, and who requests voluntary admission to an inpatient mental health facility:
(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or
(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

CAPACITY TO CONSENT TO VOLUNTARY ADMISSION
Sec. 574.152. A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

RIGHTS OF PERSON ADMITTED TO VOLUNTARY INPATIENT TREATMENT
Sec. 574.153. (a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.
(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

PARTICIPATION IN RESEARCH PROGRAM
Sec. 574.154. Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:
(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and
(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

SUBCHAPTER I. USE OF VIDEO TECHNOLOGY AT PROCEEDINGS
APPLICATION OF SUBCHAPTER
574.201. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED
§ 574.202. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:
(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;
(2) the proposed patient and the attorney representing the proposed patient do not file a written objection to the use of closed-circuit video teleconferencing;
(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and
(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.
(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.
(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.
(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER.
Sec. 574.203. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

1. written consent to the use of a secure electronic communication method for the hearing is filed with the court by:
   (A) the proposed patient or the attorney representing the proposed patient; and
   (B) the county or district attorney, as appropriate;

2. the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge, associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

3. on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge, associate judge, or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

(c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

AUTHORIZATION FOR ADMISSION

Sec. 575.001. (a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL

Sec. 575.002. This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

ADMISSION OF ALCOHOLICS AND PERSONS CHARGED WITH CRIMINAL OFFENSE

Sec. 575.003. This subtitle does not affect the admission to a state mental health facility of:

1. an alcoholic admitted under Chapter 462; or
2. a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Subsections 575.004-575.010 reserved for expansion

SUBCHAPTER B. TRANSFER PROCEDURES

TRANSFER TO DEPARTMENT MENTAL HEALTH FACILITY OR LOCAL MENTAL HEALTH AUTHORITY

Sec. 575.011. (a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:
(1) another inpatient mental health facility operated by the department; or
(2) a mental health facility deemed suitable by the local mental health authority if the authority consents.
(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.
(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.
(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.
(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

TRANSFER OF PERSON WITH MENTAL RETARDATION TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT
Sec. 575.012. (a) An inpatient mental health facility may not transfer a patient who is also a person with mental retardation to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.
(b) The department shall maintain an appropriate number of hospital-level beds for persons with mental retardation who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

TRANSFER OF PERSON WITH MENTAL RETARDATION TO STATE SCHOOL
Sec. 575.013. (a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state school for persons with mental retardation if an examination of the patient indicates that the patient has symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school are in the patient's best interest.
(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state school shall be furnished to the committing court.
(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

TRANSFER TO PRIVATE MENTAL HOSPITAL
Sec. 575.014. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:
(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;
(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and
(3) written notice of the transfer is sent to the committing court.

TRANSFER TO FEDERAL FACILITY
Sec. 575.015. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:
(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;
(2) notice of the transfer is sent to the committing court; and
(3) the committing court enters an order approving the transfer.

TRANSFER FROM FACILITY OF THE INSTITUTIONAL DIVISION
OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec. 575.016. (a) The institutional division of the Texas Department of Criminal Justice shall transfer a patient committed to an institutional division inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

TRANSFER OF RECORDS

Sec. 575.017. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state school to which the patient is transferred.

CHAPTER 576. RIGHTS OF PATIENTS

SUBCHAPTER A. GENERAL RIGHTS

RIGHTS UNDER CONSTITUTION AND LAW

Sec. 576.001. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

1. the right to register and vote at an election;
2. the right to acquire, use, and dispose of property, including contractual rights;
3. the right to sue and be sued;
4. all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;
5. the right to religious freedom; and
6. all rights relating to domestic relations.

PRESUMPTION OF COMPETENCY

Sec. 576.002. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Texas Probate Code.

WRIT OF HABEAS CORPUS

Sec. 576.003. A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

EFFECT ON GUARDIANSHIP

Sec. 576.004. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

CONFIDENTIALITY OF RECORDS

Sec. 576.005. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES

Sec. 576.0055. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.
(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

**RIGHTS SUBJECT TO LIMITATION BY FACILITY ADMINISTRATOR**

Sec.576.006. (a) A patient in an inpatient mental health facility has the right to:

1. receive visitors;
2. communicate with a person outside the facility by telephone and by uncensored and sealed mail; and
3. communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

**NOTIFICATION OF RELEASE**

Sec.576.007. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

**NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM**

Sec.576.008. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

**NOTIFICATION OF RIGHTS**

Sec.576.009. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

1. orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or
2. through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

**NOTIFICATION OF TRUST EXEMPTION**

Sec. 576.010. (a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

1. orally, in simple, nontechnical terms in the patient's primary language, if possible; or
(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

[Sections 576.011-576.020 reserved for expansion]

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

GENERAL RIGHTS RELATING TO TREATMENT

Sec. 576.021. (a) A patient receiving mental health services under this subtitle has the right to:
   (1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;
   (2) not receive unnecessary or excessive medication;
   (3) refuse to participate in a research program;
   (4) an individualized treatment plan and to participate in developing the plan; and
   (5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

ADEQUACY OF TREATMENT

Sec. 576.022. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

PERIODIC EXAMINATION

Sec. 576.023. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

USE OF PHYSICAL RESTRAINT

Sec. 576.024. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

ADMINISTRATION OF PSYCHOACTIVE MEDICATION

Sec. 576.025. (a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:
   (1) the patient is having a medication-related emergency;
   (2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;
   (3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;
(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or
(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;
(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:
   (A) the specific condition to be treated;
   (B) the beneficial effects on that condition expected from the medication;
   (C) the probable health and mental health consequences of not consenting to the medication;
   (D) the probable clinically significant side effects and risks associated with the medication;
   (E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and
   (F) the proposed course of the medication;
(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and
(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:
   (1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and
   (2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:
   (1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and
   (2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

INDEPENDENT EVALUATION

Sec. 576.026. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.
LIST OF MEDICATIONS

Sec.576.027. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1) the name of the medication;
(2) the dosage and schedule prescribed for the administration of the medication; and
(3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

LICENSE REQUIRED

Sec.577.001. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the Texas Department of Mental Health and Mental Retardation to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

DEFINITIONS

Sec.577.0011. In this chapter:
(1) "Board" means the Texas Board of Health.
(2) "Department" means the Texas Department of Health.

EXEMPTIONS FROM LICENSING REQUIREMENT

Sec.577.002. A mental health facility operated by the Texas Department of Mental Health and Mental Retardation or a federal agency need not be licensed under this chapter.

ADDITIONAL LICENSE NOT REQUIRED

Sec.577.003. A mental hospital licensed under this chapter that the Texas Department of Mental Health and Mental Retardation designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

LICENSE APPLICATION

Sec.577.004. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;
(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;
(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or
the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;  
(4) the bed capacity to be authorized by the license;  
(5) the number, duties, and qualifications of the professional staff;  
(6) a description of the equipment and facilities of the mental hospital or mental health facility; and  
(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

INVESTIGATION AND LICENSE ISSUANCE

Sec. 577.005. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

d) The license is not transferable or assignable.

FEES

Sec. 577.006. (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b) The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule under which the number of beds in the hospital determines the amount of the fee. The fee may not exceed $15 a bed. A minimum license fee may be established. The minimum fee may not exceed $1,000.

c) The board by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

d) The fees imposed under the schedule may not exceed the following:

<table>
<thead>
<tr>
<th>Cost of Construction</th>
<th>Fee</th>
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<td>(1) $ 100,000 or less</td>
<td>$ 500</td>
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<tr>
<td>(2) $ 100,001 - $ 600,000</td>
<td>$1,500</td>
</tr>
<tr>
<td>(3) $ 600,001 - $ 2,000,000</td>
<td>$3,000</td>
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<tr>
<td>(4) $ 2,000,001 - $ 5,000,000</td>
<td>$4,500</td>
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<tr>
<td>(5) $ 5,000,001 - $10,000,000</td>
<td>$6,000</td>
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<tr>
<td>(6) $10,000,001 and over</td>
<td>$7,500</td>
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(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of $500 and a maximum fee of $1,000 for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The department may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. These fees may be appropriated only to the department.

CHANGE IN BED CAPACITY
Sec.577.007. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

REQUIREMENT OF PHYSICIAN IN CHARGE
Sec.577.008. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

LIMITATION ON CERTAIN CONTRACTS
Sec.577.009. A community center or other entity the Texas Department of Mental Health and Mental Retardation designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

RULES AND STANDARDS
Sec.577.010. (a) The Texas Board of Mental Health and Mental Retardation shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

NOTIFICATION OF TRANSFER OR REFERRAL
Sec.577.0101. (a) The board shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

RECORDS AND REPORTS
Sec.577.011. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

DESTRUCTION OF RECORDS
Sec.577.012. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

INVESTIGATIONS
Sec.577.013. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:
   (1) inspect the facilities and conditions;
   (2) observe the hospital's or facility's care and treatment program; and
   (3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:
   (1) persons involved with the department in the enforcement action against the licensed mental hospital;
   (2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;
   (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;
   (4) law enforcement agencies; and
   (5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

Sec.577.014. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

Sec.577.015. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

Sec.577.016. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:
   (1) department rules;
   (2) this subtitle; or
   (3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.
(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

HEARINGS

Sec. 577.017. (a) The department's legal staff may participate in a hearing under this chapter. (b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

JUDICIAL REVIEW OF DEPARTMENT DECISION

Sec. 577.018. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision. (b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation. (c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply. (d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings. (e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

INJUNCTION

Sec. 577.019. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter. (b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction. (c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

|Section 577.020-577.050 reserved for expansion|

SUBCHAPTER B. PATIENT SAFETY PROGRAM
DUTIES OF DEPARTMENT

Sec. 577.051. The department shall develop a patient safety program for mental hospitals licensed under Section 577.001(a). The program must:
(1) be administered by the licensing program within the department; and
(2) serve as an information clearinghouse for hospitals concerning best practices and quality improvement strategies.

ANNUAL REPORT

Sec. 577.052. (a) On renewal of a license under this chapter, a mental hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year: (1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient; (2) the suicide of a patient in a setting in which the patient received care 24 hours a day; (3) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility; (4) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities; and (5) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended. (b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

ROOT CAUSE ANALYSIS AND ACTION PLAN

Sec. 577.053. (a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 577.052 and that:
(1) focuses primarily on systems and processes;
(2) progresses from special causes in clinical processes to common causes in organizational processes; and
(3) identifies potential improvements in processes or systems.
(b) Not later than the 45th day after the date a mental hospital becomes aware of an event listed in Section 577.052, the hospital shall:
(1) conduct a root cause analysis of the event; and
(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.
(c) The department may review a root cause analysis or action plan related to an event listed in Section 577.052 during a survey, inspection, or investigation of a mental hospital.
(d) The department may not require a root cause analysis or action plan to be submitted to the department.
(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from all or any part of a root cause analysis or action plan.

CONFIDENTIALITY; ABSOLUTE PRIVILEGE

Sec. 577.054. (a) Except as provided by Sections 577.055 and 577.056, all information and materials obtained or compiled by the department under this subchapter or compiled by a mental hospital under this subchapter, including the root cause analysis, annual report of the hospital, action plan, best practices report, department summary, and all related information and materials, are confidential and:
(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 577.053(c); and
(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.
(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by a mental hospital or an entity that has an ownership or management interest in a hospital.

c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

d) Information reported by a mental hospital under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the hospital or the hospital's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a mental hospital in compliance with or as authorized under this subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

ANNUAL DEPARTMENT SUMMARY

Sec. 577.055. The department annually shall compile and make available to the public a summary of the events reported by mental hospitals as required by Section 577.052. The summary may contain only aggregated information and may not directly or indirectly identify:

1. a specific mental hospital or group of hospitals;
2. an individual; or
3. a specific reported event or the circumstances or individuals surrounding the event.

BEST PRACTICES REPORT AND DEPARTMENT SUMMARY

Sec. 577.056. (a) A mental hospital shall provide to the department at least one report of best practices and safety measures related to a reported event.

(b) A mental hospital may provide to the department a report of other best practices and the safety measures that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a mental hospital to a patient safety organization.

(d) The department periodically shall:

1. review the best practices reports;
2. compile a summary of the best practices reports determined by the department to be effective
   and recommended as best practices; and
3. make the summary available to the public.

(e) The summary may not directly or indirectly identify:

1. a specific mental hospital or group of hospitals;
2. an individual; or
3. a specific reported event or the circumstances or individuals surrounding the event.

PROHIBITION

Sec. 577.057. The annual report of a mental hospital, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

REPORT TO LEGISLATURE

Sec. 577.058. (a) Not later than December 1, 2006, the commissioner of public health shall:

1. evaluate the patient safety program established under this subchapter; and
2. report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with mental hospitals licensed under this chapter.
The evaluation must address:

1. the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;
2. the degree to which the statewide summaries of events compiled by the department were accessed by the public;
3. the effectiveness of the department's best practices summary in improving hospital patient care; and
4. the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

GIFTS, GRANTS, AND DONATIONS

Sec. 577.059. The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

ADMINISTRATIVE PENALTY

Sec. 577.060. (a) The department may assess an administrative penalty against a person who violates this subchapter or a rule adopted under this subchapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

1. the seriousness of the violation;
2. the history of previous violations;
3. the amount necessary to deter future violations;
4. efforts made to correct the violation;
5. any hazard posed to the public health and safety by the violation; and
6. any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this subchapter are considered to be contested cases under Chapter 2001, Government Code.

NOTICE; REQUEST FOR HEARING

Sec. 577.061. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

1. a brief summary of the alleged violation;
2. a statement of the amount of the proposed penalty based on the factors set forth in Section 577.060(c); and
3. a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

HEARING; ORDER

Sec. 577.062. (a) If the person notified fails to respond in a timely manner to the notice under Section 577.061(b) or if the person requests a hearing, the department shall:

1. set a hearing;
2. give written notice of the hearing to the person; and
(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND

Sec. 577.063. (a) The department shall give notice of the order under Section 577.062(c) to the person notified. The notice must include:

1. separate statements of the findings of fact and conclusions of law;
2. the amount of any penalty assessed; and
3. a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

1. pay the penalty;
2. pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
3. without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

1. stay enforcement of the penalty by:
   (A) paying the penalty to the court for placement in an escrow account; or
   (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or
2. request the court to stay enforcement of the penalty by:
   (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
   (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

1. is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
2. is under the substantial evidence rule. (g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the
New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A) or gave a supersedeas bond under Subsection (c)(1)(A) and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

EXPIRATION

Sec. 577.064. Unless continued in existence, this subchapter expires September 1, 2007.

CHAPTER 578. GENERAL PROVISIONS

APPLICATION

Sec. 578.001. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

USE OF ELECTROCONVULSIVE THERAPY

Sec. 578.002. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

1. a person who is 16 years of age or older and who is voluntarily receiving mental health services; or
2. an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

CONSENT TO THERAPY

Sec. 578.003. (a) The board by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The board by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the board shall consider recommendations of the panel. Use of the consent form prescribed by the board in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

1. the nature and purpose of the procedure;
2. the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;
3. that there is a division of opinion as to the efficacy of the procedure; and
4. the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:
(1) the patient and the patient's guardian of the person, if any, receives a written copy of
the consent form that is in the person's primary language, if possible;
(2) the patient and the patient's guardian of the person, if any, receives a written
supplement that contains related information that pertains to the particular patient being
-treated;
(3) the contents of the consent form and the written supplement are explained to the
patient and the patient's guardian of the person, if any:
   (A) orally, in simple, nontechnical terms in the person's primary language, if
   possible; or
   (B) through the use of a means reasonably calculated to communicate with a
   hearing impaired or visually impaired person, if applicable;
(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the
consent form stating that the person has read the consent form and the written supplement
and understands the information included in the documents; and
(5) the signed copy of the consent form is made a part of the patient's clinical record.
(d) Consent given under this section is not valid unless the person giving the consent understands
the information presented and consents voluntarily and without coercion or undue influence.
(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility,
or physician administering the procedure shall:
   (1) ensure that two physicians have signed an appropriate form that states the procedure is
   medically necessary;
   (2) make the form described by Subdivision (1) available to the patient or the patient's
   guardian of the person; and
   (3) inform the patient or the patient's guardian of the person of any known current medical
   condition that may increase the possibility of injury or death as a result of the treatment.

WITHDRAWAL OF CONSENT
Sec.578.004. (a) A patient or guardian who consents to the administration of electroconvulsive
therapy may revoke the consent for any reason and at any time.
    (b) Revocation of consent is effective immediately.

PHYSICIAN REQUIREMENT
Sec.578.005. (a) Only a physician may administer electroconvulsive therapy.
    (b) A physician may not delegate the act of administering the therapy. A nonphysician who
administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B,
Title 3, Occupations Code.

REGISTRATION OF EQUIPMENT
Sec.578.006. (a) A person may not administer electroconvulsive therapy unless the equipment
used to administer the therapy is registered with the department.
    (b) A mental hospital or facility administering electroconvulsive therapy or a private physician
administering the therapy on an outpatient basis must file an application for registration under this section.
The applicant must submit the application to the department on a form prescribed by the department.
    (c) The application must be accompanied by a nonrefundable application fee. The board shall set
the fee in a reasonable amount not to exceed the cost to the department to administer this section.
    (d) The application must contain:
       (1) the model, manufacturer, and age of each piece of equipment used to administer the
therapy; and
       (2) any other information required by the department.
    (e) The department may conduct an investigation as considered necessary after receiving the proper
application and the required fee.
       (f) The board by rule may prohibit the registration and use of equipment of a type, model, or age
the board determines is dangerous.
       (g) The department may deny, suspend, or revoke a registration if the department determines that
the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case
under the Administrative Procedure Act (V.T.C.A. Government Code, Section 2001.001 et seq.).
REPORTS

Sec.578.007. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

1) the number of patients who received the therapy, including:
   (A) the number of persons voluntarily receiving mental health services who consented to the therapy;
   (B) the number of involuntary patients who consented to the therapy; and
   (C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

2) the age, sex, and race of the person receiving the therapy;

3) the source of the treatment payment;

4) the average number of nonelectroconvulsive treatments;

5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

6) the average number of electroconvulsive treatments administered per month;

7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

9) any other information required by the department.

USE OF INFORMATION REPORT

Sec.578.008. (a) The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

[Chapters 579-590 reserved for expansion]