

Mental Health Law

The Honorable Guy Herman
Travis County Probate Court No. 1
200 W. 8th Street
Austin, Texas 78701

Paper Written by
The Honorable Guy Herman
Travis County Probate Court No. 1

&

Updated by
Heliana Onomo & Madeleine Muselwhite
Student Law Clerks
Travis County Probate Court No. 1

© 2024

Table of Contents

I. Introduction	1
II. Involuntary Commitment: Authority	1
III. The Texas Mental Health Code.....	2
A. <i>Courts with Jurisdiction</i>	2
B. <i>Important Definitions</i>	2
C. <i>Representation of the State.....</i>	3
D. <i>Rights of the Proposed Patient.....</i>	3
E. <i>Three Steps of Involuntary Commitment</i>	3
IV. Emergency Detention	3
A. <i>Emergency Detention without a Warrant (Peace Officer) - §573.001.....</i>	4
B. <i>Emergency Detention without a Warrant (Guardian) - §573.003-4.....</i>	5
C. <i>Emergency Detention with a Warrant - §573.011.....</i>	5
1. <i>Application for Emergency Detention - §573.011</i>	5
2. <i>Issuance of the Warrant - §573.012</i>	5
D. <i>Emergency Detention & Release - §573.023</i>	6
V. Physician’s Preliminary Examination after an Emergency Detention.....	6
VI. Medical Certificates.....	6
VII. Restriction on Issuance of an OPC	7
VIII. Setting Hearings, Giving Notice, & Appointing an Attorney	7
A. <i>Setting & Notice of a Probable Cause Hearing - §574.025.....</i>	7
B. <i>Setting the Final Hearing - §574.005.....</i>	7
C. <i>Notice of the Final Hearing - §574.006</i>	8
D. <i>Appointment of Attorney - §574.003</i>	8
E. <i>Attorney’s Duties - §§574.003 & 574.004</i>	8
F. <i>Disclosure of Information - §574.007</i>	8
IX. Probable Cause Hearings.....	8
A. <i>Time Limitations - §574.025(b).....</i>	8
B. <i>The Hearing.....</i>	9
C. <i>Release by the Head of the Inpatient Facility - §574.028</i>	9
X. Final Hearing.....	9
A. <i>Pre-Hearing</i>	9
B. <i>Hearing Rules - §574.031</i>	9
C. <i>Rights of the Proposed Patient.....</i>	9
D. <i>Elements for Commitment</i>	10
1. <i>Inpatient Mental Health Services</i>	10
2. <i>Outpatient Mental Health Services</i>	10
3. <i>Specification of the Basis for Inpatient Commitment</i>	11
4. <i>The “Gravely Disabled” Standard.....</i>	11
5. <i>Sufficiency of Evidence</i>	12
6. <i>Evidence of “Overt Acts or Patterns of Behavior”.....</i>	12
7. <i>Expert Testimony</i>	13
8. <i>Admissions and the “Mental Health Miranda”</i>	14
E. <i>Least Restrictive Treatment.....</i>	15
F. <i>Order for Temporary Inpatient Mental Health Services - §574.034.....</i>	15
G. <i>NEW - Order for Temporary Outpatient Mental Health Services - §574.0345</i>	15
H. <i>Order for Extended Inpatient Mental Health Services - §574.035.....</i>	15
I. <i>NEW - Order for Extended Outpatient Mental Health Services - §574.0355</i>	16

J. <i>Compilation of Mental Health Commitment Records - §574.014</i>	16
K. <i>Transportation of Patients - §574.045(a)(1)</i>	16
XI. Voluntary Patients	16
A. <i>Voluntary Admission of Adults - §572.001 et seq.</i>	16
B. <i>Voluntary Admission of Minors (persons younger than 18 years of age)</i>	16
C. <i>Admission of Minors When the State is Guardian or Managing Conservator</i>	17
D. <i>Admissions Process</i>	17
E. <i>Discharge of Commitment after a Voluntary Admission</i>	17
XII. Involuntary Commitment and Guardianships	18
XIII. Appeals	18
XIV. Modification of Commitment Orders	19
XV. Updates on Mental Health Firearm Reporting and Other Readings	19
XVI. Conclusion	19
Appendix A: Psychoactive Medication Orders	21
Appendix B: Commitments for Persons with Intellectual Disabilities and Residential Commitments	25
Appendix C: Chemical Dependency Commitments	26
Appendix D: Prosecutor’s Questions for Mental Illness Commitment Hearing Temporary Inpatient Services	31
Appendix E: Prosecutor’s Questions for Mental Illness Commitment Hearing Temporary Outpatient Services	33
Appendix F: Prosecutor’s Questions for Mental Illness Commitment Hearing Extended Inpatient Services	35
Appendix G: Prosecutor’s Questions for Mental Illness Commitment Hearing Extended Outpatient Services	37
Appendix H: Prosecutor’s Questions for Psychoactive Medication Administration Hearing	39
Appendix I: Prosecutor’s Questions for Commitment Hearing for Person with Intellectual Disabilities	41
Appendix J: <i>T.G. v. State</i>, 7 S.W.3d 248 (Tex. App. – Dallas 1999, no pet.)	42
Appendix K: <i>K.T. v. State</i>, 68 S.W.3d 887 (Tex. App. – Houston [1st Dist.] 2002, no pet.)	45
Appendix L: Costs	50
Appendix M: Jail-based Competency Restoration Services	51
Appendix N: Bipartisan Safer Communities Act	53
Appendix O: H.B. No. 3352	61
Appendix P. Background Checks & Juvenile Mental Health	63
Appendix Q: Federal firearm reporting requirements and juvenile mental health data	67
Appendix R: <i>In Re A.R.C.</i>, No. 22-0987, 2024 WL 648677 (Tex. Feb. 16, 2024)	68

Table of Authorities

	Page(s)
Statutes	
Juvenile Justice Code, Chapter 55.....	19, 66-67
Occupations Code 1701.404	16
Texas Constitution, Article I, § 15-a.....	1
Texas Code of Criminal Procedures	
§ 2.09.....	9
§ 46B	1
§ 46C.....	1-2, 20-21
Texas Estate Code Annotated § 115.....	15, 15-16, 18
Texas Health & Safety Code Annotated	
§ 313.004, Consent to Medical Treatment Act.....	22
§ 462, Treatment of Person with Chemical Dependencies.....	25-29
§ 571, General Provisions.....	1-3, 15, 20, 49
§ 572, Voluntary Mental Health Services.....	1-2, 16-18, 20
§ 573, Emergency Detention.....	1-6, 13, 18, 20, 66-67
§ 574, Court-Ordered Mental Health Services.....	1-3, 6-8, 10-12, 15-16, 18-23, 42, 44-47, 66-67
§ 575, Admissions and Transfer Procedures for Inpatient Services.....	1-2, 20
§ 576, Rights of Patients.....	1-3
§ 577, Private Mental Hospitals and Other Mental Health Facilities.....	1-2, 20
§ 578, Electroconvulsive and Other Therapies.....	1-2, 20
§ 591, General Provisions.....	24
§ 592, Rights of Persons with an Intellectual Disability.....	24
§ 593, Admission and Commitment to Intellectual Disability.....	24
§ 594, Transfer and Discharge.....	24
§ 611.006, Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding.....	14
§ 616, Mental Health Records.....	2
Texas Family Code Annotated	
§ 35.....	25
§ 51.03.....	28
Texas Rules of Appellate Procedure 47.1.....	48
Texas Rules of Evidence	
509.....	14, 15

Mental Health

510.....	15
801.....	13

Public Laws

Bipartisan Safer Communities Act, Pub L. 117-159, 136 Stat. 13.....	19, 52-59
Texas House Bill 3352.....	19, 60-63, 66-67
Texas Senate Bill 49.....	1, 50-51
Texas Senate Bill 362.....	1, 19
Texas Senate Bill 1238.....	1, 17

Cases

<i>Addington v. Texas</i> , 441 U.S. 418 (1979).....	12, 43
<i>Broussard v. State</i> , 827 S.W.2d 619 (Tex. App. – Corpus Christi 1992, no writ).....	12, 42, 46-47
<i>D. J. v. State</i> , 59 S.W.3d 352 (Tex. App. – Dallas 2001, no pet.).....	46
<i>Goldwait v. State</i> , 961 S.W.2d 432 (Tex. App. – Houston [1 st Dist.] 1997, no writ).....	12
<i>G. H. v. State</i> , 96 S.W.3d 629 (Tex. App. – Houston[1 st Dist.] 2002, no writ).....	13
<i>House v. State</i> , 222 S.W.3d 497 (Tex. App. – Houston [14 th Dist.] 2007, pet. filed).....	16
<i>In re Breeden</i> , 4 S.W.3d 782 (Tex. App. – San Antonio 1999, no pet.).....	12, 14, 47
<i>In re A.R.C.</i> , No. 22-0987, 2024 WL 648677 (Tex. Feb. 16, 2024)	7, 68-72
<i>In re D. B.</i> , 214 S.W.3d 209 (Tex. App. – Tyler, 2007).....	20
<i>In re D. F. R.</i> , 945 S.W.2d 210 (Tex. App. – San Antonio 1997, n.w.h.).....	7
<i>In re F. H.</i> , 214 S.W.3d 780 (Tex. App. – Tyler 2007).....	20
<i>In re F. M.</i> , 183 S.W.3d 489 (Tex. App. – Houston [14 th Dist.] 2005, no pet.).....	13
<i>In re J. A.</i> , 53 S.W.3d 869 (Tex. App. – Dallas 2001, no pet. h.).....	19
<i>In re J. J.</i> , 900 S.W.2d 353 (Tex. App. – Texarkana 1995, no writ).....	11
<i>In re J. S. C.</i> , 812 S.W.2d 92 (Tex. App. – San Antonio 1991, no writ).....	11-12, 47
<i>In re K. C. M.</i> , 4 S.W.3d 392 (Tex. App. – Houston [1 st Dist.] 1999, pet. denied).....	45
<i>In re S.A.</i> , No. 12-06-00286 (Tex. App. – Tyler 2007).....	20
<i>In re State for Gill</i> , 680 S.W.2d 41 (Tex. App. – Amarillo 1984, no writ).....	7
<i>In the Interest of E. B.</i> , 962 S.W.2d 304 (Tex. App. – Beaumont 1998, no writ).....	19
<i>In the Interest of L. M.</i> , Nos. 14-06-00709 & 14-06-00710, 2007 Tex. App. LEXIS 616 (Tex. App. – Houston [14 th Dist.], Jan. 30, 2007, no pet.).....	13
<i>In the Interest of R. B.</i> , 741 S.W.2d 525 (Tex. App. – Tyler 1987, no writ).....	15
<i>In the Matter of D. T. M.</i> , 932 S.W.2d 647 (Tex. App. – Fort Worth 1996, no writ).....	9
<i>In the Matter of R. S. C.</i> , 921 S.W.2d 506 (Tex. App. – Fort Worth 1996, no writ).....	11, 18
<i>In the Matter of T. L. T.</i> , 909 S.W. 2d 949 (Tex. App. – Eastland 1995, no writ).....	11

<i>Johnstone v. State</i> , 22 S.W.3d 408 (Tex. 2000) (per curiam).....	19, 45-47
<i>Jones v. State</i> , 613 S.W.2d 570 (Tex. Civ. App. – Austin 1981, no writ).....	14
<i>K. T. v. State</i> , 68 S.W.3d 887 (Tex. App. – Houston [1 st Dist.] 2002, no pet.).....	14, 44-48
<i>L.S. v. State</i> , 867 S.W.2d 838 (Tex. App. – Austin 1993, no writ).....	11, 47
<i>Mezick v. State</i> , 920 S.W.2d 427 (Tex. App. – Houston [1 st Dist.] 1996, no writ).....	11, 13, 42, 46-47
<i>O'Connor v. Donaldson</i> , 422 U.S. 563, 95 S.Ct. 2486 (1975).....	12
<i>Porter v. State</i> , 703 S.W.2d 840 (Tex. App. – Fort Worth 1986, no writ).....	9
<i>Rent v. State</i> , 982 S.W.2d 382 (Tex. Crim. App. 1998).....	2
<i>Shike v. State</i> , 961 S.W.2d 344 (Tex. App. – Houston [1 st Dist.] 1997, writ ref'd).....	2
<i>State v. Addington</i> , 588 S.W.2d 569 (Tex. 1979).....	12, 42
<i>State v. K. E. W.</i> , 315 S.W.3d 16 (Tex. 2010).....	12, 13
<i>State v. Lodge</i> , 608 S.W.2d 910 (Tex. 1980).....	18-19, 41, 44
<i>Sell v. U.S.</i> , 539 U.S. 166 (2003).....	20
<i>T. G. v. State</i> , 7 S.W. 3d 248 (Tex. App. – Dallas 1999, no pet.).....	13, 41-43, 45-47
<i>Thapar v. Zezulka</i> , 994 S.W.2d 635 (Tex. 1999).....	14

Secondary Sources

Michael J. Churgin, <i>An Analysis of the Texas Mental Health Code</i> (3 rd Ed., 2007).....	2
Jeremy Schwartz and Kiah Collier, Texas' law on gun background checks plagued by critical omissions of minors' mental health (July 13, 2022), https://www.texastribune.org/2022/07/13/texas-guns-background-checks-juvenile	64-68
Steven Goode, et al., <i>Texas Practice: Guide to the Texas Rules of Evidence</i> , (3 rd Ed., 2007).....	14

I. Introduction

The scope of this article covers the Texas system for the involuntary commitment of persons with mental illness and persons with intellectual disabilities pursuant to the Texas Health & Safety Code. This paper discusses procedures and hearings involving emergency detention, court-ordered mental health services, and protective custody. The scope of this paper does not include psychoactive medication hearings, commitments of persons with intellectual disabilities, chemical dependency commitments, or the procedures for involuntary commitment or psychoactive-medication orders for those needing treatment under criminal court jurisdiction. However, the appendices to this paper touch on those procedures.

This paper also addresses the legislative changes made in mental health law during the 86th and 88th Legislative session. Some of the statutes passed involve changes affecting the criminal courts, but this paper will focus primarily on changes affecting civil courts with mental health jurisdiction. The most significant of these is S.B. 362, which reorganized the involuntary commitment statutes and split outpatient mental health services from inpatient mental health service and created four distinct sections: temporary outpatient mental health services, temporary inpatient mental health services, extended outpatient mental health services, and extended inpatient mental health services. Under S.B. 362, a criminal court can refer a criminal defendant without dismissing the underlying criminal charge to a civil mental health court to determine whether involuntary outpatient services are appropriate for the criminal defendant. And if the outpatient treatment regimen is successfully completed, the criminal charges can be dismissed, thus diverting the criminal defendant with mental illness from the jail system. S.B. 362 also attempts to divert more civil cases from involuntary inpatient treatment to involuntary outpatient treatment by requiring the state hospital psychiatrist to review each patient under commitment within 30 days to determine if the inpatient commitment should be modified to an outpatient commitment instead. Other changes, such as S.B. 1238 will be addressed in the paper.

S.B. 49 also made changes to criminal procedures regarding persons with intellectual or mental disabilities by providing guidelines for jail-based competency restoration programs.

On a side note, this author notes that most of the changes made by the 86th and 88th Legislature were the result of state leaders finally reaching the conclusion what local leaders had realized several years earlier – that jails and prisons throughout Texas are full of persons with mental illness. Many of these persons are jailed for offenses directly related to their mental illness.

These changes were driven by the Judicial Commission on Mental Health, which was created by the Texas Supreme Court and the Texas Criminal Court of Appeals following the 85th Legislative Session. After being tasked with studying issues surrounding persons with mental illness who are incarcerated, the Commission made a series of legislative recommendations. Alas, while there were some legislative changes, there was little to no funding appropriated to counties to enact those legislative changes. Most of the problems being addressed occur in the twenty most populous counties of Texas and, in the author's opinion, are the result of a lack of housing in general - supportive housing in particular - and a lack of adequate funding of mental health services. On top of all these issues regarding housing and inadequate mental health services, is a failure to have coordinated delivery of services - caused in part by inadequate funding.

II. Involuntary Commitment: Authority

The Texas Constitution Article I, §15a directs the Legislature to enact laws governing the commitment of persons with mental illness for observation and/or treatment and provides for appeal of such commitments. It prohibits the commitment of a person because of unsound mind, except on competent medical or psychiatric testimony. Article I, §15 of the Texas Constitution requires there be a jury trial in all involuntary commitments exceeding 90 days; however, a waiver of this mandatory jury is provided for in Article I, §15a. By statute, the Texas Legislature has mandated jury trials upon request of the proposed patient in involuntary commitments of 90 days or fewer.

Admission, confinement, treatment, and discharge in and from a psychiatric facility, whether voluntarily or involuntarily, are governed by statutory law and not the common law. Most, if not all, of the statutes applicable to voluntary and involuntary psychiatric treatment are contained in the Texas Health and Safety Code. These provisions are set out in Chapters 571 through 578 of the Texas Health and Safety Code, commonly known as the Texas Mental Health Code. The provisions for involuntary commitments of those needing treatment while under criminal court jurisdiction are set forth in Chapters 46B and 46C of the Texas Code of Criminal Procedure.

The commitment and hospitalization of individuals suffering from a mental illness in Texas is civil and not criminal in nature. These proceedings are strictly creatures of statute. Courts may exercise only such authority as has been expressed in the statutes or that may be clearly implied.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Mental Commitments vs. Guardianships

Also available as part of the eCourse

[2024 Estate Planning, Guardianship and Elder Law eConference](#)

First appeared as part of the conference materials for the
26th Annual Estate Planning, Guardianship and Elder Law Conference session
"Mental Commitments vs. Guardianships"