

Mental Health Law

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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.

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