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**PART ONE: EMERGENCY DETENTION AND COURT-ORDERED MENTAL
HEALTH SERVICES**

Compiled 07-14-2019.

{Tex. Health & Safety Code Chapter 573}, {Tex. Health & Safety Code Chapter 574}

I. EMERGENCY DETENTION

{Tex. Health & Safety Code Chapter 573}

A. Apprehension by Peace Officer Without a Warrant

An officer may take into custody without a warrant any person, regardless of age, if the officer has reason to believe and actually believes that:

1. the person is someone with a mental illness; and
2. unless the person is immediately restrained, there is a substantial risk of serious harm to the person or to others. {Tex. Health & Safety Code Sec. 573.001(a)(1)}

The peace officer also must believe that there is not enough time to obtain a warrant. {Tex. Health & Safety Code Sec. 573.001(a)(2)}

The substantial risk of harm to the person or to others may be shown 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.

The peace officer may conclude that the person poses a substantial risk of harm based upon the following:

1. a representation of a credible person;
2. the person's conduct; or
3. the circumstances under which the person is found.

I. EMERGENCY DETENTION

A. Apprehension by Peace Officer Without a Warrant

Prior to 2017, responsibility for transporting a person under this chapter belonged to law enforcement. Now, law enforcement agencies and emergency medical services providers may enter into a memorandum of understanding under which emergency services providers may instead transport a person taken into custody under Section 573.001 by law enforcement. {Tex. Health & Safety Code Sec. 573.005}

This transfer from law enforcement to EMS personnel for transport may only happen if a memorandum of understanding is in place between the two entities and the officer determines that transferring the person is safe for both the person and EMS personnel. {Tex. Health & Safety Code Sec. 573.005(c)}

The peace officer who takes a person into custody must immediately:

1. transport the person to the nearest appropriate inpatient mental health facility or a facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or
2. if there is a memorandum of understanding that has been executed under {Tex. Health & Safety Code Sec. 573.005}, transfer the apprehended person to emergency medical services personnel of an emergency medical services provider for transport to a facility. {Tex. Health & Safety Code Sec. 573.001(d)}

Note that jails are not considered suitable except in cases of extreme emergency. If the officer must take the person to jail, the person must be kept separate from anyone charged with or convicted of a crime.

A peace officer who takes a person into custody must immediately inform the person orally in simple, nontechnical terms:

- (1) of the reason for the detention; and
- (2) that a staff member of the facility will inform the person of his or her rights within twenty-four hours after the person is admitted. {Tex. Health & Safety Code Sec. 573.001(g)}

A peace officer who takes a person into custody for transport to a facility may immediately seize any firearm found in the person's possession. After seizing the firearm, the officer may dispose of it in the manner described by Code of Criminal Procedure Art. 18.191. {Tex. Health & Safety Code Sec. 573.001(h)}

After taking the person into custody, the officer must file immediately with a facility a notification of detention. {Tex. Health & Safety Code Sec. 573.002(a)} In an effort to standardize the information provided to the facility by peace officers, subsection 573.002(d) sets out a form that officers should use. {Tex. Health & Safety Code Sec. 573.002(d)}

If emergency medical personnel transport the person at the request of a peace officer, they must immediately file with the facility the notification of detention completed by the peace officer who made the request. {Tex. Health & Safety Code Sec. 573.002(a)}

If an officer transports a person who is a ward into custody under {Tex. Health & Safety Code Sec. 573.001}, the officer must notify the court having jurisdiction over the ward's guardianship within one day of the ward's detention or transportation to a facility. {Tex. Health & Safety Code Sec. 573.0021}

A guardian of an adult ward (18 or older), without assistance of an officer, may transport the ward to an inpatient mental health facility for a preliminary examination if the guardian has reason to believe and in fact believes that:

1. the ward is a person with mental illness; and
2. the ward must be restrained because of substantial risk of serious harm to the ward or others. The substantial risk of harm may be demonstrated by the ward's behavior or evidence of severe emotional distress to the ward's mental condition to the extent that the ward cannot remain at large. {Tex. Health & Safety Code Sec. 573.003}

After transporting a ward to a facility, a guardian must immediately file an application for emergency detention. {Tex. Health & Safety Code Sec. 573.004(a)} The requirements for the petition are set out in {Tex. Health & Safety Code Sec. 573.004(b)} and discussed in Part I(B)(2) below.

B. Application for Emergency Detention

1. Filing the Application

Any adult may file a written application for the emergency detention of another person. {Tex. Health & Safety Code Sec. 573.011} The emergency detention procedure allows the applicant, upon a proper showing, to arrange for the detention of another person for a maximum period of forty-eight hours, unless an application for court-ordered mental health services is filed and a written order for protective custody obtained. {Tex. Health & Safety Code Sec. 573.021(b)}

2. Contents of Application

Under {Tex. Health & Safety Code Sec. 573.011(b)-(c)}, the emergency detention application must:

- a. state that the applicant has an actual and reasonable belief that the person shows evidence of mental illness;

I. EMERGENCY DETENTION

B. Application for Emergency Detention

- b. state that the applicant has an actual and reasonable belief that the person presents a substantial risk of serious harm to self or to others;
- c. specifically describe the risk of harm;
- d. state that the applicant has an actual and reasonable belief that the risk of harm is imminent unless the person is restrained immediately;
- e. state that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;
- f. specifically describe the behavior, acts, attempts, or threats;
- g. specifically describe the applicant's relationship to the person whose detention is sought, or if the applicant is a peace officer, state the name and relationship to the person sought to be detained of any person who reported or observed the behavior, acts, attempts, or threats; and
- h. state any other relevant information.

C. Ordering Emergency Detention

The applicant (other than a doctor in circumstances described below) personally must present the application to the magistrate, who must examine the application and may interview the applicant. {Tex. Health & Safety Code Sec. 573.012}

A judge or magistrate may allow a physician to present an application by e-mail or secure electronic means (including satellite transmission, closed-circuit TV, or any other secure, two-way electronic communication that includes audio and video recording capabilities). {Tex. Health & Safety Code Sec. 573.012(h)}

After presentation of an application, the judge may transmit a warrant to the applicant electronically (if a digital signature as defined by {Tex. Code Crim. Proc. art. 2.26} is transmitted with the document), or by email with the warrant attached as a PDF document if the legal signature of the judge is transmitted with the PDF document. {Tex. Health & Safety Code Sec. 573.012(h-1)}

The magistrate or judge must preserve this recording until the patient is discharged. The patient may obtain a copy after paying reasonable costs for the copy. If the patient is indigent, the court must provide the copy at no charge. {Tex. Health & Safety Code Sec. 573.012(i)}

1. Probate Jurisdiction by Administrative Order

The judge of a court with probate jurisdiction by administrative order may provide that the application must be:

- a. presented personally to the court; or
- b. retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge is not available when the application is presented. {Tex. Health & Safety Code Sec. 573.012}

If there is more than one court with probate jurisdiction in the county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts. {Tex. Health & Safety Code Sec. 573.012(g)}

The magistrate should issue a warrant for apprehension and an order for emergency detention only if the magistrate finds reasonable cause to believe that:

- a. the person is mentally ill; {Tex. Health & Safety Code Sec. 573.012(b)(1)}
- b. the person presents a substantial risk of serious harm to self or to others, as demonstrated by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain on his own; {Tex. Health & Safety Code Sec. 573.012(b)(2), (c)(1)-(2)}
- c. the risk of harm is imminent unless the person is restrained immediately; and {Tex. Health & Safety Code Sec. 573.012(b)(3)}
- d. the necessary restraint cannot be accomplished without emergency detention. {Tex. Health & Safety Code Sec. 573.012(c)(4)}

When the magistrate has reasonable cause to believe that all four criteria have been established, the magistrate should sign the order for emergency detention and issue a warrant of apprehension and detention. {Tex. Health & Safety Code Sec. 573.012(d)}

The warrant will serve as the application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility. {Tex. Health & Safety Code Sec. 573.012(f)}

The period of emergency detention may last a maximum of forty-eight hours from the time the person is presented to the facility, unless a written order for protective custody is obtained. If the forty-eight-hour period ends on a Saturday, Sunday, legal holiday, or before 4:00 p.m. on the first succeeding business day, however, the person may be detained until 4:00 p.m. on

I. EMERGENCY DETENTION
C. Ordering Emergency Detention

the first succeeding business day. If the forty-eight-hour period ends at a different time, the person may be detained only until 4:00 p.m. on the day the forty-eight-hour period ends. {Tex. Health & Safety Code Sec. 573.021(b)}

2. Preliminary Examination

A physician at the facility must conduct a preliminary examination of the detained person within twelve hours from the time the person is apprehended by a police officer or transported by a guardian. {Tex. Health & Safety Code Sec. 573.021(c)}

After the preliminary examination is conducted, continued detention is possible only if the physician who conducted the examination makes a written report that:

a. states that the person is acceptable to the facility; {Tex. Health & Safety Code Sec. 573.022(a)(1)}

b. states that the person is a person with mental illness; {Tex. Health & Safety Code Sec. 573.022(a)(2)(A)}

c. states that the person presents a substantial risk of serious harm to self or to others; {Tex. Health & Safety Code Sec. 573.022(a)(2)(B)}

d. states that the described risk of harm is imminent unless the person is immediately restrained; {Tex. Health & Safety Code Sec. 573.022(a)(2)(C)}

e. states that emergency detention is the least restrictive means by which the necessary restraint may be accomplished; {Tex. Health & Safety Code Sec. 573.022(a)(2)(D)}

f. describes the nature of the person's mental illness, specifically describes the risk of harm the person poses, as 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 the person cannot remain at large; and {Tex. Health & Safety Code Sec. 573.022(a)(3)(A)-(B)}

g. specifically describes in detail all information from which the physician formed the opinions. {Tex. Health & Safety Code Sec. 573.022(a)(3)(C)}

3. Transportation

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. {Tex. Health & Safety Code Sec. 573.022(b)}

In 2011, the legislature established additional procedures by which mental health patients are to be transported to medical facilities for court-ordered medical services. These changes were likely in response to Attorney General Opinion GA-0753 (2009), which concluded that a mental health facility may not require a peace officer to transport a person in custody under Chapter 573 to a medical facility for medical evaluation prior to taking that person to a mental health facility. *Op. Tex. Att'y Gen. GA-0753* (2009).

Commissioners courts are required to establish and maintain a list of qualified transportation service providers that a county may authorize or with whom a person may contract to transport a person to a mental health facility. {Tex. Health & Safety Code Sec. 574.0455}

The court may authorize, in the following order of priority, transportation of a committed patient or a patient detained for an evaluation to a designated mental health facility by:

- a. a special officer for mental health assignment certified under {Tex. Occ. Code Sec. 1701.404};
- b. the facility administrator or personnel of the designated mental health facility, if available;
- c. a representative of the local mental health authority;
- d. a qualified transportation service provider selected from the list established and maintained by commissioners court (as discussed above; see {Tex. Health & Safety Code Sec. 574.0455});
- e. the sheriff or constable; or
- f. a relative or other responsible person who has a proper interest in the patient's welfare and who receives no compensation, except for actual and necessary expenses. {Tex. Health & Safety Code Sec. 574.045(a)}

Although the person transporting the patient may restrain the patient, the restraint may only be employed during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

A facility that has admitted a person for emergency detention or to which a person has been transported may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator. {Tex. Health & Safety Code Sec. 573.022(c)}

II. PROTECTIVE CUSTODY
C. Ordering Emergency Detention

A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services unless transportation to that facility is authorized by a court order. {Tex. Health & Safety Code Sec. 574.0456}

D. Release from Emergency Detention

A person detained by a peace officer without a warrant, by a peace officer with a warrant of apprehension, or transported by a guardian for emergency detention must be released on completion of the preliminary examination, unless the physician who completed the preliminary examination makes the emergency detention report. {Tex. Health & Safety Code Sec. 573.023(a)}

A person subjected to emergency detention must be released if the facility administrator determines at any time during the emergency detention period that any one of the following criteria is no longer applicable: {Tex. Health & Safety Code Sec. 573.023(b)}

1. the person is a person with a mental illness;
2. the person presents a substantial risk of serious harm to self or to others;
3. the described risk of harm is imminent unless the person immediately is restrained; or
4. emergency detention is the least restrictive means by which the necessary restraint may be accomplished. {Tex. Health & Safety Code Sec. 573.022(a)(2)(A)-(D)}

II. PROTECTIVE CUSTODY

A. Nature of Protective Custody Proceeding

An order of protective custody is used to detain a proposed patient pending a hearing on an application for court-ordered mental health services. See {Tex. Health & Safety Code Sec. 574.021-574.028}

B. Motion for Protective Custody

1. Where Motion May be Filed

The motion may be filed only in the court in which an application for court-ordered mental health services is pending. {Tex. Health & Safety Code Sec. 574.021}

2. Filing the Motion

The motion for protective custody may be filed by the county or district attorney or on the court's own motion.

3. Contents of the Motion

The motion must state that:

- a. the movant has an actual and reasonable belief that the proposed patient meets the criteria authorizing the court to order protective custody; and
- b. the movant's belief is derived from:
 - (1) the representations of a credible person;
 - (2) the proposed patient's conduct; or
 - (3) the circumstances under which the proposed patient is found.

The motion must be accompanied by a sworn certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient no more than three days before the motion was filed. {Tex. Health & Safety Code Sec. 574.021(d)}

C. Issuing the Protective Custody Order

Under {Tex. Health & Safety Code Sec. 574.022(a)-(b)}, a protective custody order may be issued if:

1. an application for mental health services is pending; and
2. the sworn certificate of medical examination provides a factual basis for the court to conclude that the proposed patient is a person with mental illness and presents a substantial risk of serious harm to self or to others if not immediately restrained pending the hearing on the application for court-ordered mental health services, as demonstrated by:
 - a. the proposed patient's behavior; or
 - b. 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.

II. PROTECTIVE CUSTODY

D. Placing a Criminal Defendant Under Protective Custody

D. Placing a Criminal Defendant Under Protective Custody

A person charged with a criminal offense may be subject to a protective custody order if:

1. the requirements for obtaining a protective custody order are fulfilled; and
2. the facility administrator designated to detain the proposed patient agrees to the detention. {Tex. Health & Safety Code Sec. 574.022(e)}

E. Appointing Counsel for the Proposed Patient

After the protective custody order has been signed and issued, the judge shall appoint an attorney to represent the proposed patient if the proposed patient does not have an attorney. {Tex. Health & Safety Code Sec. 574.024(a)} The court also shall inform the attorney of the attorney's duties as specified in Sec. 574.004.

F. Probable Cause Hearing

1. Purpose of Hearing

The probable cause hearing is held to determine if:

- a. a physician has stated the proposed patient is mentally ill and has stated his opinion and detailed reasons for his opinion; and
- b. there is probable cause to believe that the proposed patient subject to the order for protective custody presents a substantial risk of harm to self or to others to the extent that the proposed patient cannot be at liberty pending the hearing on the application for court-ordered mental health services. {Tex. Health & Safety Code Sec. 574.025}

2. Timing of Hearing

The probable cause hearing must be held not later than seventy-two 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.

3. Notice of Probable Cause Hearing

Within a reasonable time before the probable cause hearing, the court shall provide to the proposed patient and the proposed patient's attorney written notice of the protective custody

order, the grounds for the order, and the time and place of the probable cause hearing. {Tex. Health & Safety Code Sec. 574.024(b)}

No later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge must identify the person the judge intends to designate to be responsible for those services under Sec. 574.037. {Tex. Health & Safety Code Sec. 574.0125}

G. Procedures for the Probable Cause Hearing

The hearing shall be held before by the court or held through electronic communication methods, as described below. {Tex. Health & Safety Code Sec. 574.025}

1. Evidence

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

The movant must convince the judge that the protective custody order was justified. Specifically, the movant must submit sufficient evidence for the court to find probable cause to believe that the proposed patient presents a substantial risk of serious harm to self or to others to the extent that the proposed patient cannot remain free pending the hearing on the application for court-ordered mental health services.

Evidence, including letters, affidavits, and other material, that may not be otherwise admissible or sufficient in a subsequent commitment hearing, may be considered at the probable cause hearing.

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

2. Electronic Hearing

In proceedings under Chapter 574, judges may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

II. PROTECTIVE CUSTODY

H. Notification of Probable Cause Hearing Authorizing Continued Custody

H. Notification of Probable Cause Hearing Authorizing Continued Custody

1. Probable Cause

If the court determines that the movant established a factual basis for probable cause to believe that the proposed patient presents a substantial risk of harm to self or to others and that the proposed patient should not remain free pending the hearing on the application for court-ordered mental health services, the court shall issue an order for continued detention. {Tex. Health & Safety Code Sec. 574.026}

This order is captioned “Notification of Probable Cause Hearing.” This order authorizes continued detention until the date of the hearing on the application for court-ordered mental health services. A copy of the notification of probable cause hearing and the supporting evidence must be filed with the court that entered the original order of protective custody.

2. No Probable Cause

If the court determines that the movant failed to establish probable cause, the court must issue an order releasing the proposed patient from custody. If the court releases the proposed patient, the court must give notice of its order to the facility and must give notice of the date of the hearing on the application to the proposed patient. {Tex. Health & Safety Code Sec. 574.028(a)}

I. Facility Discharge of a Person under a Protective Custody Order

The facility administrator must discharge a person held under a protective custody order if:

1. within seventy-two hours after detention began the facility administrator does not receive notice that continued detention is authorized after the probable cause hearing;
2. a final order for court-ordered mental health services has not been entered within the allowed time; or
3. the facility administrator determines that the proposed patient no longer meets the criteria for protective custody. {Tex. Health & Safety Code Sec. 574.028(c)}

III. COURT-ORDERED MENTAL HEALTH SERVICES

A. Application for Court-Ordered Mental Health Services

Any adult may file a sworn written application for court-ordered mental health services. A court order for mental health services requires that a person be committed to a mental health facility for treatment. {Tex. Health & Safety Code Sec. 574.001(a)}

Effective Sept. 1, 2019, the Texas Legislature passed SB 362, which modified some of the procedures and requirements for court-ordered inpatient and outpatient mental health services, including the mechanisms for transitioning patients from inpatient to outpatient or continuing care and the procedures for diverting some people with mental illnesses from the criminal justice system to outpatient services. In part, the Legislature accomplished this by separating into four separate statutes the possibilities for treatment under Chapter 574:

1. temporary inpatient mental health services {Tex. Health & Safety Code Sec. 574.034}
2. temporary outpatient mental health services {Tex. Health & Safety Code Sec. 574.0345}
3. extended inpatient mental health services {Tex. Health & Safety Code Sec. 574.035}
4. extended outpatient mental health services {Tex. Health & Safety Code Sec. 574.0355}.

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; or
2. in the opinion of the physician responsible for the patient's treatment, 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
 - d. that physician completes a certificate of medical examination for mental illness that - in addition to the information required by Sec. 574.011 (the section defining "certificate of mental examination") - states that there is no reasonable alternative to the recommended treatment, and the patient will not benefit from continued inpatient care without the recommended treatment. {Tex. Health & Safety Code Sec. 572.005}

III. COURT-ORDERED MENTAL HEALTH SERVICES

B. Certificate of Medical Examination

B. Certificate of Medical Examination

An application for court-ordered mental health services must be accompanied by a sworn certificate of medical examination. However, the county attorney or district attorney may file an application that is not accompanied by a certificate of medical examination. {Tex. Health & Safety Code Sec. 574.001(a)}

C. Where Application May be Filed

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 under court order or under a warrantless apprehension for emergency detention. {Tex. Health & Safety Code Sec. 574.001(b)}

If the proposed patient is a child in the custody of the Texas Juvenile Justice Department, the application may be filed in the county where the child's commitment to the commission was ordered. {Tex. Health & Safety Code Sec. 574.001(f)}

D. Transfer of Application

If the application is not filed in the county in which the proposed patient resides, the court may, on the request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county. {Tex. Health & Safety Code Sec. 574.001(c)}

E. Contents of Application

The application must be styled using the proposed patient's initials rather than the proposed patient's full name. {Tex. Health & Safety Code Sec. 574.002(a)-(c)}

The application must specify whether temporary or extended mental health services are sought.

An application for extended inpatient mental health services must state that the proposed patient has received court-ordered inpatient mental health services for at least sixty consecutive days during the preceding twelve months. {Tex. Health & Safety Code Sec. 574.002(b)}

An application for extended outpatient mental health services must include a statement regarding any court-ordered inpatient and/or outpatient mental health services the patient has recently received under the Texas Mental Health Code or as part of an incompetency or civil commitment proceeding. {Tex. Health & Safety Code Sec. 574.002(b)}

The application must state the proposed patient's name, address, and county of residence in Texas.

The application must state that the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services under {Tex. Health & Safety Code Sec. 574.034} (temporary inpatient mental health services), {Tex. Health & Safety Code Sec. 574.0345} (temporary outpatient mental health services), {Tex. Health & Safety Code Sec. 574.035} (extended inpatient mental health services), or {Tex. Health & Safety Code Sec. 574.0355} (extended outpatient mental health services). {Tex. Health & Safety Code Sec. 574.002(c)}

The application must state whether the proposed patient is charged with a criminal offense.

F. Prehearing Procedures and Requirements; Right to Counsel

The judge must appoint an attorney within twenty-four hours after the application is filed unless the proposed patient is already represented by counsel. {Tex. Health & Safety Code Sec. 574.003(a)-(b)}

The court must inform the attorney in writing of the attorney's duties under Sec. 574.004. {Tex. Health & Safety Code Sec. 574.004}

G. Attorney's Access to Information

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 physician's records. In addition, on the request of proposed patient's attorney, at least forty-eight hours before the hearing, the county or district attorney, within a reasonable time before the hearing, must provide a statement containing the following: {Tex. Health & Safety Code Sec. 574.003(c)}

1. the provisions of the Health & Safety Code on which the state will rely to establish that the proposed patient requires court-ordered mental health services; {Tex. Health & Safety Code Sec. 574.007(b)(1)}
2. the reasons voluntary outpatient services are not considered appropriate for the proposed patient; {Tex. Health & Safety Code Sec. 574.007(b)(2)}
3. the name, address, and telephone number of each witness who may testify at the hearing; {Tex. Health & Safety Code Sec. 574.007(b)(3)}
4. a brief description of the reasons why court-ordered temporary or extended, inpatient or outpatient, mental health services are required; and {Tex. Health & Safety Code Sec. 574.007(b)(4)}

III. COURT-ORDERED MENTAL HEALTH SERVICES

G. Attorney's Access to Information

5. a list of acts committed by the proposed patient that the applicant will attempt to prove at the hearing. {Tex. Health & Safety Code Sec. 574.007(b)(5)}

Except as provided above, not later than forty-eight hours before the time set for the hearing on petition for recommitment, the county or district attorney must 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 or outpatient services. The proposed patient, the proposed patient's attorney, and the district or county attorney may agree to waive this requirement either orally in the court's presence or in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney. {Tex. Health & Safety Code Sec. 574.007(d)(1)-(2)}

H. Requirement of Medical Examination

A hearing on an application for court-ordered mental health services may not be held unless the court has on file at least two sworn certificates of medical examination for mental illness. If at least two sworn certificates are not on file at the time set for the hearing on the application, the court must dismiss the application and order the immediate release of the proposed patient if the proposed patient is in detention. {Tex. Health & Safety Code Sec. 574.009(d)}

The examinations must be completed by different physicians, each of whom has examined the proposed patient within thirty days before the hearing. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county. {Tex. Health & Safety Code Sec. 574.009(a)}

If the certificates are not filed with the application, the judge may appoint the necessary physicians to examine the proposed patient and to file the certificates. In addition, the court may order the proposed patient to submit to the examinations, and issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations. {Tex. Health & Safety Code Sec. 574.009(c)}

The court may order an independent evaluation by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. {Tex. Health & Safety Code Sec. 574.010(a)}

I. The Hearing

1. Timing of the Hearing

The hearing must be held within fourteen days after the application is filed, provided that:

- a. 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; and

b. the court may grant continuances; however, the hearing shall be held not later than the thirtieth day after the application is filed. {Tex. Health & Safety Code Sec. 574.005(a)-(c)}

2. Notice of Hearing

The proposed patient and the proposed patient's 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. {Tex. Health & Safety Code Sec. 574.006} In addition, 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 all potential witness for either party who has stated that they have evidence to present on any material issue. This notice, however, must not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. {Tex. Health & Safety Code Sec. 574.006(d)}

3. Motion to Transfer Hearing

The proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court presided over by a judge who is licensed to practice law in Texas. {Tex. Health & Safety Code Sec. 574.008(b)}

4. Location of Hearing

The hearing may be held at any suitable location, but if the proposed patient or proposed patient's attorney so requests, the hearing must be held in the county courthouse. {Tex. Health & Safety Code Sec. 574.031(a)-(b)}

In proceedings under Chapter 574, judges also may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

5. Procedural Rights and Requirements

The proposed patient has the right to be present at the hearing; however, the proposed patient or the proposed patient's attorney may waive this right. {Tex. Health & Safety Code Sec. 574.031(c)}

The hearing must be open to the public unless:

III. COURT-ORDERED MENTAL HEALTH SERVICES

I. The Hearing

- a. the proposed patient or the proposed patient’s attorney requests that it be closed;
and
- b. the court determines there is good cause to close the hearing. {Tex. Health & Safety Code Sec. 574.031(d)}

6. Right to Jury

Temporary Commitment: A hearing on an application for temporary mental health services must be held before the court, unless the proposed patient or the proposed patient’s attorney requests a jury. {Tex. Health & Safety Code Sec. 574.032}

Extended Commitment: A hearing on an application for extended mental health services must be held before a jury, unless the proposed patient or the proposed patient’s attorney waives the right to a jury. Any waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient’s attorney.

The court may not require a jury fee.

The Texas Rules of Evidence apply unless they are inconsistent with a more specific statutory provision in the Health & Safety Code. The hearing must be on the record. “On the record” means before a court reporter. {Tex. Health & Safety Code Sec. 574.031(g)}

The court may consider the testimony of a non-physician mental health professional in addition to medical or psychiatric testimony. {Tex. Health & Safety Code Sec. 574.031(f)}

7. Burden of Proof/Expert Testimony

The applicant must prove the need for court-ordered mental health services by clear and convincing evidence. {Tex. Health & Safety Code Sec. 574.031(g)} To be clear and convincing, the evidence must include expert testimony and evidence of a recent overt act or continuing pattern of behavior that tends to confirm:

- a. the likelihood of serious harm to the proposed patient or to others; or
- b. the proposed patient’s distress and the deterioration of ability to function.

8. Waiver of Evidentiary Requirements in a Temporary Commitment Hearing

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. If so admitted, the certificates constitute competent medical or psychiatric testimony, and the court

may make its findings solely from the certificates. {Tex. Health & Safety Code Sec. 574.031(d-1)} {Tex. Health & Safety Code Sec. 574.004(f)}

9. Role of the Fact Finder

The finder of fact, either the jury in a jury trial or the court in a bench trial, is to determine if the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services. The court always makes the finding regarding the type of services to be provided to the proposed patient. {Tex. Health & Safety Code Sec. 574.034(a)} and {Tex. Health & Safety Code Sec. 574.035(a)}

Thus, in jury trials, the jury does not make a finding about the type of services to be provided; that determination is within the province of the court. {Tex. Health & Safety Code Sec. 574.036}

Effective Sept. 1, 2019, in a hearing for extended inpatient or outpatient mental health services under Sec. 574.035 or 574.0355, a court may not make its findings solely from certificates of medical examination for mental illness but must 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. {Tex. Health & Safety Code Sec. 574.031(d-2)}

J. Order for Temporary Inpatient or Outpatient Mental Health Services

1. Order for Temporary Inpatient Mental Health Services

Under {Tex. Health & Safety Code 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:

- a. the proposed patient is a person with mental illness; and
- b. as a result of that mental illness, the proposed patient:
 - (1) is likely to cause serious harm to self;
 - (2) is likely to cause serious harm to others; or
 - (a) is suffering severe abnormal mental, emotional, or physical distress;
 - (b) is experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed

III. COURT-ORDERED MENTAL HEALTH SERVICES

J. Order for Temporary Inpatient or Outpatient Mental Health Services

patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

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

The finder of fact must specify which of the above criteria forms the basis for the decision to commit. {Tex. Health & Safety Code Sec. 574.034(c)}

An order for temporary inpatient mental health services must state that treatment is authorized for no longer than forth-five days. The order may specify a period not to exceed ninety days only if the judge finds that the longer period is necessary. {Tex. Health & Safety Code Sec. 574.034(g)}

A judge may not issue an order for temporary 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. {Tex. Health & Safety Code Sec. 574.034(h)}

2. Order for Temporary Outpatient Mental Health Services

Under {Tex. Health & Safety Code Sec. 574.0345}, the judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

- a. the judge finds that appropriate mental health services are available to the patient; and
- b. the judge or jury finds, from clear and convincing evidence that:
 - (1) the proposed patient is a person with severe and persistent mental illness;
 - (2) as a result of the illness, the proposed patient, if not treated, will 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 mental health services;
 - (3) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and
 - (4) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:
 - (A) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(B) specific characteristics of the proposed patient’s clinical condition that significantly impair the proposed patient’s ability to make a rational and informed decision whether to submit to voluntary outpatient treatment. {Tex. Health & Safety Code Sec. 574.0345(a)}

To be clear and convincing evidence that the patient will experience deterioration of the ability to function independently, 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 deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;
- (2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and
- (3) the proposed patient’s inability to participate in outpatient treatment services effectively and voluntarily. {Tex. Health & Safety Code Sec. 574.0345(b)}

*Note regarding the deterioration criterion: The San Antonio Court of Appeals, in expressly upholding the constitutionality of the deterioration criterion, has stated that “a dangerousness standard, in keeping with due process requirements is encompassed in this ... criterion.” *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App. - San Antonio 1985, no writ). The court in *Johnson* explained: “An individual who cannot make a rational decision to receive treatment poses a threat to his own well being. That person is a danger to himself precisely because the nature of his illness prevents him from seeking treatment which might improve his condition.”

An order for temporary outpatient mental health services must state that treatment is authorized for no longer than forth-five days. The order may specify a period not to exceed ninety days only if the judge finds that the longer period is necessary. {Tex. Health & Safety Code Sec. 574.0345(c)}

A judge may not issue an order for temporary 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. {Tex. Health & Safety Code Sec. 574.0345(d)}

K. Order for Extended Mental Health Services

1. Court-Ordered Extended Inpatient Mental Health Services

Under {Tex. Health & Safety Code 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 jury trial has been waived, finds, from clear and convincing evidence, that:

III. COURT-ORDERED MENTAL HEALTH SERVICES

K. Order for Extended Mental Health Services

- a. the proposed patient is a person with mental illness; and
- b. as a result of that mental illness, the proposed patient:
 - (1) is likely to cause serious harm to self;
 - (2) is likely to cause serious harm to others; or
 - (3) is suffering severe abnormal mental, emotional, or physical distress;
 - (4) is experiencing substantial mental or physical deterioration of the ability to function independently (exhibited by an inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety); and
 - (5) is unable to make a rational and informed decision as to whether or not to submit to treatment.
- c. the proposed patient's condition is expected to continue for more than ninety days; and
- d. the proposed patient has received court-ordered inpatient mental health services for at least sixty consecutive days during the preceding twelve months.

The finder of fact must specify which of the above criteria basis for the decision to commit. {Tex. Health & Safety Code Sec. 574.035(c)}

The finder of fact is not required to make the finding if the proposed patient has been subject to a prior order for extended mental health services. {Tex. Health & Safety Code Sec. 574.035(d)}

An order for extended inpatient or outpatient mental health services shall state that treatment is authorized for up to twelve months. Tex. Health & Safety Code Sec. 574.035(h)}

A judge may not issue an order for extended inpatient 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. {Tex. Health & Safety Code Sec. 574.035(i)}

2. Court-Ordered Extended Outpatient Mental Health Services

Under {Tex. Health & Safety Code Sec. 574.0355}, the judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

- a. the judge finds that appropriate mental health services are available to the patient;
and
- b. the judge or jury finds from clear and convincing evidence that:
 - (1) the proposed patient is a person with severe and persistent mental illness;
 - (2) as a result of the illness, the proposed patient, if not treated, will 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 mental health services;
 - (3) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;
 - (4) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:
 - (A) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or
 - (B) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;
 - (5) the proposed patient's condition is expected to continue for more than ninety days; and
 - (6) the proposed patient has received:
 - (A) court-ordered inpatient mental health services under this subtitle or under competency-to-stand-trial provisions in Chapter 46B, Code of Criminal Procedure, for a total of at least sixty days during the preceding twelve months; or
 - (B) court-ordered outpatient mental health services under this subtitle or under competency-to-stand-trial provisions in Chapter 46B, Code of Criminal Procedure, during the preceding sixty days.

The judge or jury is not required to make the finding if the proposed patient has been subject to a prior order for extended mental health services under Chapter 46B. {Tex. Health & Safety Code Sec. 574.0355(b)}

III. COURT-ORDERED MENTAL HEALTH SERVICES

K. Order for Extended Mental Health Services

To be clear and convincing under Subsection (a)(2), 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 deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;
2. the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and
3. the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily. {Tex. Health & Safety Code Sec. 574.0355(c)}

An order for extended inpatient or outpatient mental health services shall state that treatment is authorized for up to twelve months. Tex. Health & Safety Code Sec. 574.0355(d)}

A judge may not issue an order for extended 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. {Tex. Health & Safety Code Sec. 574.0355(e)}

3. Order of Care or Commitment

After the hearing on the application for court-ordered inpatient or outpatient mental health services, after the jury has been dismissed in a jury trial, and after the finder of fact has determined that the proposed patient is a person with mental illness and meets the criteria for court-ordered temporary or extended mental health services, the judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting of care the person will receive. {Tex. Health & Safety Code Sec. 574.036}

The purpose of hearing additional evidence is to determine the setting of the proposed patient's care. The judge must consider the recommendation for the most appropriate treatment alternative. {Tex. Health & Safety Code Sec. 574.036(c)}

After hearing the additional evidence, the court may enter an order:

- a. committing the proposed patient to a mental health facility or inpatient care for temporary or extended mental health services; or
- b. committing the person to outpatient temporary or extended mental health services.

4. Court-Ordered Outpatient Services

In an order that directs a patient to participate in outpatient mental health services, the court must designate a person who is responsible for those services. The person designated must be the facility administrator or an individual involved in providing the outpatient services either in the region in which the committing court is located, or in a county where a patient has previously received mental health services. The person responsible for the services shall submit to the court a general treatment program, which will be incorporated into the court order. {Tex. Health & Safety Code Sec. 574.037(a)-(b)}

The program must include:

- (1) services to provide care coordination; and
- (2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community. {Tex. Health & Safety Code Sec. 574.037(b)}

If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services must seek input from the patient's inpatient treatment providers in preparing the program and submit it to the court before any modification of the court's order. {Tex. Health & Safety Code Sec. 574.037(b-1)}

A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order. {Tex. Health & Safety Code Sec. 574.037(c-1)}

A court on its own motion may set a status conference with the person responsible for the services, the patient, and the patient's attorney. {Tex. Health & Safety Code Sec. 574.037(c-2)}
{Tex. Health & Safety Code Sec. 574.0665}

The court shall order the patient to participate in the program but may not compel performance. If a court receives information that a patient is not complying with the court's order, the court may:

- (1) set a modification hearing under {Tex. Health & Safety Code Sec. 574.062}; and
- (2) issue an order for temporary detention if an application is filed under {Tex. Health & Safety Code Sec. 574.063}. {Tex. Health & Safety Code Sec. 574.037(c-3)}

Any patient's failure of a patient to comply with the program incorporated into a court order may not be punished by contempt of court. {Tex. Health & Safety Code Sec. 574.037(c-4)}

III. COURT-ORDERED MENTAL HEALTH SERVICES

K. Order for Extended Mental Health Services

5. Writs of Commitment

The court must 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. {Tex. Health & Safety Code Sec. 574.046}

6. Release After Hearing

The court must enter an order denying the application for court-ordered temporary or extended mental health services if, after hearing, the finder of fact fails to find, from clear and convincing evidence, that the proposed patient is a person with mental illness and meets the applicable criteria for court-ordered mental health services. Upon denying the application, the court must order the immediate release of the proposed patient if the proposed patient is in detention. {Tex. Health & Safety Code Sec. 574.033}

7. Administration of Medication to Patient Under Order for Inpatient Mental Health Services

A person may not administer a psychoactive medication, as defined in {Tex. Health & Safety Code Sec. 574.101(3)}, to a patient who refuses to take the medication voluntarily unless:

- a. the patient is having a medication-related emergency, as defined in {Tex. Health & Safety Code Sec. 574.101(2)};
- b. the patient is under an order issued under {Tex. Health & Safety Code Sec. 574.106} authorizing the administration of the medication regardless of the patient's refusal;
- c. or the patient is 18 or older and the guardian of the patient consents to the administration of medication regardless of the patient's refusal. {Tex. Health & Safety Code Sec. 574.103(b)}

8. Physician's Application for Order to Authorize Psychoactive Medication

In 2005, the legislature amended the provisions for administering psychoactive medications to bring them in compliance with the U.S. Supreme Court's decision in *Sell v. U.S.*, 539 U.S. 166 (2002) and made corresponding changes to the provisions regarding competency to stand criminal trial in Chapter 46B of the Texas Code of Criminal Procedure.

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:

- a. the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;
- b. the physician determines that the medication is the proper course of treatment for the patient;
- c. the patient is under an order for inpatient mental health services under Chapter 574 or other law or an application for court-ordered mental health services under {Tex. Health & Safety Code Sec. 574.034}, {Tex. Health & Safety Code Sec. 574.0345}, {Tex. Health & Safety Code Sec. 574.035}, or {Tex. Health & Safety Code Sec. 574.0355} has been filed for the patient; and
- d. the patient, verbally or by other indication, refuses to take the medication voluntarily. {Tex. Health & Safety Code Sec. 574.104(a)}

The application, which is separate from an application for court-ordered mental health services, must state:

- a. 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;
- b. each medication the physician wants the court to compel the patient to take;
- c. whether an application for court-ordered mental health services under {Tex. Health & Safety Code Sec. 574.034}, {Tex. Health & Safety Code Sec. 574.0345}, {Tex. Health & Safety Code Sec. 574.035}, or {Tex. Health & Safety Code Sec. 574.0355} has been filed;
- d. whether a court order for inpatient mental health services for the patient has been issued and under what authority;
- e. the physician's diagnosis of the patient; and
- f. the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from customary methods. {Tex. Health & Safety Code Sec. 574.104(b)}

9. Timing of the Hearing

The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services, but shall be held not later than thirty days after the filing

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of the application for the order to authorize psychoactive medication. {Tex. Health & Safety Code Sec. 574.104(d)}

If the hearing is not held on the same day as the application for court-ordered mental health services under Sec. 574.034, Sec. 574.0345, Sec. 574.035, or Sec. 574.0355, 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. {Tex. Health & Safety Code Sec. 574.104(d)}

Even though generally, the hearing shall be held not later than thirty 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. {Tex. Health & Safety Code Sec. 574.104(e)}

10. Procedural Rights of Patient and Requirements

Under {Tex. Health & Safety Code 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:

- a. representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;
- b. 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;
- c. 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;
- d. be told, at the time personal notice of the hearing is given, of the patient's right to hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;
- e. be present at the hearing;
- f. request from the court an independent expert; and
- g. oral notification, at the conclusion of rehearing, of the court's determinations of the patient's capacity and best interests.

11. The Hearing

A hearing shall be conducted on the record by the probate judge or judge with probate jurisdiction. {Tex. Health & Safety Code Sec. 574.106(c)}

In the alternative, the judge may refer a hearing to a magistrate or an associate judge who has training regarding psychoactive medications. The magistrate or associate judge may give the notice, set hearing dates, and appoint attorneys as required. A record is not required if the hearing is held by a magistrate or associate judge. {Tex. Health & Safety Code Sec. 574.106(d)}

In proceedings under Chapter 574, judges may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

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 thirty days of the filing of the application for an order to authorize psychoactive medication. {Tex. Health & Safety Code Sec. 574.106(e)}

A hearing for psychoactive medication may not be held for a patient who receives services under an order of protective custody under Sec. 574.021. {Tex. Health & Safety Code Sec. 574.106(k)}

If criminal charges are pending, the county in which the charges are pending or were adjudicated must pay the costs of a hearing for a patient ordered to receive mental health services. {Tex. Health & Safety Code Sec. 574.107(b)}

12. Motion to Transfer Hearing

If a hearing or an appeal of a magistrate's or associate judge'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. {Tex. Health & Safety Code Sec. 574.106(f)}

13. Order Authorizing Psychoactive Medication

The court may consider ordering psychoactive medication for only two classes of patients:

- a. those under court order to receive inpatient mental health services; or

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b. those in custody awaiting trial in a criminal proceeding who were ordered to receive inpatient mental health services in the six months preceding the current hearing. {Tex. Health & Safety Code Sec. 574.106(a)}

The court may issue an order authorizing the administration of one or more classes of psychoactive medication if the court finds by clear and convincing evidence after the hearing:

a. that the patient lacks the capacity, as defined in {Tex. Health & Safety Code Sec. 574.101(1)}, 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

b. 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:

(1) the patient presents a danger to self or others in the inpatient mental facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Sec. 574.1065; or

(2) the patient has remained confined in a correctional facility for more than seventy-two hours while awaiting transfer for competency restoration proceedings and presents a danger to himself or others in the correctional facility as a result of a mental disorder or defect. {Tex. Health & Safety Code Sec. 574.106(a-1)}

For patients who are confined in a correctional facility while awaiting transfer for competency restoration treatment, the court may issue an order that authorizes initiation of any appropriate mental health treatment, but the order may not authorize the correctional facility to retain the patient while the patient is receiving competency restoration treatment. {Tex. Health & Safety Code Sec. 574.106(l)}

In making the finding that treatment with the proposed medication is in the patient's best interest, the court must consider:

a. the patient's expressed preferences regarding treatment with psychoactive medication;

b. the patient's religious beliefs;

c. the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

d. the consequences to the patient if the psychoactive medication is not administered;

- e. the prognosis for the patient if the patient is treated with psychoactive medication;
- f. alternative, less intrusive treatments that are likely to produce the same result; and
- g. less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication. {Tex. Health & Safety Code Sec. 574.106(b)}

A court may order psychoactive medication when a treatment facility or applicant believes a current patient receiving inpatient mental health services is a danger to self or others because of a mental disorder or defect. Under Sec. 574.1065, the court must consider the following when deciding whether to order psychoactive medication for the potentially dangerous patient:

- a. an assessment of the patient's present mental condition;
- b. whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to himself or to another while in the facility; and
- c. whether the patient, in the six months prior to being placed in the facility, has inflicted, attempted to inflict, or threatened to inflict substantial physical harm to another that resulted in the patient being placed in the facility. {Tex. Health & Safety Code Sec. 574.1065}

As soon as practicable after the conclusion of the hearing, the patient and patient's attorney are entitled to written notification of the court's determinations. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations. {Tex. Health & Safety Code Sec. 574.106(g)}

An order for psychoactive medication must authorize the administration to a patient, regardless of the patient's refusal, of one or more medications specified in the application and consistent with the patient's diagnosis. The order must also permit an increase or decrease in the 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. {Tex. Health & Safety Code Sec. 574.106(h)}

The classes of psychoactive medications in the order must conform to classes determined by the Department of Health. {Tex. Health & Safety Code Sec. 574.106(i)}

Any party may petition for reauthorization or modification of the order. The order remains in effect pending action on a petition for reauthorization or modification. ("Modification" means a change of a class of medication authorized in the order.) {Tex. Health & Safety Code Sec. 574.106(j)}

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For patients who are confined in a correctional facility while awaiting transfer for competency restoration treatment, the court may issue an order that authorizes initiation of any appropriate mental health treatment, but the order may not authorize the correctional facility to retain the patient while the patient is receiving competency restoration treatment. {Tex. Health & Safety Code Sec. 574.106(l)}

14. Appeal

A patient may appeal an order. The requirements for this appeal are the same as for an appeal of an order requiring court-ordered mental health services. {Tex. Health & Safety Code Sec. 574.070} An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order. {Tex. Health & Safety Code Sec. 574.108}

15. Effect of Order

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 {Tex. Health & Safety Code Sec. 574.106}.

The issuance of an order under Sec. 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 that person's property rights or legal capacity. {Tex. Health & Safety Code Sec. 574.109(b)}

With one exception, all orders expire on the same date as expiration of the temporary or extended mental health services in effect when the medication is ordered. An order for medication of a person returned to a correctional facility and awaiting trial in a criminal proceeding continues to be in effect until the earlier of:

- a. the 180th day after the defendant returns to the correctional facility;
- b. the date the defendant is acquitted, convicted, or pleads guilty; or
- c. the date all criminal charges are dismissed. {Tex. Health & Safety Code Sec. 574.110(b)}

An order under Sec. 574.110(b) no longer needs to be reviewed by the issuing court every six months.

IV. POST-COMMITMENT PROCEEDINGS

A. Recommendation for Modification of Order for Inpatient Treatment

1. Making the Recommendation

The facility administrator of the facility in which a patient has been committed for inpatient court-ordered mental health services, not later than the thirtieth day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services. {Tex. Health & Safety Code Sec. 574.061(a)}

2. Contents of the Recommendation

The facility administrator's recommendation must:

- a. explain in detail the reason for the facility administrator's recommendation to modify the order to require outpatient mental health services; and
- b. be accompanied by a supporting certificate of medical examination for mental illness prepared by a physician who has examined the patient no more than seven days before the recommendation. {Tex. Health & Safety Code Sec. 574.061(b)}

3. Notice, Request for Hearing, and Appointment of Counsel

a. Notice

The court must give notice of the recommendation for modification to the patient. {Tex. Health & Safety Code Sec. 574.061(c)}

b. Appointment of Counsel

On the request of the patient or any other interested party, the court must hold a hearing on the facility administrator's recommendation that the court modify the commitment order. The court must appoint counsel to represent the patient at the hearing and must consult with the local mental health authority before issuing a decision. {Tex. Health & Safety Code Sec. 574.061(d)}

IV. POST-COMMITMENT PROCEEDINGS

A. Recommendation for Modification of Order for Inpatient Treatment

c. Procedural Rights and Requirements

The hearing must be held before the court without a jury and as prescribed by {Tex. Health & Safety Code Sec. 574.031}. The patient must be represented by an attorney and receive proper notice. {Tex. Health & Safety Code Sec. 574.061(d)}

The hearing must be held at a suitable location, one that is not likely to have a harmful effect on the patient. On the request of the patient or the patient's attorney, the hearing must be held in the county courthouse. {Tex. Health & Safety Code Sec. 574.031}

The patient has the right to be present at the hearing. The patient or the patient's attorney may waive this right. {Tex. Health & Safety Code Sec. 574.031(c)}

The hearing must be open to the public, unless the patient or the patient's attorney requests that the hearing be closed and the court determines that there is good cause to close the hearing. {Tex. Health & Safety Code Sec. 574.031(d)}

d. The Texas Rules of Evidence

The Texas Rules of Evidence apply to this hearing, unless they conflict with a more specific statutory provision in the Health & Safety Code. The hearing must be on the record. "On the record" means before a court reporter. {Tex. Health & Safety Code Sec. 574.031(g)}

The court may consider the testimony of a non-physician mental health professional in addition to medical or psychiatric testimony. {Tex. Health & Safety Code Sec. 574.031(f)}

e. No Hearing Requested

If neither the patient nor any other interested person requests a hearing on the recommendation, the court may make its decision based on the recommendation, the supporting certificate, and consultation with the local mental health authority about available resources to treat the patient. {Tex. Health & Safety Code Sec. 574.061(e)}

f. Order of Modification - Term of Modification

A modified order may extend beyond the terms of the original order, but not by more than sixty days. {Tex. Health & Safety Code Sec. 574.061(h)}

B. Motion for Modification of Order for Outpatient Treatment

1. Filing the Motion

Any interested person, the person responsible for treating a patient ordered to undergo outpatient mental health services, or the court that ordered a patient to undergo outpatient mental health services may move to modify the order for outpatient treatment “in a way that is a substantial deviation from the original program of treatment incorporated in the court’s order.” {Tex. Health & Safety Code Sec. 574.062(a)} Generally, a motion for modification seeks to change an order for outpatient mental health services into an order for inpatient mental health services.

2. Where Motion May be Filed

The motion for modification must be filed in the court that entered the order for outpatient mental health services. {Tex. Health & Safety Code Sec. 574.062(a)}

3. Contents of Motion

The statute does not expressly require a statement of the reasons for the request for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 574.065} The criteria for modification, however, suggest that the person requesting the modification provide:

- a. evidence that the patient meets the criteria supporting an order for court-ordered temporary or extended mental health services prescribed by {Tex. Health & Safety Code Sec. 574.034(a)} or {Tex. Health & Safety Code Sec. 574.035(a)}; and
- b. a certificate of medical examination, for the statute expressly provides that a decision to modify must be supported by a sworn certificate of medical examination for mental illness prepared by a physician who has examined the patient no more than seven days before the hearing on the motion to modify. {Tex. Health & Safety Code Sec. 574.065(c)}

4. Request for Hearing, Notice, and Appointment of Counsel for Patient

a. Request for Hearing

The court may set the hearing on the motion for modification on its own motion, at the request of the person responsible for the patient’s outpatient treatment, or at the request of any other interested person. {Tex. Health & Safety Code Sec. 574.062(a)}

IV. POST-COMMITMENT PROCEEDINGS

B. Motion for Modification of Order for Outpatient Treatment

b. Appointment of Counsel for the Patient

If a hearing is scheduled on the motion for modification, the court must appoint an attorney to represent the patient. {Tex. Health & Safety Code Sec. 574.062(b)}

c. Notice

If a hearing is scheduled on the motion for modification, the court must provide the patient and the patient's attorney with the moving papers and written notice of the time and place of the hearing. {Tex. Health & Safety Code Sec. 574.062(b)}

5. Timing of the Hearing

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 motion by a party and for good cause shown or on agreement of the parties. The court shall hold the hearing not later than the fourteenth day after the date the motion is filed. {Tex. Health & Safety Code Sec. 574.062(d)}

In case of extremely hazardous weather conditions or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court may postpone the hearing for not more than twenty-four hours. The written order must declare that an emergency exists because of weather or disaster. {Tex. Health & Safety Code Sec. 574.062(e)}

6. Application for Temporary Detention

a. Filing the Application

The person responsible for the patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility at which the patient receives treatment may file a sworn application for the patient's temporary detention pending the hearing on the motion for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 574.063(a)}

b. Contents of Application

The temporary detention application must state the applicant's opinion and provide the reasons for the applicant's opinion that:

- (1) the patient continues to meet the criteria supporting an order for court-ordered temporary or extended mental health services under {Tex. Health & Safety Code Sec. 574.064(a-1)}; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court ordered services. {Tex. Health & Safety Code Sec. 574.063(b)}

c. Ordering Temporary Detention

The court may issue an order for temporary detention if:

- (1) a hearing on the motion for modification has been scheduled; and
- (2) information in the application causes the court to have probable cause that the opinions stated in the application are valid. {Tex. Health & Safety Code Sec. 574.063(c)}

When the court has probable cause to believe the applicant's opinions, the court should sign the order for temporary detention and issue a warrant of apprehension. {Tex. Health & Safety Code Sec. 574.063(c)}

Upon signing the order for temporary detention, the court must appoint an attorney to represent the patient if the patient does not have an attorney. {Tex. Health & Safety Code Sec. 574.063(d)}

Within twenty-four hours after the detention begins, the court must provide the following to the patient and the patient's attorney:

- (1) written notice 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 hearing on the motion for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 574.063(e)}

d. Order for Temporary Detention

The order shall direct a peace officer or other designated person to take the patient into custody and immediately to transport the patient to the nearest appropriate inpatient mental health facility or to a facility deemed suitable by the county's mental health authority, if an appropriate inpatient mental health facility is not available. {Tex. Health & Safety Code Sec. 574.064(a)}

A physician must evaluate the patient as soon as possible within twenty-four hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the

IV. POST-COMMITMENT PROCEEDINGS

B. Motion for Modification of Order for Outpatient Treatment

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

- (1) the patient's behavior; or
- (2) evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community. {Tex. Health & Safety Code Sec. 574.064(a-1)}

If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility must:

- (1) notify the person designated as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient, as well as the court that entered the order for court-ordered outpatient mental health services; and
- (2) release the patient. {Tex. Health & Safety Code Sec. 574.064(a-2)}

A patient detained may not be detained in a non-medical facility used to detain persons charged with or convicted of a crime. {Tex. Health & Safety Code Sec. 574.064(f)}

The patient may be detained for more than seventy-two hours excluding Saturdays, Sundays, or legal holidays, and for the period prescribed by {Tex. Health & Safety Code Sec. 574.025(b)} for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or an associate judge finds that there is probable cause to believe that:

- (1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, to the extent that the patient cannot be at liberty pending a final hearing; and
- (2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered mental health services. {Tex. Health & Safety Code Sec. 574.064(b)}

If probable cause is found, the patient may be detained under the temporary detention until the hearing is completed. {Tex. Health & Safety Code Sec. 574.064(c)}

e. Release

The 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 seventy-two hours after the patient's detention begins; or
- (2) after a modification hearing held within the period prescribed by {Tex. Health & Safety Code Sec. 574.062}. {Tex. Health & Safety Code Sec. 574.064(d)}

When a facility releases a patient under the above criteria — either immediately after an evaluation by a physician or after a hearing in front of the court — the patient remains subject to the prior order for court-ordered outpatient services, so long as the order has not expired. {Tex. Health & Safety Code Sec. 574.064(e)}

7. Procedural Rights and Requirements

The hearing must be held before the court without a jury. {Tex. Health & Safety Code Sec. 574.062}

The hearing must be held at a suitable location, one that is not likely to have a harmful effect on the patient. On the request of the patient or the patient's attorney, the hearing must be held at the county courthouse.

The patient and the patient's attorney have the right to be present at the hearing. The patient or the patient's attorney may waive this right.

The hearing must be open to the public, unless the patient or the patient's attorney requests that the hearing be closed and the court determines that there is good cause to close the hearing.

The Texas Rules of Evidence apply to the hearing unless they conflict with a more specific requirement of the Health & Safety Code.

The hearing must be on the record. "On the record" means before a court reporter. The court may consider the testimony of a non-physician mental health professional in addition to medical or psychiatric testimony.

In proceedings under Chapter 574, judges may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must

IV. POST-COMMITMENT PROCEEDINGS

B. Motion for Modification of Order for Outpatient Treatment

consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

8. Order of Modification of Order for Outpatient Treatment

Under {Tex. Health & Safety Code Sec. 574.065}, the court, as the finder of fact, may modify an order for outpatient mental health services only upon finding, from clear and convincing evidence, that:

- a. the patient continues to be mentally ill;
- b. as a result of that mental illness, the patient:
 - (1) is likely to cause serious harm to self;
 - (2) is likely to cause serious harm to others; or
 - (a) is suffering severe and abnormal mental, emotional, or physical distress;
 - (b) is experiencing 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;
 - (c) is unable to make a rational and informed decision as to whether or not to submit to treatment. {Tex. Health & Safety Code Sec. 574.035(a)}

*Note regarding deterioration criterion: The San Antonio Court of Appeals, in expressly upholding the constitutionality of the deterioration criterion, has stated that "a dangerousness standard, in keeping with due process requirements, is encompassed in this ... criterion." *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App. - San Antonio 1985, no writ). The court in *Johnson* explained: "An individual who cannot make a rational decision to receive treatment poses a threat to his own well being. That person is a danger to himself precisely because the nature of his illness prevents him from seeking treatment which might improve his condition."

If the court decides to modify the earlier order, the court's decision must be supported by at least one sworn certificate of medical examination for mental illness prepared by a physician who has examined the patient no more than seven days before the hearing.

The court's modification may:

(1) incorporate a revised treatment program and provide 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) provide for a commitment to an inpatient mental health facility. {Tex. Health & Safety Code Sec. 574.065(d)}

Even if the criteria for modification have been met, the court may refuse to modify the earlier order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order. {Tex. Health & Safety Code Sec. 574.065(b)}

The court may not extend the provision of mental health services beyond the period prescribed in the earlier order for outpatient mental health services. {Tex. Health & Safety Code Sec. 574.065(e)}

C. Application for Renewal of Order for Extended Mental Health Services

1. Filing the Application

Any adult, including a county or district attorney, may file an application to renew an order for extended mental health services. {Tex. Health & Safety Code Sec. 574.066}

2. Contents of Application

The application must explain in detail why the applicant requests renewal of the order for extended mental health services. The application must explain in detail why a less restrictive setting is not appropriate. {Tex. Health & Safety Code Sec. 574.066(b)}

3. Certificates of Medical Examination

Along with the application, the applicant must submit two sworn certificates of medical examination for mental illness prepared by two different physicians who have examined the patient no more than thirty days before the filing of the application. {Tex. Health & Safety Code Sec. 574.066(c)}

4. Appointment of Counsel for Patient and Request for Hearing

a. Right to Counsel

When an application for renewal of an order for extended mental health services is filed, the court must appoint an attorney to represent the patient. {Tex. Health & Safety Code Sec. 574.066(d)}

IV. POST-COMMITMENT PROCEEDINGS

C. Application for Renewal of Order for Extended Mental Health Services

b. Requesting or Setting of Hearing

The patient, the patient's attorney, or another individual may request a hearing on the application. In addition, the court may set a hearing on its own motion. {Tex. Health & Safety Code Sec. 574.066(e)}

c. Application for Renewal

When a hearing on the application for renewal is requested or set, the application is considered an original application for court-ordered extended mental health services.

5. The Hearing

a. Timing of the Hearing

The hearing must be held within fourteen days after the application is filed, provided that:

(1) the hearing may not be held during the first three days after the application is filed if the patient or the patient's attorney objects; and

(2) the court may grant continuances; however, the hearing shall be held not later than the thirtieth day after the application for renewal is filed. {Tex. Health & Safety Code Sec. 574.005}

b. Notice of Hearing

The patient and the patient's attorney are entitled to receive a copy of the application for renewal and written notice of the time and place of the hearing immediately after the date for the hearing is set. {Tex. Health & Safety Code Sec. 574.006}

c. Motion to Transfer Hearing

The patient or the patient's attorney may request that the proceeding be transferred to a court presided over by a judge who is licensed to practice law in Texas. {Tex. Health & Safety Code Sec. 574.008}

d. Procedural Rights and Requirements

The hearing may be held in any suitable location, but if the patient or the patient's attorney so requests, the hearing must be held in the county courthouse. {Tex. Health & Safety Code Sec. 574.031}

The patient has the right to be present at the hearing.

The hearing must be open to the public, unless the patient or the patient's attorney requests that the hearing be closed and the court determines that there is good cause to close the hearing.

In proceedings under Chapter 574, judges may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

e. Texas Rules of Evidence

The Texas Rules of Evidence apply, unless a more specific statutory provision in the Health & Safety Code conflicts. The hearing must be on the record. "On the record" means before a court reporter. The hearing on the application for renewal must be before a jury, unless the patient or the patient's attorney waives the right to a jury.

f. Extended Outpatient Mental Health Services

To be clear and convincing for extended outpatient mental health services, the evidence must include expert testimony of a recent overt act or continuing pattern of behavior that tends to confirm:

- (1) the likelihood of serious harm to the patient or others; or
- (2) the proposed patient's distress and the deterioration of ability to function. {Tex. Health & Safety Code Sec. 574.035(e)}

g. Extended Inpatient Mental Health Services

To be clear and convincing for extended inpatient mental health services, the evidence must include expert testimony 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 is unable to live safely in the community; and
- (3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily. {Tex. Health & Safety Code Sec. 574.035(f)}

IV. POST-COMMITMENT PROCEEDINGS

C. Application for Renewal of Order for Extended Mental Health Services

The court may not make its findings solely from the sworn certificates of medical examination for mental illness; instead, the court must hear testimony. The court's findings must be supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony. {Tex. Health & Safety Code Sec. 574.035(g)}

h. No Request for or Setting of Hearing

If a hearing on the application for renewal is not requested or set on the court's own motion, the court may admit into evidence the two 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 of the order for extended court-ordered mental health services. {Tex. Health & Safety Code Sec. 574.066(g)}

i. Order Renewing an Order for Extended Mental Health Services

The finder of fact, either the jury in a jury trial or the court in a bench trial, determine if the patient is a person with mental illness and meets the criteria for court-ordered extended mental health services. The court always makes the findings about the type of services to be provided to the patient. {Tex. Health & Safety Code Sec. 574.035(a)}

Thus, in jury trials, the jury does not make a finding about the type of services to be provided; that determination is made solely by the court. {Tex. Health & Safety Code Sec. 574.036}

j. Renewal of Order for Extended Inpatient Mental Health Services

Under {Tex. Health & Safety Code Sec. 574.035(a)}, the judge may determine that a request for renewal of a prior order for extended mental health services should be granted only upon finding, from clear and convincing evidence, that:

- (1) the proposed patient is a person with mental illness;
- (2) as a result of the mental illness, the patient:
 - (a) is likely to cause serious harm to self;
 - (b) is likely to cause serious harm to others; or
 - (i) is suffering severe abnormal mental, emotional, or physical distress;
 - (ii) is 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) is 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 ninety days; and

(4) the proposed patient has received court ordered inpatient mental health services for at least sixty consecutive days during the preceding twelve months.

D. Motion for Rehearing

1. Good Cause

For good cause shown, the court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing. {Tex. Health & Safety Code Sec. 574.067(a)}

2. Rehearing

Pending the rehearing, the court may:

a. stay the court-ordered mental health services and release the proposed patient (or the patient, in the case of an order of renewal) from custody before the rehearing, so long as the court is satisfied that the proposed patient (or patient) does not meet the criteria for protective custody; and

b. if the proposed patient is not confined, require an appearance bond in an amount set by the court. {Tex. Health & Safety Code Sec. 574.067(b)}

E. Request for Reexamination and Hearing

1. Filing the Request

A patient ordered to undergo extended mental health services, or any interested person acting on the patient's behalf and with the patient's consent, may file a request for a reexamination of the patient and request for a hearing to determine whether the patient continues to meet the criteria for extended mental health services. {Tex. Health & Safety Code Sec. 574.068(a)}

IV. POST-COMMITMENT PROCEEDINGS

E. Request for Reexamination and Hearing

2. Where Request May Be Filed

The patient or interested person acting on behalf of and with the consent of the patient must file the request for a reexamination and a hearing in the county in which the patient is receiving the mental health services. {Tex. Health & Safety Code Sec. 574.068(b)}

3. Timing of the Request

A court is not required to order a reexamination or a hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request for reexamination is filed. {Tex. Health & Safety Code Sec. 574.068(d)}

4. Court Evaluation of the Request

For “good cause shown,” the court may:

- a. require that the patient be reexamined;
- b. schedule a hearing on the request; and
- c. notify the facility administrator of the facility providing mental health services to the patient. {Tex. Health & Safety Code Sec. 574.068(c)}

5. Duty of the Facility Administrator

After receiving the court’s notice, the facility administrator must arrange for a physician to reexamine the patient.

After receiving the results of the reexamination, the facility administrator must:

- a. immediately discharge the patient if the reexamination reveals that the patient no longer meets the criteria for court-ordered extended mental health services; or {Tex. Health & Safety Code Sec. 574.068(f)}
- b. file a sworn certificate of medical examination for mental illness within ten days after the filing of the request for reexamination and hearing if the reexamination reveals that the patient continues to meet the criteria for court-ordered mental health services. {Tex. Health & Safety Code Sec. 574.068(g)}

6. Setting the Hearing

a. Reasons for Setting Hearing

The court may set a date and place for a hearing if, not later than the tenth day after the date on which the request is filed, the facility administrator has filed a sworn statement of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services or the facility administrator has neither filed a certificate of medical examination for mental illness nor discharged the patient. {Tex. Health & Safety Code Sec. 574.069(a)}

b. Appointment of Counsel for the Patient and Notice

When the court sets the time and date of the hearing, the court must appoint an attorney to represent the patient if the patient does not have an attorney and give notice of the scheduled hearing to the patient, the patient's attorney, and the facility administrator. {Tex. Health & Safety Code Sec. 574.069(b)}

c. Reason to Decline to Set Hearing

If the facility administrator files a sworn certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services, and if the court determines that the request for reexamination and hearing fails to show good cause to schedule a hearing on the matter, the court may deny the request for reexamination and hearing and dismiss the request for reexamination and hearing on the basis of the certificate of mental examination. {Tex. Health & Safety Code Sec. 574.068(c), (g)}

7. Prehearing Examination

After the court has scheduled a hearing, the court must appoint a physician to examine the patient and to file a sworn certificate of medical examination for mental illness with the court. The physician appointed by the court may not be on the staff of the mental health facility in which the patient is receiving mental health services. In addition, the physician appointed by the court must be a psychiatrist if a psychiatrist is available in the county. The court must ensure that the patient is examined by a physician of the patient's choice and at the patient's own expense if requested by the patient. {Tex. Health & Safety Code Sec. 574.069(c)}

8. The Hearing

The hearing must be before the court and without a jury. {Tex. Health & Safety Code Sec. 574.069(d)}

IV. POST-COMMITMENT PROCEEDINGS
E. Request for Reexamination and Hearing

The hearing must be held in accordance with the requirements for a hearing on an original application for court-ordered mental health services.

In proceedings under Chapter 574, judges may use secure electronic means, including satellite transmission, closed-circuit TV, or any other method of secure, two-way electronic communication accessible to both parties, approved by the court, and capable of visually and audibly recording the proceedings. The patient and his attorney and the local prosecutor must consent in writing. If requested, the patient must be able to communicate privately with his attorney without being heard by the judge or prosecutor. {Tex. Health & Safety Code Sec. 574.208}

9. The Order

Under {Tex. Health & Safety Code Sec. 574.035(a)}, to qualify for court-ordered inpatient mental health services the court must determine that:

- (1) the proposed patient is a person with mental illness;
- (2) as a result of the mental illness, the patient:
 - (a) is likely to cause serious harm to self;
 - (b) is likely to cause serious harm to others; or
 - (i) is suffering severe abnormal mental, emotional, or physical distress;
 - (ii) is 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) is unable to make a rational and informed decision as to whether or not to submit to treatment; and
- (3) the proposed patient's condition is expected to continue for more than ninety days; and
- (4) the proposed patient has received court ordered inpatient mental health services for at least sixty consecutive days during the preceding twelve months.

10. Discharging Patient

The court must order the facility administrator to discharge the patient if the court fails to find clear and convincing evidence that the patient continues to meet the criteria described above. {Tex. Health & Safety Code Sec. 574.069(f)}

F. Appeal

Any appeal from an order requiring court-ordered mental health services, or from an order of renewal or modification, must be filed in the court of appeals for the county in which the order is entered. {Tex. Health & Safety Code Sec. 574.070(a)}

Notice of appeal must be filed not later than the tenth day after the date on which the order is signed. {Tex. Health & Safety Code Sec. 574.070(b)}

When an appeal is filed, the clerk immediately must send a certified transcript of the proceedings to the court of appeals. {Tex. Health & Safety Code Sec. 574.070(c)}

Pending the appeal, the trial judge in whose court the matter is pending may:

1. stay the order and release the proposed patient or patient from custody before the appeal if the judge is satisfied that the proposed patient or patient does not meet the criteria for protective custody; and
2. if the proposed patient is at liberty, require an appearance bond in an amount set by the court. {Tex. Health & Safety Code Sec. 574.070(d)}

PART TWO: CHEMICAL DEPENDENCY PROCEEDINGS

{Tex. Health & Safety Code Chapter 462}

I. EMERGENCY DETENTION

A. Apprehension by Peace Officer Without a Warrant

A peace officer may take a person into custody without a warrant if the officer has reason to believe and in fact believes that:

1. the person is chemically dependent; and

I. EMERGENCY DETENTION

A. Apprehension by Peace Officer Without a Warrant

2. the person immediately must be restrained because there is a substantial risk of serious harm to the person or to others. {Tex. Health & Safety Code Sec. 462.041(a)-(e)}

The peace officer also must believe that there is not enough time to obtain a warrant.

The substantial risk of harm to the person or to others may be shown by:

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

The peace officer may conclude that the person poses a substantial risk of harm based upon the following:

1. a representation of a credible person;
2. the person's conduct; or
3. the circumstances under which the person is found.

The peace officer who takes a person into custody immediately shall transport the person to:

1. the nearest appropriate inpatient treatment facility; or
2. a facility considered suitable by the county's health authority, if an appropriate inpatient treatment facility is not available.

The peace officer then immediately must file an application for emergency detention.

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

B. Application for Emergency Detention

1. Filing the Application

Any adult may file a written application for the emergency detention of a minor or of another adult. The emergency detention procedure allows the applicant, upon a proper showing of evidence, to arrange for the detention of a minor or of another adult for a maximum period of twenty-four hours, unless an application for court-ordered treatment is filed and an order for protective custody obtained. {Tex. Health & Safety Code Sec. 462.045(a)}

If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts. {Tex. Health & Safety Code Sec. 462.043(f)}

2. Contents of Application

Under {Tex. Health & Safety Code Sec. 462.042(b)}, the emergency detention application must:

- a. state that the applicant has an actual and reasonable belief that the person is chemically dependent;
- b. state that the applicant has an actual and reasonable belief that the person evidences a substantial risk of serious harm to self or to others;
- c. specifically describe the risk of harm;
- d. state that the applicant has an actual and reasonable belief that the risk of harm is imminent unless the person immediately is restrained;
- e. state that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;
- f. specifically describe the behavior, acts, attempts, or threats; and
- g. specifically describe the applicant's relationship to the person whose detention is sought, or, if the applicant is a peace officer, state the name and relationship to the person sought to be detained of any person who reported or observed the behavior, acts, attempts, or threats.

The application may also state any other relevant information.

C. Ordering Emergency Detention

The applicant personally must present the application to a judge or magistrate, who shall examine the application and may interview the applicant. {Tex. Health & Safety Code Sec. 462.043(a)-(f)}

The magistrate should issue a warrant of apprehension and an order for emergency detention only if the magistrate finds reasonable cause to believe that:

1. the person is chemically dependent;
2. the person evidences a substantial risk of serious harm to self or to others;

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C. Ordering Emergency Detention

3. the risk of harm is imminent unless the person immediately is restrained; and {Tex. Health & Safety Code Sec. 462.043(b)}

When the magistrate has reasonable cause to believe that all four criteria have been established, the magistrate should sign the order for emergency detention and issue a warrant of apprehension and detention. {Tex. Health & Safety Code Sec. 462.043(c)}

The warrant and copies of the application must be served on the person as soon as possible and transmitted to the treatment facility. {Tex. Health & Safety Code Sec. 462.043(e)}

The period of emergency detention may last a maximum of twenty-four hours from the time the person is presented to the facility; however, if the twenty-four-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained until 4:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday. The detention may be continued after twenty-four hours, however, if the court issues an order of protective custody pending the hearing on the application for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.045}

D. Preliminary Examination and Information that Must be Provided

Upon presentation to the treatment facility, a physician at the facility is required to conduct a preliminary examination of the detained person. The examination must take place as soon as possible within twenty-four hours from the time the person is apprehended by a peace officer. {Tex. Health & Safety Code Sec. 462.044}

After the preliminary examination is conducted, continued detention is possible only if the physician who conducted the examination makes a written report stating that:

1. the person is chemically dependent;
2. the person evidences a substantial risk of serious harm to self or to others;
3. the described risk is imminent unless the person immediately is restrained; and
4. the necessary restraint cannot be accomplished without emergency detention. {Tex. Health & Safety Code Sec. 462.044(b)}, {Tex. Health & Safety Code Sec. 462.043(b)}

The person must be released on completion of the preliminary examination if the examining physician does not state in writing that the person meets the criteria for emergency commitment. {Tex. Health & Safety Code Sec. 462.044(b)}

The personnel at the treatment facility immediately must advise the person presented for a preliminary examination, orally, in writing, and in simple, nontechnical terms, that:

1. the person may be detained for treatment for not longer than twenty-four hours after the time of the initial detention unless an order for further detention is obtained;
2. if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator must release the person;
3. not later than the twenty-fourth hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction a petition to have the person committed for court-ordered treatment;
4. if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than seventy-two hours after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;
5. when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;
6. the person has the right to communicate with counsel at any reasonable time and to have assistance in contacting the counsel;
7. the person's communications to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;
8. the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing;
9. the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;
10. beginning on the twenty-fourth hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and
11. the person is entitled to request that a hearing be held in the county of the person's residence, if the county is in Texas. {Tex. Health & Safety Code Sec. 462.046(a)}

E. Rights of the Person Detained

Under {Tex. Health & Safety Code Sec. 462.048}, within twenty-four hours after the time of admission, the person apprehended and detained must be advised, orally, in writing, and in simple, nontechnical terms, of the person's right:

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E. Rights of the Person Detained

1. to be advised of the location of detention, the reasons for the detention, and the fact that detention could result in a longer period of involuntary commitment;
2. to contact an attorney of the person's choice and to be given a reasonable opportunity to contact that attorney;
3. to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;
4. to be released from a facility upon a determination at any time during the emergency detention that the person does not meet the criteria for emergency detention; and
5. to be advised that communications to a chemical dependency treatment professional may be used in proceedings for further detention.

F. Release

A person subject to emergency detention must be released if the facility administrator determines at any time during the emergency detention that any one of the criteria for emergency detention no longer applies. {Tex. Health & Safety Code Sec. 462.047}

If a person is released from emergency detention and is not arrested and does not object, arrangements shall be made to return the person to the location of apprehension or other suitable place.

II. PROTECTIVE CUSTODY

A. Nature of Protective Custody

An order of protective custody is used to detain a proposed patient pending a final hearing on an application for court-ordered treatment.

B. Motion for Protective Custody

1. Where Motion May Be Filed

The motion may be filed only in the court in which an application for court-ordered treatment is pending. {Tex. Health & Safety Code Sec. 462.065(a)}

2. Filing the Motion

The motion for protective custody may be filed by the county or district attorney or on the court's own motion. {Tex. Health & Safety Code Sec. 462.065(a)}

3. Contents of the Motion

The motion must state that:

- a. the movant has an actual and reasonable belief that the proposed patient meets the criteria authorizing the court to order protective custody; and
- b. the movant's belief is derived from:
 - (1) the representations of a credible person;
 - (2) the proposed patient's conduct; or
 - (3) the circumstances under which the proposed patient was found. {Tex. Health & Safety Code Sec. 462.065(b)}

The motion must be accompanied by a sworn certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient no more than five days before the filing of the motion. {Tex. Health & Safety Code Sec. 462.065(c)}

C. Issuing the Protective Custody Order

1. Requirements

A protective custody order may be issued only if:

- a. an application for court-ordered treatment is pending; and
- b. the sworn certificate of medical examination for chemical dependency provides a factual basis for the court to conclude that the proposed patient is chemically dependent and that the proposed patient presents a substantial risk of serious harm to self or to others if not immediately restrained pending the hearing on the application for court-ordered treatment, as demonstrated by:
 - (1) the proposed patient's behavior; or
 - (2) evidence that proposed patient cannot remain at liberty. {Tex. Health & Safety Code Sec. 462.065(e)-(f)}

II. PROTECTIVE CUSTODY

C. Issuing the Protective Custody Order

2. Evidence To Be Considered

The judge may make a determination that the proposed patient meets the criteria for issuance of the protective custody order from the application and the sworn certificate of medical examination alone if the judge determines that the conclusions of the applicant and certifying physician adequately are supported by the information provided. {Tex. Health & Safety Code Sec. 462.065(f)} The judge may consider additional evidence, however, if a fair determination of the matter cannot be made from consideration of the application and sworn certificate only.

3. Placing a Criminal Defendant under Protective Custody

A person charged with a criminal offense may be subject to a protective custody order if:

- a. the requirements for obtaining a protective custody order are fulfilled; and
- b. the facility administrator designated to detain the proposed patient agrees to the detention. {Tex. Health & Safety Code Sec. 462.065(g)}

D. Procedures for Probable Cause Hearing

1. Purpose of Hearing

The probable cause hearing is held to determine if:

- a. a physician has stated that the proposed patient is a person with chemical dependency and has stated the reasons for such opinion; and
- b. there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self or to others if not immediately restrained pending the hearing on the application for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.066(a)}

2. Timing of Hearing

The probable cause hearing must be held not later than seventy-two hours after the time that the court signed the protective custody order, unless the proposed patient waives the right to a hearing. If the seventy-two-hour 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. {Tex. Health & Safety Code Sec. 462.066(a)}

3. Notice of Probable Cause Hearing

The court must provide to the proposed patient and the proposed patient's attorney written notice of the protective custody order, the grounds for the order, and the time and place of the probable cause hearing. {Tex. Health & Safety Code Sec. 462.063(b)}

4. Procedures for the Probable Cause Hearing

The hearing must be held before the court. {Tex. Health & Safety Code Sec. 462.066(b)}

The proposed patient and the proposed patient's attorney are entitled to appear and to present evidence on any allegation or statement in the sworn certificate of medical examination for chemical dependency. {Tex. Health & Safety Code Sec. 462.066(c)}

The movant must convince the court that the protective custody order was justified. Specifically, the movant must submit sufficient evidence for the court to find probable cause to believe that the proposed patient presents a substantial risk of serious harm to self or to others to the extent that the proposed patient cannot be at liberty pending the hearing on the application for court-ordered treatment.

At the probable cause hearing, the court may consider any evidence, including, but not limited to, affidavits. {Tex. Health & Safety Code Sec. 462.066(c)}

The state may prove its case on the physician's certificate of medical examination filed in support of the original motion for an order of protective custody. {Tex. Health & Safety Code Sec. 462.066(c)}

5. Notification of Probable Cause Hearing Authorizing Continued Custody

If the court determines that the movant established a factual basis for probable cause to believe that the proposed patient presents a substantial risk of harm to self or to others to the extent that the proposed patient cannot be at liberty pending the hearing on the application for court-ordered treatment, the court shall issue an order for continued detention. This order is captioned "Notification of Probable Cause Hearing." This order authorizes continued detention until the date of the hearing on the application for court-ordered treatment or until the facility administrator determines that the proposed patient no longer meets the criteria for detention. 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. {Tex. Health & Safety Code Sec. 462.066(g)}

If the court determines after the hearing that the movant failed to establish a factual basis for probable cause to believe that the proposed patient presents a substantial risk of harm to self or to others to the extent that the proposed patient cannot be at liberty pending the hearing

III. COURT-ORDERED TREATMENT
D. Procedures for Probable Cause Hearing

on the application for court-ordered treatment, the court must issue an order releasing the person subject to the protective custody order. {Tex. Health & Safety Code Sec. 462.066(d)}

E. Facility Discharge of a Person under a Protective Custody Order

The facility administrator shall discharge a person held under a protective custody order if:

1. within seventy-two hours after detention began the facility administrator does not receive notice that continued detention is authorized after the probable cause hearing;
2. a final order for court-ordered treatment has not been entered within the allowed time;
3. the facility administrator determines that the proposed patient no longer meets the criteria for protective custody; or {Tex. Health & Safety Code Sec. 462.066(e)}
4. the fact finder finds no probable cause exists to believe the proposed patient presents a substantial risk of serious harm to self or others. {Tex. Health & Safety Code Sec. 462.066(d)}

III. COURT-ORDERED TREATMENT

A. Application for Court-Ordered Treatment

1. Filing an Application

Any adult may file a sworn written application for court-ordered treatment of another person. Court-ordered treatment requires that a person be committed to a facility for treatment for chemical dependency. {Tex. Health & Safety Code Sec. 462.062(a)}

Special rule when proposed patient is a patient receiving voluntary care: An application for court-ordered treatment may not be filed against a patient receiving voluntary chemical dependency treatment unless:

- a. a request for release of the patient has been filed; or
- b. in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered treatment and:
 - (1) is absent from the facility without authorization;
 - (2) is unable to consent to appropriate and necessary treatment; or

(3) 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 chemical dependency that (in addition to the information required by {Tex. Health & Safety Code Sec. 462.064}, defining “certificate of medical examination for chemical dependency”), includes the opinion that:

(a) there is no reasonable alternative to the treatment recommended by the physician; and

(b) the patient will not benefit from continued inpatient care without the recommended treatment. {Tex. Health & Safety Code Sec. 462.024(a)}

2. Certificate of Medical Examination

An application for court-ordered treatment must be accompanied by a sworn certificate of medical examination for chemical dependency. {Tex. Health & Safety Code Sec. 462.062(a)}

However, the county attorney or district attorney may file an application that is not accompanied by a sworn certificate of medical examination for chemical dependency.

3. Where Application May Be Filed

The application must be filed with the county clerk in the county in which the proposed patient:

a. resides;

b. is found; or

c. is receiving treatment services under court order or under a warrantless apprehension for emergency detention. {Tex. Health & Safety Code Sec. 462.062(b)}

4. Contents of Application

The application must be styled using the proposed patient’s initials rather than the proposed patient’s name. {Tex. Health & Safety Code Sec. 462.062(d)}

The application must state the proposed patient’s name, address, and county of residence in Texas. {Tex. Health & Safety Code Sec. 462.062(e)(1)}

The application must state that the proposed patient is a person with chemical dependency who:

III. COURT-ORDERED TREATMENT

A. Application for Court-Ordered Treatment

- a. is likely to cause serious harm to self or to others; or
- b. will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment. {Tex. Health & Safety Code Sec. 462.062(e)(2)}

The application must state that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person. However, this requirement does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Sec. 51.03 of the Texas Family Code. {Tex. Health & Safety Code Sec. 462.062(e)(3)}, {Tex. Health & Safety Code Sec. 462.062(f)}

5. Prehearing Procedures and Requirements

a. Right to Counsel

The court must appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice. {Tex. Health & Safety Code Sec. 462.063(c)}

The court must appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney. {Tex. Health & Safety Code Sec. 462.063(d)}

b. Access to Information

The proposed patient is entitled to view and copy all petitions and reports in the court's file on the application. {Tex. Health & Safety Code Sec. 462.063(b)}

c. Requirement of Medical Examination

A hearing on an application for court-ordered treatment may not be held unless there are on file with the court at least two sworn certificates of medical examination for chemical dependency. {Tex. Health & Safety Code Sec. 462.064(a)}

The examinations must be completed by different physicians, each of whom has examined the proposed patient no more than thirty days before the hearing.

If the certificates are not filed with the application, the court may:

- (1) appoint the necessary physicians to examine the proposed patient and to file the certificates;

- (2) order the proposed patient to submit to the examinations; and
- (3) issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations. {Tex. Health & Safety Code Sec. 462.064(b)}

d. Dismissal of Application

If two sworn certificates of medical examination are not on file with the court at the time set for the hearing on the application, the court must dismiss the application and order the immediate release of the proposed patient if the proposed patient is being detained, and, therefore, is not at liberty. {Tex. Health & Safety Code Sec. 462.064(e)}

B. The Hearing

1. Timing of the Hearing

The hearing must be held within fourteen days after the date on which the application for court-ordered treatment is filed, provided that:

- a. 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; and
- b. the court may grant continuances; however, the hearing shall not be held later than the thirtieth day after the application is filed. {Tex. Health & Safety Code Sec. 462.063(a)}

2. Notice of Hearing

The proposed patient and the proposed patient's attorney are entitled to receive a copy of the application and written notice of the time and the place of the hearing immediately after the date for the hearing is set. {Tex. Health & Safety Code Sec. 462.063(b)}

3. Motion to Transfer Hearing

The proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court, if the judge of the constitutional county court is not a licensed attorney. {Tex. Health & Safety Code Sec. 462.061(b)}

4. Location of the Hearing

The hearing may be held at any suitable location, but if the proposed patient or the proposed patient's attorney so requests, the hearing shall be held in the county courthouse. {Tex. Health & Safety Code Sec. 462.067(c)}

III. COURT-ORDERED TREATMENT

B. The Hearing

5. Procedural Rights and Requirements

The proposed patient has the right to be present at the hearing; however, the proposed patient or the proposed patient's attorney may waive this right. {Tex. Health & Safety Code Sec. 462.067(b)}

The Texas Rules of Civil Procedure and Texas Rules of Evidence apply. {Tex. Health & Safety Code Sec. 462.067(d)}

The hearing must be on the record. "On the record" means before a court reporter. {Tex. Health & Safety Code Sec. 462.067(d)} The hearing must be before a jury, unless the proposed patient and the proposed patient's attorney waive the right to a jury. In the event of a waiver, the waiver may be filed at any time after the proposed patient is served with a copy of the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney. {Tex. Health & Safety Code Sec. 462.067(a)}

The proposed patient is entitled to present evidence on the proposed patient's own behalf and cross-examine any witnesses who testify for the applicant. {Tex. Health & Safety Code Sec. 462.067(e)}

The proposed patient is entitled to view and copy all petitions and reports in the court's file on the application. {Tex. Health & Safety Code Sec. 462.067(e)}

The proposed patient is entitled to elect to have the hearing open or closed to the public. {Tex. Health & Safety Code Sec. 462.063(e)}

6. Burden of Proof - Clear and Convincing Evidence

The applicant must prove the need for court-ordered treatment by clear and convincing evidence. {Tex. Health & Safety Code Sec. 462.067(d)} This means that the applicant must prove, by clear and convincing evidence, that the proposed patient is a chemically dependent person who:

- a. is likely to cause serious harm to self;
- b. is likely to cause serious harm to others; or
- c. will continue to suffer abnormal, mental, emotional, or physical distress and to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

7. Expert Testimony/Waiver of Rights to Cross-Examination

a. Proposed Patient's Right to Cross-Examination

The proposed patient is entitled to cross-examine witnesses who testify on behalf of the applicant. {Tex. Health & Safety Code Sec. 462.067(e)}

b. Expert Testimony Required

To prove the need for court-ordered treatment by clear and convincing evidence, the applicant must introduce competent medical or psychiatric testimony. The finder of fact may not make its findings solely from the sworn certificates of medical examination for chemical dependency. {Tex. Health & Safety Code Sec. 462.067(f)}

c. Proposed Patient's Waiver of Right to Cross-Examination

The proposed patient or the proposed patient's attorney may waive the right to cross-examine the applicant's witnesses. The waiver must be contained in a written document filed with the court. {Tex. Health & Safety Code Sec. 462.067(f)} If the proposed patient or the proposed patient's attorney waives the right to cross-examination, the court may admit as evidence the sworn certificates of medical examination. Furthermore, the finder of fact may make its findings solely from the sworn certificates.

8. Role of the Fact Finder

The finder of fact, either the jury in a jury trial or the court in a bench trial, is to determine whether the proposed patient is a person with chemical dependency and meets the criteria for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.069} The court always makes the findings regarding the type of services to be provided to the proposed patient.

Thus, in jury trials, the jury does not make a finding about the type of services to be provided; that determination is made solely by the court.

C. Order for Chemical Dependency Treatment

1. Finder of Fact

The finder of fact may determine that the proposed patient requires court-ordered treatment only upon finding, from clear and convincing evidence, that:

- a. the proposed patient admits the allegations contained in the complaint; or {Tex. Health & Safety Code Sec. 462.069(a)(1)}

III. COURT-ORDERED TREATMENT
C. Order for Chemical Dependency Treatment

b. the material allegations in the application are true, i.e., that the proposed patient is a chemically dependent person who:

- (1) is likely to cause serious harm to self;
- (2) is likely to cause serious harm to others; or
- (3) will continue to suffer abnormal, mental, emotional, or physical distress; and
- (4) to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit for treatment.* {Tex. Health & Safety Code Sec. 462.069(a)(2)}

*Note regarding deterioration criterion: The San Antonio Court of Appeals, in expressly upholding the constitutionality of the deterioration criterion in the context of mental commitments, has stated that “a dangerousness standard, in keeping with due process requirements, is encompassed in this ... criterion.” *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App. - San Antonio 1985, no writ). The court in *Johnson* explained: “An individual who cannot make a rational decision to receive treatment poses a threat to his own well being. That person is a danger to himself precisely because the nature of his illness prevents him from seeking treatment which might improve his condition.”

2. Order

Upon a finding that a need for treatment exists, the court shall enter an order:

- a. committing the proposed patient to a facility for inpatient treatment; or
- b. requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor, if the proposed patient so requests and if the court finds that participation in outpatient treatment is in the patient’s best interest considering the impairment. {Tex. Health & Safety Code Sec. 462.069(a)-(b)}

3. Duration of Order

An order for court-ordered chemical dependency treatment must state that treatment is authorized for not more than ninety days. {Tex. Health & Safety Code Sec. 462.069(a)}

D. Order Denying Application and Release after Hearing

After the hearing on the merits, the court shall enter an order denying the application for court-ordered treatment if the fact finder fails to find, from clear and convincing evidence, that

the proposed patient is a person with chemical dependency and meets the criteria for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.068(a)} When the court denies the application, it must order the discharge of the proposed patient if the proposed patient is in detention and, therefore, not at liberty. {Tex. Health & Safety Code Sec. 462.068(b)}

IV. POST-COMMITMENT PROCEEDINGS

A. Motion for Modification of Order for Outpatient Treatment

1. Filing the Motion

Any interested person, the person responsible for the treatment of a patient who has been ordered to undergo outpatient mental services, or the court that ordered a patient to undergo outpatient mental services may move to modify the order for outpatient treatment specifically to require inpatient treatment. {Tex. Health & Safety Code Sec. 462.070(a)}

2. Where Motion May Be Filed

The motion for modification must be filed in the court that entered the order for court-ordered outpatient treatment. {Tex. Health & Safety Code Sec. 462.070(a)}

3. Contents of Motion

The statute does not expressly require a statement of the reasons for the request for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 462.072(a)-(c)} The criteria for modification, however, suggest that the person requesting the modification provide:

- a. evidence that the patient continues to meet the criteria supporting an order for court-ordered treatment; and {Tex. Health & Safety Code Sec. 462.072(a)}
- b. evidence that the patient has not complied with the court's earlier order for outpatient treatment or evidence that the patient's condition has so deteriorated that outpatient care or services are no longer appropriate. {Tex. Health & Safety Code Sec. 462.070(a)(1), (2)}

The statute expressly provides that a decision to modify must be supported by a sworn certificate of examination for chemical dependency prepared by a physician who has examined the patient no more than seven days before the hearing on the motion. {Tex. Health & Safety Code Sec. 462.072(c)}

IV. POST-COMMITMENT PROCEEDINGS

A. Motion for Modification of Order for Outpatient Treatment

4. Request for Hearing, Notice, and Appointment of Counsel

a. Request for Hearing

The court may set the hearing on the motion for modification on its own motion, at the request of the person responsible for the patient's outpatient treatment, or at the request of any other interested person. {Tex. Health & Safety Code Sec. 462.070(a)}

If a hearing is scheduled on the motion for modification, the court must appoint an attorney to represent the patient. {Tex. Health & Safety Code Sec. 462.070(b)}

b. Notice

If a hearing is scheduled on the motion for modification, the court must provide the patient and the patient's attorney with a copy of the application, the moving papers, and written notice of the time and place of the hearing. {Tex. Health & Safety Code Sec. 462.070(c)}

B. Application for Temporary Detention

1. Filing the Application

The person responsible for the patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility at which the patient receives treatment may file a sworn application for the patient's temporary detention pending the hearing on the motion for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 462.071(a)}

2. Contents of Application

The temporary detention application must state the applicant's opinion and provide the reasons for the applicant's opinion that:

a. the patient continues to meet the criteria supporting an order for court-ordered chemical dependency treatment; and

b. either:

(1) the patient has not complied with the court's earlier order for outpatient treatment; or

(2) the patient's condition has deteriorated to the extent that outpatient services are no longer appropriate (see {Tex. Health & Safety Code Sec. 462.072(a)}); and

c. detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services. {Tex. Health & Safety Code Sec. 462.071(b)}

3. Ordering Temporary Detention

The court should issue an order for temporary detention if 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. {Tex. Health & Safety Code Sec. 462.071(c)}

Upon signing the order for temporary detention, the court must appoint an attorney to represent the patient if the patient does not have an attorney. {Tex. Health & Safety Code Sec. 462.071(d)}

Within seventy-two hours after the detention begins, the court must provide the following to the patient and the patient's attorney:

- (1) written notice 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 hearing on the motion for modification of the order for outpatient treatment. {Tex. Health & Safety Code Sec. 462.071(e)}

4. Order for Temporary Detention

The temporary detention order shall direct a peace officer or other designated person to take the patient into custody and immediately to transport the patient to the nearest appropriate inpatient treatment facility or to a suitable facility if an appropriate inpatient treatment facility is not available. {Tex. Health & Safety Code Sec. 462.071(f)}

The patient may be detained under the temporary detention order for a maximum of seventy-two hours. {Tex. Health & Safety Code Sec. 462.071(g)}

5. Release

The facility administrator immediately shall release a patient held under a temporary detention order if the facility administrator does not receive notice within the seventy-two-hour detention that the patient's continued detention is authorized after a hearing on the motion for modification. {Tex. Health & Safety Code Sec. 462.071(h)}

When a facility releases a patient because it has not received notice within the seventy-two-hour period that continued detention is authorized, the patient remains subject to

IV. POST-COMMITMENT PROCEEDINGS

B. Application for Temporary Detention

the prior order for court-ordered outpatient services, so long as the order has not expired. {Tex. Health & Safety Code Sec. 462.071(i)}

C. The Hearing on Motion for Modification - Procedural Rights and Requirements

The hearing must be held before the court without a jury. {Tex. Health & Safety Code Sec. 462.070(c)}

The hearing must be held at a suitable location. On the request of the patient or the patient's attorney, the hearing must be held at the county courthouse.

The patient and the patient's attorney have the right to be present at the hearing. The patient or the patient's attorney, however, may waive this right.

The Texas Rules of Evidence and the Texas Rules of Civil Procedure apply:

1. The hearing must be on the record. "On the record" means before a court reporter.
2. The proposed patient is entitled to present evidence on the proposed patient's own behalf.
3. The proposed patient is entitled to cross-examine witnesses on behalf of the movant. By written document filed with the court, the proposed patient or proposed patient's attorney may waive the right to cross-examine witnesses. If the proposed patient or the proposed patient's attorney waives the right to cross-examination, the court may admit as evidence the sworn certificate of medical examination, and make its findings based solely upon the certificate. If the right is not waived, the court must hear testimony, and the testimony must include competent medical or psychiatric testimony.
4. The proposed patient is entitled to copy all petitions and reports in the court file.
5. The proposed patient is entitled to elect to have the hearing open or closed to the public.
6. The court must provide the proposed patient with proper notice of the hearing.

D. Order of Modification of Order for Outpatient Treatment

The court, as the finder of fact, may modify an order for outpatient services only upon finding, from clear and convincing evidence that:

1. the patient continues to be chemically dependent;
2. as a result of the chemical dependency, the patient:

- a. is likely to cause serious harm to self;
 - b. is likely to cause serious harm to others; or
 - c. will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently, and is unable to make a rational and informed choice as to whether or not to submit to treatment;* and
3. the patient has not complied with the court's earlier order for outpatient treatment or the patient's condition has deteriorated to the extent that outpatient services are no longer appropriate. {Tex. Health & Safety Code Sec. 462.067(d), 462.072(a)}

*Note regarding deterioration criterion: The San Antonio Court of Appeals, in expressly upholding the constitutionality of the deterioration criterion in the context of mental commitments, has stated that "a dangerousness standard, in keeping with due process requirements, is encompassed in this ... criterion." *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App. - San Antonio 1985, no writ). The court in *Johnson* explained: "An individual who cannot make a rational decision to receive treatment poses a threat to his own well being. That person is a danger to himself precisely because the nature of his illness prevents him from seeking treatment which might improve his condition."

If the court decides to modify the earlier order, the court's decision must be supported by at least one sworn certificate of medical examination for chemical dependency prepared by a physician who has examined the patient within seven days of the hearing. {Tex. Health & Safety Code Sec. 462.072(c)}

The court's modification may:

- (1) incorporate a revised treatment program and provide for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or
- (2) provide for a commitment to an approved treatment facility for inpatient care. {Tex. Health & Safety Code Sec. 462.072(d)}

Even if the criteria set forth above have been met, the court may refuse to modify the earlier order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order. {Tex. Health & Safety Code Sec. 462.072(b)}

The court may not extend the provision of court-ordered treatment beyond the period prescribed in the earlier order for outpatient care or treatment. {Tex. Health & Safety Code Sec. 462.072(e)}

E. Motion for Modification of Order for Inpatient Treatment

1. Filing the Motion

The facility administrator of the facility in which a patient has been committed for inpatient treatment may move to modify the order to require the patient to participate in outpatient care or services. {Tex. Health & Safety Code Sec. 462.073(a)}

2. Where Motion May Be Filed

The facility administrator must file the motion for modification in the court that entered the order for outpatient care or services. {Tex. Health & Safety Code Sec. 462.073(a)}

3. Contents of the Motion

The facility administrator's moving papers must:

- a. explain in detail the reason for the request to modify the order to require outpatient services; and
- b. be accompanied by a sworn certificate of medical examination for chemical dependency prepared by a physician who has examined the patient no more than seven days before the filing of the motion. {Tex. Health & Safety Code Sec. 462.073(b)}

4. Notice, Request for Hearing, and Appointment of Counsel

a. Notice

The court must give notice of the motion for modification to the patient. In the notice, the court should inform the patient of the patient's right to demand a hearing. {Tex. Health & Safety Code Sec. 462.073(c)}

b. Request for Hearing and Appointment of Counsel for the Patient

On the request of the patient or any other interested party, the court must hold a hearing on the motion. If a hearing is requested, the court must appoint counsel to represent the hearing and give proper notice of the hearing. {Tex. Health & Safety Code Sec. 462.073(d)}

c. The Hearing - Procedural Rights and Requirements

The hearing must be held before the court without a jury. {Tex. Health & Safety Code Sec. 462.073(d), (e)}

The hearing must be held at a suitable location. On the request of the patient or the patient's attorney, the hearing must be held in the county courthouse.

The patient has the right to be present at the hearing. The patient or the patient's attorney, however, may waive this right.

d. Texas Rules of Evidence and Texas Rules of Civil Procedure

The Texas Rules of Evidence and the Texas Rules of Civil Procedure apply to this hearing. The hearing must be on the record. "On the record" means before a court reporter.

The patient is entitled to present evidence on the proposed patient's own behalf.

The patient is entitled to cross-examine witnesses called on behalf of the movant. By written document filed with the court, the patient or the patient's attorney may waive the right to cross-examination. If the patient or the patient's attorney waives the right to cross-examination, the court may admit as evidence the sworn certificate of medical examination, and make its findings based solely upon the certificate. If the right is not waived, the court must hear testimony, and the testimony must include competent medical or psychiatric testimony.

The patient is entitled to copy all petitions and reports in the court file.

The patient is entitled to elect to have the hearing open or closed to the public.

e. No Hearing Requested

If neither the patient nor any other interested person requests a hearing on the motion, the court may make its decision solely on the basis of the motion and the supporting certificate of medical examination for chemical dependency. {Tex. Health & Safety Code Sec. 462.073(e)}

f. Order of Modification - Term of Modification

If the court determines that the motion should be granted (i.e., that the order for inpatient treatment should be changed to require outpatient services), the modified order may not extend beyond the term of the original order for mental health services. {Tex. Health & Safety Code Sec. 462.073(h)}

If the court orders the modification, the court must identify the person to be responsible for the outpatient care or services. {Tex. Health & Safety Code Sec. 462.073(f)}

IV. POST-COMMITMENT PROCEEDINGS

E. Motion for Modification of Order for Inpatient Treatment

In addition, the person responsible for the care or services shall submit to the court, within two weeks after the court enters the order, the general program of treatment to be provided. The program must be incorporated into the court order. {Tex. Health & Safety Code Sec. 462.073(g)}

F. Application for Renewal of Order for Court-Ordered Treatment

1. Filing the Application

Any adult who has reasonable cause to believe that a patient remains a person with chemical dependency and that because of the chemical dependency is likely to cause serious physical harm to self or to others may file an application to renew an order for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.075(b)} The applicant must file the application not later than the fourteenth day before the date on which the previous order expires.

2. Contents of Application

The application must be styled using the patient's initials rather than the patient's full name. {Tex. Health & Safety Code Sec. 462.062(d)}

The application must state the patient's name, address, and county of residence. {Tex. Health & Safety Code Sec. 462.062(e)(1)}

The application must state that the patient is a chemically dependent person who:

- a. is likely to cause serious harm to self or to others; or
- b. will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment {Tex. Health & Safety Code Sec. 462.062(e)(2)}; and
- c. is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person. {Tex. Health & Safety Code Sec. 462.062(e)(3)}

G. Certificates of Medical Examination

Along with the application, the applicant must submit new certificates of medical examination for chemical dependency prepared by two different physicians who have examined the patient no more than thirty days before the hearing. {Tex. Health & Safety Code Sec. 462.075(c)}

H. Appointment of Counsel For Patient

When an application for renewal of an order for court-ordered treatment is filed, the court must appoint an attorney to represent the patient if the patient does not retain an attorney of the patient's choice. If the patient is a minor, the court must appoint an attorney for the patient regardless of the ability of the patient or the patient's family to afford an attorney. {Tex. Health & Safety Code Sec. 462.063(c), (d)}

I. The Hearing

1. Timing of the Hearing

The hearing must be held within fourteen days after the application is filed, provided that:

- a. the hearing may not be held during the first three days after the application is filed if the patient or the patient's attorney objects; and
- b. the court may grant continuances; however, the hearing shall be held not later than the thirtieth day after the application for renewal is filed. {Tex. Health & Safety Code Sec. 462.063(a)}

2. Notice of Hearing

The patient and the patient's attorney are entitled to receive a copy of the application for renewal and written notice of the time and place of the hearing immediately after the date for the hearing is set. {Tex. Health & Safety Code Sec. 462.063(b)}

3. Motion to Transfer Hearing

If the constitutional county court judge is not a licensed attorney, the patient or the patient's attorney may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a probate court. {Tex. Health & Safety Code Sec. 462.061(b)}

4. Procedural Rights and Requirements

The hearing may be held in any suitable location, but if the patient or the patient's attorney so requests, the hearing must be held in the county courthouse. {Tex. Health & Safety Code Sec. 462.067}

The patient has the right to be present at the hearing.

The patient is entitled to present evidence on the patient's own behalf.

IV. POST-COMMITMENT PROCEEDINGS

I. The Hearing

The patient is entitled to view and copy all petitions and reports in the court file.

The patient is entitled to have the hearing open or closed to the public.

The patient is entitled to cross-examine witnesses who testify on behalf of the applicant. This right may be waived. If the patient or the patient's attorney waives the right to cross-examination, the court may admit the two sworn certificates and make its findings solely from the certificates. If the right is not waived, the court must hear testimony, including competent medical or psychiatric testimony.

5. Texas Rules of Evidence and Texas Rules of Civil Procedure

The Texas Rules of Evidence and Texas Rules of Civil Procedure apply at the hearing. The hearing must be on the record. "On the record" means before a court reporter.

The hearing on the application for renewal must be before a jury, unless the patient or the patient's attorney waives the right to a jury.

6. Burden of Proof/Expert Testimony

The applicant must prove the need to renew the order for court-ordered treatment by clear and convincing evidence. {Tex. Health & Safety Code Sec. 462.067(d)}

The court may make its findings solely from the sworn certificates of medical examination only if the patient or the patient's attorney waives the right to cross-examination. Otherwise the court must hear testimony. The court's findings must be supported by testimony taken at the hearing, and the testimony must include competent medical or psychiatric testimony. {Tex. Health & Safety Code Sec. 462.067(f)}

J. Order Renewing an Order for Court-Ordered Treatment

1. Role of the Fact Finder

The finder of fact, either the jury in a jury trial or the court in a court trial, is to determine if the patient is chemically dependent and meets the criteria for court-ordered treatment. The court always makes the findings about the type of services to be provided to the patient.

2. Renewal of Order for Court-Ordered Treatment

Under {Tex. Health & Safety Code Sec. 462.075(f)}, the finder of fact may determine that a request for renewal of prior order for treatment should be granted only if the patient admits the allegations or only upon finding, from clear and convincing evidence, that:

- a. the proposed patient is chemically dependent; and
- b. as a result of the chemical dependency, the patient:
 - (1) is likely to cause serious harm to self;
 - (2) is likely to cause serious harm to others; or
 - (3) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress, will continue to experience deterioration of his ability to function independently; and
 - (4) is unable to make a rational and informed decision as to whether or not to submit to treatment. {Tex. Health & Safety Code Sec. 462.062(e)(2)} *

* Note regarding deterioration criterion: The San Antonio Court of Appeals, in expressly upholding the constitutionality of the deterioration criterion in the context of mental commitments, has stated that “a dangerousness standard, in keeping with due process requirements, is encompassed in this ... criterion.” *Johnson v. State*, 693 S.W.2d 559, 563 (Tex. App. - San Antonio 1985, no writ). The court in *Johnson* explained: “An individual who cannot make a rational decision to receive treatment poses a threat to his own well being. That person is a danger to himself precisely because the nature of his illness prevents him from seeking treatment which might improve his condition.”

The order must require that the patient be committed to a treatment facility for not more than ninety days. {Tex. Health & Safety Code Sec. 462.075(f)}

K. Order Denying Application for Renewal

The court must enter an order denying the application for renewal if the finder of fact fails to find, from clear and convincing evidence, that the patient is a person with chemical dependency and meets the criteria for court-ordered treatment. {Tex. Health & Safety Code Sec. 462.075(e)} If the court denies the application, the court must order the discharge of a patient who is in detention and, therefore, not at liberty.

L. Appeal

Any appeal from an order requiring court-ordered treatment, or from an order of renewal or modification, must be filed in the court of appeals for the county in which the order is entered not later than the tenth day after the date on which the order was signed. {Tex. Health & Safety Code Sec. 462.076(a)-(b)}

PART THREE: INTELLECTUAL DISABILITY SERVICES

L. Appeal

When an appeal is filed, the clerk immediately must send a certified transcript of the proceedings to the court of appeals. {Tex. Health & Safety Code Sec. 462.076(c)}

Pending the appeal, the trial judge in whose court the matter is pending may:

1. stay the order and release the proposed patient or patient from custody before the appeal if the judge is satisfied that the proposed patient or patient does not meet the criteria for protective custody; and
2. if the proposed patient is at liberty, require an appearance bond in an amount set by the court. {Tex. Health & Safety Code Sec. 462.076(d)}

PART THREE: INTELLECTUAL DISABILITY SERVICES

Note that in 2011, the legislature passed HB 1481, which calls for use of “person first respectful language in reference to individuals with disabilities.” Specifically, for purposes of this manual, it calls for “mental retardation” to be referred to as “intellectual disability.” In 2015, the legislature followed up with SB 219, which changed references from “mental retardation” to “intellectual disability” in many codes, including the Health & Safety Code, Code of Criminal Procedure, Family Code, and Penal Code. These changes are consistent with terminology now used in the medical community. See changes made to {Tex. Health & Safety Code Chapter 593} and {Tex. Health & Safety Code Chapter 594} in relation to intellectual disability services.

I. PROTECTIVE CUSTODY

A. Nature of Protective Custody

An order of protective custody is used to detain a proposed resident in a residential care facility pending a hearing on an application for commitment to a residential care facility.

B. Issuing the Protective Custody Order

1. Requirements

If an application for commitment to a residential care facility is pending, the court may issue a protective custody order, based upon “certificates filed with the court,”* if the court finds that the proposed resident is:

- a. believed to be a person with an intellectual disability; and

b. likely to cause injury to self or to others if not immediately restrained. {Tex. Health & Safety Code Sec. 593.044(a)}

*Note regarding filed certificates: {Tex. Health & Safety Code Sec. 593.044(a)} expressly requires that the court make its determination based upon “certificates filed with the court.” Chapter 593, however, fails to specify the contents of the certificates. Some courts require sworn certificates from medical doctors or psychologists certified by the Texas Department of Aging and Disability Services stating that the proposed resident is a person with an intellectual disability and is likely to cause danger to self or to others if not restrained immediately.

2. Custody of the Proposed Resident

If the court issues the protective custody order, the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

- a. a designated residential care facility in which space is available; or
- b. a place deemed suitable by the county health authority. {Tex. Health & Safety Code Sec. 593.044(b)}

3. Voluntary Resident

If the proposed resident is a voluntary resident, the court for good cause may order the resident’s detention in:

- a. the facility in which the resident was voluntarily admitted; or
- b. another suitable location to which the resident is authorized to be transported. (See places listed in the subsection “Custody of the Proposed Resident” above.) {Tex. Health & Safety Code Sec. 593.044(c)}

4. No Probable Cause Hearing

No probable cause hearing is required after the issuance of the protective custody order.

C. Detention in Protective Custody

1. Duration

A person under a protective custody order may be detained for a maximum period of twenty days from the date on which custody begins. {Tex. Health & Safety Code Sec. 593.045(a)}

2. Location of Protective Custody

A person under a protective custody order may not be detained in a non-medical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no instance for longer than twenty-four hours. {Tex. Health & Safety Code Sec. 593.045(b)}

3. Medical Care During Detention

The county health authority must ensure that the detained person receives proper medical attention pending removal to a residential care facility. {Tex. Health & Safety Code Sec. 593.045(c)}

4. Release from Protective Custody

The administrator of the facility in which a person is held in protective custody shall discharge the person not later than the twentieth day after the date on which custody begins, unless the court that issued the protective custody order issues a further detention order. {Tex. Health & Safety Code Sec. 593.046(a)}

D. Court-Ordered Commitment to a Residential Care Facility

1. Application for Court-Ordered Commitment to a Residential Care Facility

a. Filing the Application

Under {Tex. Health & Safety Code Sec. 593.041(a)}, the following individuals may file an application for an interdisciplinary team report and recommendation that the proposed resident is in need of long-term placement in a residential care facility:

- (1) the proposed resident, if an adult;
- (2) the parent of a proposed resident who is a minor;
- (3) the guardian of the proposed resident;
- (4) the court; or
- (5) any other interested person, including a community center or agency that conducted a determination of intellectual disability of the proposed resident.

b. Where Application May Be Filed

The applicant must file the application with the county clerk in the county in which the proposed patient resides. {Tex. Health & Safety Code Sec. 593.041(b)}

If the applicant is the superintendent of a residential care facility in which the proposed resident is a voluntary resident, the county in which the facility is located is considered the proposed resident's county of residence. {Tex. Health & Safety Code Sec. 593.041(b)}

However, an application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the commitment was ordered. {Tex. Health & Safety Code Sec. 593.041(e)}

The county court has original jurisdiction of all judicial proceedings for the commitment of a person with an intellectual disability to residential care facilities. {Tex. Health & Safety Code Sec. 593.041(c)}

2. Contents of Application

The applicant must execute the application for commitment under oath. {Tex. Health & Safety Code Sec. 593.042}

The application must state the name, date of birth, sex, and address of the proposed resident.

The application must state the name and address of the proposed resident's parent or guardian, if applicable.

The application must contain a short and plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate.

The application must contain a short and plain statement explaining the inappropriateness of admission to less restrictive services.

The application must be accompanied by the interdisciplinary team report and recommendation, if the report has been completed. {Tex. Health & Safety Code Sec. 593.013}

3. Prehearing Procedures and Requirements

a. Right to Counsel

The proposed resident must be represented by an attorney, who represents the rights and legal interests of the proposed patient without regard to who initiates the proceedings or pays the attorney's fee. {Tex. Health & Safety Code Sec. 593.043(a)}

I. PROTECTIVE CUSTODY

D. Court-Ordered Commitment to a Residential Care Facility

The court must appoint an attorney to represent the proposed resident if the proposed resident cannot afford an attorney. The court must appoint an attorney not later than the eleventh day before the date set for the hearing on the application. (Note: If the court appoints an attorney, the court must pay the attorney a reasonable fee from the county's general fund.) {Tex. Health & Safety Code Sec. 593.043(b), (c)}

b. Representation of Parent or Guardian

The parent, if the proposed resident is a minor, or the guardian of the proposed resident may be represented by legal counsel during the proceedings. {Tex. Health & Safety Code Sec. 593.043(d)}

c. Requirements of Determination of Intellectual Disability Report and Interdisciplinary Team Report and Recommendation

At the hearing on the application, the interdisciplinary report and recommendation must be presented in evidence. {Tex. Health & Safety Code Sec. 593.041(d)}

A person may not be committed to the Texas Department of Aging and Disability Services for placement in a residential care facility unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the court hearing on the application. If the report and recommendation have not been completed or revised during that period, the court shall order the report and recommendation on receiving the application.

d. Determination of Intellectual Disability Report

At the hearing on the application, the results of the determination of intellectual disability must be presented in evidence.

E. The Hearing on the Application

1. Timing of the Hearing

On the filing of the application, the court immediately must set the earliest practicable date for the hearing to determine the appropriateness of the proposed commitment. {Tex. Health & Safety Code Sec. 593.047} If the proposed resident is in protective custody and, therefore, cannot be held for a period longer than twenty days for the date protective custody began, the court must consider this time restriction in setting the hearing date.

2. Notice of Hearing

Not later than the eleventh day before the day set for the hearing, a copy of the application, written notice of the time and place of the hearing, and an order for the determination of intellectual disability and interdisciplinary team report and recommendation, if necessary, must be served on:

- a. the proposed resident or the proposed resident's representative;
- b. the parent if the proposed resident is a minor;
- c. the guardian of the proposed resident, if applicable; and
- d. the Texas Department of Aging and Disability Services. {Tex. Health & Safety Code Sec. 593.048}

3. Contents of Notice

The notice must specify in plain and simple language the right to an independent determination of intellectual disability under {Tex. Health & Safety Code Sec. 593.007}.

The notice must specify in plain and simple language the proposed resident's right to counsel. {Tex. Health & Safety Code Sec. 593.043}

The notice must specify in plain and simple language the date and time set for the hearing on the application. {Tex. Health & Safety Code Sec. 593.047}

The notice must specify in plain and simple language that on the request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury and that the Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and to all other aspects of the proceedings. {Tex. Health & Safety Code Sec. 593.049(b)}

The notice must specify in plain and simple language how the hearing must proceed. {Tex. Health & Safety Code Sec. 593.048(b)(2)}

The notice must specify in plain and simple language that after the hearing, the court promptly must report in writing the decision and finding of facts. {Tex. Health & Safety Code Sec. 593.048(b)(2), and Sec. 593.053}

4. Procedural Rights and Requirements

On the request of a party to the proceedings, or on the court's own motion, the hearing must be before a jury. {Tex. Health & Safety Code Sec. 593.049(a)}

I. PROTECTIVE CUSTODY

E. The Hearing on the Application

The Texas Rules of Civil Procedure apply to jury selection, the court's charge to the jury, and all other aspects of the proceedings and trial. {Tex. Health & Safety Code Sec. 593.049(b)}

The hearing on the application must be open to the public, unless the proposed resident or the proposed resident's representative requests that the hearing be closed and the court determines that there is good cause to close the hearing. {Tex. Health & Safety Code Sec. 593.050(a)}

The proposed resident has the right to be present at the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, however, the court may waive the requirement in writing and state the reason for the waiver. {Tex. Health & Safety Code Sec. 593.050(b)}

The proposed resident has the right to and must be provided the opportunity to confront and to cross-examine each witness. {Tex. Health & Safety Code Sec. 593.050(c)}

The Texas Rules of Evidence apply. {Tex. Health & Safety Code Sec. 593.050(d)}

The results of the determination of intellectual disability and the current interdisciplinary team report and recommendation must be presented in evidence. {Tex. Health & Safety Code Sec. 593.050(d)}

5. Applicant's Burden of Proof

The applicant has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate. {Tex. Health & Safety Code Sec. 593.050(e)}

F. Order for Commitment to a Residential Care Facility

The finder of fact, either the jury in a jury trial or the court in a court trial, may determine that a proposed resident requires commitment to a residential care facility only upon finding, by proof beyond a reasonable doubt, that: {Tex. Health & Safety Code Sec. 593.052(a)}

1. the proposed resident is a person with an intellectual disability;
2. because of an intellectual disability, the proposed resident:
 - a. represents a substantial risk of physical impairment or injury to self or to others; or
 - b. is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

3. the proposed resident cannot adequately and appropriately be habilitated in an available, less restrictive setting; and

4. the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs. {Tex. Health & Safety Code Sec. 593.052(a)}

If the finder of fact determines that the above criteria for commitment have been met and that long-term placement in a residential care facility is appropriate, the court must commit the proposed resident for care, treatment, and training to a community center or the Texas Department of Aging and Disability Services. {Tex. Health & Safety Code Sec. 593.052(b)}

The court immediately must send a copy of the commitment order to the community center or to the Texas Department of Aging and Disability Services. {Tex. Health & Safety Code Sec. 593.052(c)}

The court immediately must report in writing the decision and findings of fact. {Tex. Health & Safety Code Sec. 593.053}

G. Appeal

A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals. In the event of an appeal, the court may grant a stay of the commitment order pending the appeal. {Tex. Health & Safety Code Sec. 593.056}

II. OTHER PROCEEDINGS

A. Appeal from a Transfer or Discharge of a Resident

After a person has been committed to a residential care facility, the person who provides the supervision, care, and treatment of the resident may determine that the resident's placement is no longer appropriate, that the resident could be better treated or habilitated in another setting, and that placement in another setting that can better treat and habilitate the resident can be secured. If the service provider draws these conclusions, the provider may transfer the resident, furlough the resident to an alternative placement, or discharge the resident. {Tex. Health & Safety Code Sec. 594.011}

For the same reasons, the resident, the parent of a resident who is a minor, or the guardian of a resident may request a transfer or discharge. When a request is made, the person who provides the supervision, care, and treatment of the resident must determine the appropriateness of the requested transfer or discharge and then grant or deny the request. {Tex. Health & Safety Code Sec. 594.012}

II. OTHER PROCEEDINGS

A. Appeal from a Transfer or Discharge of a Resident

The resident and the parent or the guardian have the right to an administrative hearing to contest a proposed transfer or discharge or to contest the denial of a request to transfer or to discharge. After the hearing, at which the hearing officer considers oral and written testimony, the hearing officer must report the officer's decision, findings of fact, and the reasons for the findings. {Tex. Health & Safety Code Sec. 594.014}

A party to the hearing may appeal the hearing officer's decision in the county court of the county in which the resident resides or in the county court of Travis County. An appeal is by trial de novo. Accordingly, if an appeal is brought, the court must consider the challenges to the proposed transfer or discharge or to the denial of a request to transfer or to discharge in the same manner as the administrative hearing officer. {Tex. Health & Safety Code Sec. 594.017} For the applicable statutory provisions, see {Tex. Health & Safety Code Sec. 594.011-594.019}.

B. Transfer of a Committed Resident to a State Mental Hospital

1. Transfer of Resident Committed by the Court

The director of a facility in which the court has committed a resident for residential care (see Tex. Health & Safety Code Sec. 593.041) may transfer the resident to a state mental hospital for mental health care if:

an examination of the resident by a physician indicates symptoms of mental illness to the extent that care, treatment, and rehabilitation in a state mental hospital is in the best interest of the resident;

the hospital administrator of the state mental hospital to which the resident is to be transferred agrees with the transfer; and

the director coordinates the transfer with the hospital administrator of the state mental hospital. {Tex. Health & Safety Code Sec. 594.032(a)}

A resident transferred from a resident care facility to a state mental hospital may not remain in the hospital for a period longer than thirty consecutive days, unless the transfer is authorized by a court order. {Tex. Health & Safety Code Sec. 594.032(b)}

2. Examination by State Mental Hospital

Upon transfer to the state mental hospital, the hospital administrator immediately shall order an evaluation of the resident's condition. {Tex. Health & Safety Code Sec. 594.033}

3. Request for Transfer Order of the Court

If the hospital's evaluation reveals that continued hospitalization is necessary for longer than thirty consecutive days, the hospital administrator promptly shall request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital. {Tex. Health & Safety Code Sec. 594.034(a)}

The hospital administrator must submit two sworn certificates of medical examination for mental illness stating that the resident:

- a. is a person with mental illness; and
- b. requires observation or treatment in a mental hospital.

4. Hearing on the Request for a Transfer Order of the Court

a. Timing of the Hearing

Upon receipt of the hospital administrator's request and the sworn certificates of medical examination for mental illness, the court must set a date for the hearing on the proposed transfer. {Tex. Health & Safety Code Sec. 594.035}

Because the resident cannot be held in the hospital for a period longer than thirty consecutive days from the date of transfer without court authorization, the court must consider this time restriction in setting the hearing date.

b. Notice of Hearing

Not later than the eighth day before the date set for the hearing, a copy of the hospital administrator's request for transfer and notice of the transfer hearing must be served on the resident, the resident's parents if the resident is a minor, and the resident's guardian if the resident has been declared to be incapacitated as provided in the Estates Code and a guardian has been appointed. {Tex. Health & Safety Code Sec. 594.036(b)}

c. Hearing Location

The hearing may be held at any suitable place in the county. The physical setting of the hearing should be one that is not likely to have a harmful effect on the resident. {Tex. Health & Safety Code Sec. 594.037}

II. OTHER PROCEEDINGS

B. Transfer of a Committed Resident to a State Mental Hospital

d. Procedural Rights and Requirements

The hearing must be held before a jury, unless a waiver of trial by jury is made in writing and under oath by the resident, the parent if the resident is a minor, or the guardian if one has been appointed for the resident. Notwithstanding the execution of a written waiver, the hearing must be before a jury if the resident, the parent, the guardian, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made. {Tex. Health & Safety Code Sec. 594.038}

The resident has the right to be present at the hearing, unless the court determines that it is in the resident's best interest not to be present. {Tex. Health & Safety Code Sec. 594.039}

The hearing must be open to the public, unless the court finds that it is in the best interest of the resident to close the hearing and obtains consent to close the hearing from the resident, a parent of a resident who is a minor, the resident's guardian, and the resident's legal representative. {Tex. Health & Safety Code Sec. 594.040}

The resident may not be transferred to a state mental hospital except on competent medical or psychiatric testimony. At least two physicians (at least one of whom must be a psychiatrist) must testify at the transfer hearing. The physicians must have completed their examinations of the resident within fifteen days of the hearing. {Tex. Health & Safety Code Sec. 594.041}

C. Order for Transfer

The finder of fact, either the jury in a jury trial or the court in a bench trial, may approve the transfer of the resident to a state mental hospital only upon finding that:

1. the resident is a person with mental illness; and
2. the resident requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others. {Tex. Health & Safety Code Sec. 594.042}

If the finder of fact finds that the above criteria have been met, the court must enter an order approving the transfer.

The relevant statutory provisions do not specify whether the burden of proof is clear and convincing evidence or some other standard. Some courts employ the clear and convincing evidence standard.

D. Discharge of Resident

A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility must be discharged. {Tex. Health & Safety Code Sec. 594.043}

E. Transfer Back to the Residential Care Facility

A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility must be returned to the residential care facility from which the resident was transferred. {Tex. Health & Safety Code Sec. 594.044(a)}

In such circumstances, the hospital administrator of the state mental hospital must:

- a. send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of an intellectual disability; and
- b. request that the resident be transferred to a residential care facility. {Tex. Health & Safety Code Sec. 594.045(a)}

The transfer may be made if the committing court approves the transfer as provided in {Tex. Health & Safety Code Sec. 575.013}.