

CHAPTER 70

H.B. No. 1256

An Act relating to voluntary and involuntary mental health proceedings and services and to the rights of mental health patients.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3, Texas Mental Health Code (Article 5547-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. **APPLICABILITY OF CODE CONSTRUCTION ACT [STANDARD RULES OF CONSTRUCTION AND DEFINITIONS].** Unless specifically supplanted by this code or unless the context otherwise requires, the provisions of the *Code Construction Act* [Articles 10, 11, 12, 14, 22, and 23, Revised Statutes, and Chapter 350, Acts of the 50th Legislature, 1947] (Article 5429b-2 [23a], Vernon's Texas Civil Statutes), apply to this code.

SECTION 2. Section 4, Texas Mental Health Code (Article 5547-4, Vernon's Texas Civil Statutes), is amended by amending Subdivision (13) and adding Subdivisions (18), (19), (20), (21), and (22) to read as follows:

(13) "Mental health facility" means an in-patient or out-patient mental health facility operated by the department, by any person or political subdivision, or by an agency of the United States; a community mental health and mental retardation center as defined in Subdivision (22) of this section, or a facility operated by a community center [established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon's Texas Civil Statutes), which provides mental health services]; and that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons.

(18) "In-patient mental health facility" means a mental health facility which can provide 24-hour residential and psychiatric services that is operated by the department, is a private mental hospital licensed by the department, is a community center as defined in Subdivision (22) of this section or a facility operated by a community center, is that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons and which is licensed either by the department or the Texas Department of Health, or is a hospital operated by an agency of the United States.

(19) "Legal holidays" include those state holidays as enumerated by the legislature in Article 4591, Revised Statutes, as amended, from time to time and officially designated county holidays applicable to the court in which proceedings are to be held.

(20) "A person charged with a criminal offense" as used in this code does not include a juvenile alleged to be a child engaged in delinquent conduct or to be a child in need of supervision as defined in Section 51.03, Family Code.

(21) "Mental health authority" means that agency designated by the commissioner of the department to direct, operate, facilitate, and/or coordinate services to mentally ill persons in the various service areas of the state.

(22) "Community center" means a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), which provides mental health services.

SECTION 3. Section 6, Texas Mental Health Code (Article 5547-6, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. **NOTICE.** Except as specifically provided herein, notice required by this code may be given by delivering a copy of the notice or of the document, as the case may be, to the party to be given notice, in person or in such other [any] manner reasonably calculated to give actual notice [knowledge] to the person to be notified as the court in its discretion may direct.

SECTION 4. Sections 11 and 12, Texas Mental Health Code (Articles 5547-11 and 5547-12, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 11. **PAPERS TO BE FILED WITH CLERK.** All applications, petitions, certificates, and all other papers permitted or required to be filed in the county court by this code shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number and his official signature. *The papers to be filed with the clerk under this code may be initially filed by the use of reproduced, photocopied, or electronically transmitted papers, so long as the original signed copies of such papers are filed with the clerk within three working days.*

Sec. 12. **INSPECTION OF RECORDS IN MENTALLY ILL DOCKETS OF COUNTY CLERKS.** Each and every writing, including but not limited to docket books, indices, judgment books, etc. [statement of facts, together with each and every other writing which discloses intimate details of the personal and private life of the accused or the patient or which discloses intimate details of the personal life of any and all members of the family of the accused or the patient], in a mentally ill docket in the office of the county clerk is [are] hereby declared to be a public record [records] of a private nature which may be used, inspected, or copied only by a written order of the county judge, a judge of a court having probate

jurisdiction [~~probate judge, a court of domestic relations judge~~], or a district judge of the county in which the docket is located. No [~~and no~~] such order shall issue until the issuing judge has entered findings [~~determined informally to his satisfaction~~] that said use, inspection, or copying is justified and in the public interest or that such release is to a patient, former patient, or to a person designated by the patient upon signed and written consent for the release of such information by the allegedly mentally ill person; and that the reasons for such use, inspection, or copying fall within the statutory exemptions to confidentiality of mental health information or physician/patient privilege where the disclosure of such information is in issue. Such records shall be released to any attorney representing the proposed patient in a proceeding held under this code. Nothing herein shall prevent access by law enforcement personnel to necessary information in execution of a writ or warrant.

SECTION 5. Section 14, Texas Mental Health Code (Article 5547-14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. COSTS. (a) The county which initiated Emergency Detention pursuant to Section 26 or 28 of this code [~~entered an Order for Temporary Mental Health Services~~] shall pay the costs of a probable cause hearing pursuant to an Order of Protective Custody and any proceedings for Court-Ordered Mental Health Services. If the person is not subject to Emergency Detention, then the county which accepts an Application for Court-Ordered Mental Health Services and issues an Order of Protective Custody or an Order for Temporary Mental Health Services or the county to which the application is transferred pursuant to Subsection (a) of Section 32 of this code shall pay the costs of any hearings or proceedings. These costs shall include [~~including~~] attorney fees and physician examination fees, compensation for language interpreters, sign interpreters, and masters appointed by the court pursuant to Section 15 of this code, and expenses of transportation to a state mental health facility or to an agency of the United States. If a patient under an Order for Temporary Mental Health Services requires extended treatment, the court which entered the temporary order shall arrange with the appropriate court of the county in which the patient is being treated for a hearing on Court-Ordered Extended Mental Health Services to be held before the date of expiration of the Order for Temporary Mental Health Services, or the county of the court which entered the original Order for Temporary Mental Health Services shall pay the expenses of transportation of the patient back to that county for such hearing.

(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a state mental health facility.

(c) [~~The county which accepts an Application for Court-Ordered Mental Health Services and issues an Order for Protective Custody shall pay the costs of a probable cause hearing pursuant to that order and any attendant expenses including transportation of the patient for such hearing.~~

[(d)] Unless the patient or someone responsible for him is able to do so, the state shall pay the cost of transportation home of a discharged or furloughed patient and the return of a patient absent without authority.

(d) [(e)] Neither the county nor the state shall pay any costs for a patient committed to a private hospital.

SECTION 6. Subsection (a), Section 23, Texas Mental Health Code (Article 5547-23, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Request for Voluntary Admission of a person to an in-patient mental health [a] facility as a voluntary patient shall be in writing and filed with the head of the mental health facility to which admission is sought and:

- (1) shall be signed by the person, if the person is 16 years of age or older; or
- (2) shall, if the person is under the age of 16 years be signed by the parent, or by the managing conservator if one has been appointed, or by the guardian if one has been appointed; and
- (3) shall state that the person will submit himself to the custody of the in-patient mental health facility for diagnosis, observation, care, and treatment until he is discharged or until the expiration of 96 hours after written request for his release is filed with the head of the mental health facility.

SECTION 7. Sections 24 and 25, Texas Mental Health Code (Articles 5547-24 and 5547-25, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 24. APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES DURING VOLUNTARY IN-PATIENT CARE. No Application for Court-Ordered Mental Health Services may be filed for the commitment of a voluntary patient in in-patient care unless a request for his release has been filed with the head of the facility or unless in the opinion of the head of the facility he meets the criteria for court-ordered mental health services and:

- (1) he is absent without authorization; or

(2) he refuses or is unable to consent to appropriate and necessary psychiatric treatment.

Sec. 25. RIGHTS OF VOLUNTARY PATIENTS ADMITTED FOR IN-PATIENT CARE. Every voluntary patient in an in-patient [a] mental health facility has the following rights:

(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed orally [~~verbally and~~] in [~~writing, in the person's primary language; in~~] simple, nontechnical terms[;] of these above-listed rights. *In addition, the person shall be informed in writing of these same above-listed rights, in his primary language if possible. The above-listed rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.*

SECTION 8. Subsection (a), Section 26, Texas Mental Health Code (Article 5547-26, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any peace officer, who has reason to believe and does believe upon the representation of a credible person, or upon the basis of the conduct of a person, or the circumstances under which the person is found, that the person is mentally ill and because of such mental illness represents a substantial risk of serious harm to himself or others unless immediately restrained, *which harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty*, and who believes there is not sufficient time to obtain a warrant, may, without first obtaining a warrant, take such person into custody and immediately transport the person to the nearest appropriate in-patient mental health facility [~~or other suitable detention facility~~] and shall immediately file application with the facility for the person's detention. *If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county.* In no case shall a jail or similar detention facility be deemed suitable except in an extreme emergency. Persons detained in a jail or other nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

SECTION 9. Subsection (a), Section 27, Texas Mental Health Code (Article 5547-27, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) No person shall be admitted to any facility for emergency detention unless such admission is supported by a written statement of an examining physician acceptable to the facility that after a preliminary examination it is his opinion that:

(1) the person is mentally ill, the nature of which disorder shall be described;

(2) the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described *and which harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty*;

(3) the described risk of harm is imminent unless the person is immediately restrained; and

(4) emergency detention is the least restrictive means by which necessary restraint may be effected.

SECTION 10. Subsections (d), (e), and (g), Section 28, Texas Mental Health Code (Article 5547-28, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) The magistrate shall deny the application unless he finds there is reasonable cause to believe:

- (1) that the person evidences mental illness;
 - (2) that the person evidences a substantial risk of serious harm to himself or others; *such harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty;*
 - (3) that the risk of harm is imminent unless the person is immediately restrained; and
 - (4) that necessary restraint cannot be accomplished without emergency detention.
- (e) If the magistrate finds that the person meets all four criteria for emergency detention in Subsection (d) ~~[(a)]~~ of this section ~~[Section 27 of this code]~~, he shall issue a warrant for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility for a preliminary examination in accordance with the provisions of Subsection (c) of Section 26 of this code. *If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county. The [For purposes of this section, the] warrant shall serve as the application required in Subsection (c) [(b)] of Section 26 of this code. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the facility.*
- (g) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that *if the 24-hour period ends [should the person be taken into custody after 12 noon on Friday or] on a Saturday or Sunday or a legal holiday or before 4 p.m. on the first succeeding business day, then the [24-hour] period of [allowed for obtaining an order permitting further] detention shall end [begin] at 4 p.m. [9 a.m.] on the first succeeding business day.*

SECTION 11. Section 29, Texas Mental Health Code (Article 5547-29, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 29. **RELEASE FROM EMERGENCY DETENTION.** If during the emergency detention period it is determined by the head of the facility that *any one of* the conditions set out in Subdivisions (1), (2), (3), or (4) of Subsection (a) of Section 27 of this code no longer apply, the person shall be released. Arrangements shall be made for his return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

SECTION 12. Section 30, Texas Mental Health Code (Article 5547-30, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 30. **RIGHTS OF PERSONS APPREHENDED FOR EMERGENCY DETENTION.** (a) Each person apprehended or detained under this subchapter of the code shall have the following rights:

- (1) the right to be advised of the location of detention, the reasons for his detention, and the fact that his detention could result in a longer period of involuntary commitment;
- (2) the right to contact an attorney of his own choosing with a reasonable opportunity to contact that attorney;
- (3) the right to be transported back to the location of apprehension or to his place of residence in the state or other suitable place if not admitted for emergency detention, unless he is arrested or objects to the return;
- (4) the right to be released if the head of the facility determines that *any one of* the four criteria for emergency detention set out in Subsection (a) of Section 27 of this code no longer apply; and
- (5) the right to be advised that communications to a mental health professional may be used in proceedings for further detention.

(b) Each person apprehended or detained under this code shall be advised within 24 hours of admission, orally ~~[and in writing]~~, in simple, nontechnical terms ~~[language]~~ of the above-listed rights ~~[provided in this section]~~. *In addition, the person shall be informed in writing of these same above-listed rights, in his primary language if possible. The above-listed rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights.*

SECTION 13. Subsections (a) and (c), Section 31, Texas Mental Health Code (Article 5547-31, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Pursuant to the provisions of this code and upon a proper application, a judge may enter an Order for Temporary Mental Health Services or an Order for Extended Mental Health Services. *A judge shall not issue an Order for Temporary Mental Health Services or an Order for Extended Mental Health Services for a person who is charged with a criminal offense.*

(c) An Order for Extended Mental Health Services authorizes treatment for a period of time not to exceed 12 months and may be entered only if the person has, for at least 60 consecutive days within the immediately preceding 12 months received *in-patient* mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended. *The requirement of 60 consecutive days of court-ordered in-patient mental health services prior to an extended order does not apply to an Order Renewing an Order for Extended Mental Health Services as provided in Section 55 of this code.* The Order for Extended Mental Health Services may be entered only upon compliance with the provisions of Section 51 of this code.

SECTION 14. Subsections (a), (c), and (d), Section 32, Texas Mental Health Code (Article 5547-32, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A sworn Application for Court-Ordered Mental Health Services may be filed by any adult person, or the county or district attorney, with the county clerk in the county in which the person resides or in which the person is found or in which the person is receiving mental health services by court order. However, upon request of the person or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the person's residence, if not initially filed there. *If an application is filed without an accompanying Certificate of Medical Examination for Mental Illness, the application shall be filed by the county or district attorney.*

(c) The application shall be in writing and shall state the following upon information and belief of the applicant:

(1) the name and address of the proposed patient, including the county of his residence in this state;

(2) that the person is mentally ill and meets the criteria in either Section 50 or 51 of this code for court-ordered mental health services; and

(3) *whether [that] the person is [not] charged with a criminal offense.*

(d) If the application is for Court-Ordered Extended Mental Health Services, the application shall further state that the person has, for at least 60 consecutive days, within the immediately preceding 12 months, received *in-patient* mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended.

SECTION 15. Subsections (a) and (c), Section 33, Texas Mental Health Code (Article 5547-33, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A sworn Certificate of Medical Examination for Mental Illness shall be dated and signed by the examining physician and shall state:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) a brief diagnosis of the physical and mental condition of the person examined;

(5) the period of time, if any, that the person examined has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the examining physician and the detailed basis for that opinion that:

(A) the person examined is mentally ill; and

(B) as a result of that illness the person *meets at least one of the following additional criteria:*

(i) is likely to cause serious harm to himself; or

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

(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment. *If the examining physician finds that the person meets at least one of these criteria, he shall specify in the certificate which of the three criteria forms the basis for his opinion.*

(c) If the certificate is to be offered in support of a Motion for an Order of Protective Custody, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the person presents a substantial risk of serious harm to himself or others if not immediately restrained. *Such harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty.*

SECTION 16. Section 36, Texas Mental Health Code (Article 5547-36, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 36. PROTECTIVE CUSTODY. (a) A Motion for an Order of Protective Custody may be filed only in the court in which an Application for Court-Ordered Mental Health Services is pending. The motion may be filed by the county or district attorney or on the court's own motion. The motion shall state that the judge or the county or district attorney has reason to believe and does believe upon the representations of a credible person, or upon the basis of the conduct of the person, or the circumstances under which the person is found that the person meets the criteria set forth in Subsection (c) [(b)] of this section. The motion shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician who has examined the person within five days of the filing of the motion.

(b) *The judge of the court in which the application is pending may designate any magistrate to issue orders of protective custody under this code in the absence of the judge.*

(c) The judge or designated magistrate may issue an Order of Protective Custody if the judge or designated magistrate determines:

(1) that a physician has stated his opinion and the detailed basis for his opinion that the person is mentally ill; and

(2) the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing; such harm may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his mental condition to the extent that the person cannot remain at liberty.

This determination may be made on the basis of the application and the certificate. If the judge or designated magistrate concludes that a fair determination of the matter cannot be made on this information, the judge or designated magistrate may take further evidence. If the determination is made on the basis of the application and the certificate, the judge or designated magistrate must determine that the conclusions of the applicant and the certifying physician are adequately supported by the information presented. *The judge or designated magistrate may issue an Order of Protective Custody if the person meets the requirements of this section even if the person is charged with a criminal offense, provided the head of the facility designated to detain the person has consented to the proposed custody.*

(d) [(e)] The Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to an appropriate [a designated] in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. *If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county.* The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

SECTION 17. Section 37, Texas Mental Health Code (Article 5547-37, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 37. APPOINTMENT OF ATTORNEY; NOTICE OF PROBABLE CAUSE HEARING. (a) When an Order of [for] Protective Custody is signed, the presiding judge or his designated magistrate shall simultaneously appoint an attorney, if there is no attorney representing the proposed patient.

(b) *Within a reasonable period of time prior to the time of the probable cause hearing, the [The] proposed patient and his attorney shall receive [be served within a reasonable period of time prior to the time of the probable cause hearing with] written notice that the patient has been placed under an order of protective custody, the reasons why such order was issued, and the time and place of a hearing to establish probable cause to believe that the patient [is mentally ill and] presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered mental health services and to establish that a physician has stated his opinion and the detailed basis for his opinion that the person is mentally ill.* Such notice shall be provided by the court ordering protective custody.

SECTION 18. Section 38, Texas Mental Health Code (Article 5547-38, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 38. PROBABLE CAUSE HEARING ON PROTECTIVE CUSTODY. (a) A probable cause hearing shall be held within 72 hours of the time detention begins pursuant to the order for protective custody; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. *The probable cause hearing may be postponed for an additional period not to exceed 24 hours if an extreme emergency is declared by the presiding judge or magistrate based on extremely hazardous weather conditions which threaten the safety of the patient or other essential parties to the hearing.* The hearing shall be before a magistrate or, at the discretion of the presiding judge,

before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney shall have an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physician's certificate filed in support of the initial detention.

(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others, he shall order the patient's release. Arrangements shall be made for the return of the patient to the location of his apprehension or to his place of residence within the state or some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the commitment hearing, the patient's detention in protective custody shall continue subject to the provisions of Section 39 of this code. If the protective custody is to continue, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place along with copies of the certificate, affidavits, and other material submitted as evidence and a Notification of Probable Cause Hearing which shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient [-----] was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient [-----] and his attorney _____ have been given written notice that the proposed patient [-----] was placed under an order of protective custody and the reasons for such order on _____

(attorney)
 (date of notice)
 I have examined the certificate of medical examination for mental illness and _____ Based upon this evidence, I find that there is probable cause (other evidence considered) to believe that the proposed patient [-----] presents a substantial risk of serious harm to himself (yes ___ or no ___) or others (yes ___ or no ___) such that (s)he cannot be at liberty pending final hearing because _____

(reasons for finding; type of risk found)

A copy of the Notification of Probable Cause Hearing and the supporting evidence shall also be filed with the county court which entered the original Order of Protective Custody.

SECTION 19. Section 39, Texas Mental Health Code (Article 5547-39, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (d) and by adding Subsection (e) to read as follows:

(b) The person detained in protective custody shall be detained in an appropriate in-patient mental health facility [or other facility deemed suitable by the county health officer]. If there is no appropriate in-patient mental health facility available, the person shall be detained in a facility deemed suitable by the mental health authority for that county. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than 72 hours, *excepting weekends, legal holidays, and extreme weather emergencies declared pursuant to Subsection (a) of Section 38 of this code*; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the person may be detained in such a facility until the first succeeding business day. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held within 72 hours of the time detention begins pursuant to the order of protective custody, excepting weekends, legal ~~and~~ holidays, and extreme weather emergencies declared pursuant to Subsection (a) of Section 38 of this code, authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody.

(e) A patient ~~[Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending a hearing on Court/Ordered Mental Health Services]~~ shall be discharged by the head of the facility in which he has been detained if:

(1) a final Order for Court-Ordered Mental Health Services has not been entered by the court before the expiration of 14 days or before the expiration of 30 ~~[21]~~ days from the day of the filing of the original application if an order of continuance has been granted pursuant to Section 42 ~~[or Subsection (d) of Section 40 of this code]~~; or

(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody as specified in Section 36 of this code.

SECTION 20. Sections 40 and 42, Texas Mental Health Code (Articles 5547-40 and 5547-42, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 40. COURT IN WHICH PROCEEDINGS TO BE HELD. A proceeding pursuant to this subchapter shall be held in the statutory or constitutional court of the county exercising the jurisdiction of a probate court in mental illness matters. ~~[If there is no such court in a county, the proceedings shall be heard in the county court.]~~

Sec. 42. SETTING ON APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES. When an Application for Court-Ordered Mental Health Services is filed, the judge or magistrate designated pursuant to Subsection (b) of Section 36 of this code shall set a date for a hearing to be held within 14 days of the filing of the application. If the proposed patient or his attorney objects, the hearing shall not be held within the first three days following the filing of the application. Upon proper motion by either party and for good cause shown or upon agreement of the parties, the court may grant one or more continuances ~~[a single continuance]~~ of the hearing, provided that the hearing shall be held no later than 30 days from the filing of the original application ~~[for a period not to exceed seven days].~~

SECTION 21. Subsection (a), Section 43, Texas Mental Health Code (Article 5547-43, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Immediately after the judge or his designated magistrate sets the date for the hearing, the person and his attorney shall receive written notice of the time and place of the hearing and ~~[be personally served with]~~ a copy of the application ~~[and written notice of the time and place of hearing thereon]~~. A copy of the application and notice shall be delivered in person or sent by certified mail to the parent if the person is a minor under the age of 18 or to the duly appointed guardian if the person is the subject of a guardianship or to the managing and possessory conservators, ~~[conservator]~~ if either ~~[one]~~ has been appointed. If the parent cannot be located and no guardian or conservator has been appointed, notice may be given to the next of kin if that person is the applicant in these proceedings.

SECTION 22. Subsection (e), Section 45, Texas Mental Health Code (Article 5547-45, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) The attorney shall maintain responsibility for the person's legal representation until the application is dismissed, appeal from an order directing treatment is taken, the time for giving notice of appeal has expired by operation of law, or another attorney assumes responsibility for the matter; ~~whichever is later.~~

SECTION 23. Subsection (b), Section 46, Texas Mental Health Code (Article 5547-46, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If the certificates are not filed with the application, the judge or magistrate designated pursuant to Subsection (b) of Section 36 of this code may ~~[shall]~~ appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the person and file certificates with the court. The judge or his designated magistrate may order the proposed patient to submit to the examination and may issue a warrant under which a peace officer may take the person into custody for the purpose of the examinations.

SECTION 24. Subsections (c) and (d), Section 49, Texas Mental Health Code (Article 5547-49, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. ~~[A waiver of this right shall be filed at least 48 hours prior to the scheduled time of the hearing.]~~

(d) Upon good cause shown, the court may permit a waiver of jury trial properly made and filed to be withdrawn if the waiver is withdrawn at least seven days prior to the scheduled time of the hearing. If a waiver is withdrawn within 48 hours of the scheduled time of the hearing, the court may order a continuance for a reasonable period, not to exceed 72 hours, in order to permit a hearing before a jury. [If the person is detained pending the hearing under an Order of Protective Custody, that order may be extended to authorize detention for an additional period not to exceed the period of a continuance granted pursuant to this section.]

SECTION 25. Subsection (b), Section 50, Texas Mental Health Code (Article 5547-50, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and
(2) as a result of that mental illness the person meets at least one of the following additional criteria:

(i) is likely to cause serious harm to himself; or
(ii) is likely to cause serious harm to others; or
(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment. If the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision.

SECTION 26. Subsection (b), Section 51, Texas Mental Health Code (Article 5547-51, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and
(2) as a result of that mental illness the person meets at least one of the following additional criteria:

(i) is likely to cause serious harm to himself; or
(ii) is likely to cause serious harm to others; or
(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed choice as to whether or not to submit to treatment; if the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision; and

(3) the condition of the person is expected to continue for more than 90 days; and, except where the person has already been subject to an Order for Extended Mental Health Services;

(4) the person has either:
(i) received in-patient mental health services under court order pursuant to this code for at least 60 consecutive days within the 12 months immediately preceding the hearing; or
(ii) received in-patient mental health services under court order pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended, for at least 60 consecutive days within the 12 months immediately preceding the hearing.

SECTION 27. The heading to Section 53, Texas Mental Health Code (Article 5547-53, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 53. MODIFICATION OF ORDER FOR OUT-PATIENT MENTAL HEALTH SERVICES; ORDER FOR TEMPORARY DETENTION.

SECTION 28. Section 53, Texas Mental Health Code (Article 5547-53, Vernon's Texas Civil Statutes), is amended by amending Subsections (c) and (e), adding a new Subsection (f), and relettering current Subsections (f) and (g) to read as follows:

(c) If a hearing on modification is set, the court may issue an Order for Temporary Detention [order protective custody] pending the modification hearing provided the court finds that there is probable cause to believe that the person meets the criteria in Subsection (e) of this section and that detention in an in-patient mental health facility is required in order to evaluate the appropriate setting for continued court-ordered care. The court's determination shall be based on a sworn request for temporary detention filed with the court by the individual responsible for the person's court-ordered out-patient services or the head of the out-patient facility stating his opinion.

and the detailed basis of his opinion that the person meets the criteria in Subsection (e) of this section and that detention in an in-patient mental health facility is required in order to evaluate the appropriate setting for continued court-ordered care. When an Order for Temporary Detention is signed, the presiding judge shall simultaneously appoint an attorney for the person, if there is no attorney representing the person. Within 24 hours from the time detention begins, the person and his attorney shall receive written notice that the person has been placed under an Order for Temporary Detention, the reasons why such order was issued, and the time and place of the modification hearing. Such notice shall be provided by the court ordering temporary detention. The Order for Temporary Detention shall direct a peace officer or other designated person to take the person into custody and immediately transport him to an appropriate in-patient mental health facility. If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county. If an Order for Temporary Detention is issued, the person shall be detained no longer than 72 hours, excepting weekends, legal holidays, and extreme weather emergencies as provided for protective custody in Subsection (a) of Section 38 of this code, pending the hearing on modification. If the head of the in-patient facility in which the person is detained does not receive notice that a modification hearing has been held within 72 hours of the time detention begins pursuant to an Order for Temporary Detention, excepting weekends, legal holidays, and extreme weather emergencies authorizing the temporary detention to continue, the head of the in-patient facility shall immediately release the person from custody. If the person is released from custody because a hearing on modification has not been held within the required period of time, the person shall continue to be subject to the conditions of the Order for Court-Ordered Out-patient Services issued prior to the Order for Temporary Detention if it has not already expired [requirements of Subchapter G of this code are met].

(e) At the hearing, the court may modify the order if it determines [either] that the person continues to meet the applicable criteria for court-ordered mental health services in Section 50 or Section 51 of this code and that either :

- (1) the person has not complied with the court's order; or
- (2) the person's condition has so deteriorated that out-patient mental health services are no longer appropriate.

(f) The court's determination with regard to modification shall be supported by at least one Certificate of Medical Examination for Mental Illness prepared by a physician based on an examination conducted within the seven days immediately preceding the modification hearing.

(g) If the findings required by Subsection (e) of this section are made, the court may:

- (1) decline to modify the order and direct that the person continue to participate in out-patient mental health services pursuant to the terms of the order; or
- (2) if a revised general program of treatment has been submitted to and accepted by the court, modify the order so as to incorporate that revised treatment program and to provide for continued out-patient mental health services pursuant to the modified order; or
- (3) modify the order to provide for the commitment of the person to a facility for in-patient care.

(h) [(g)] In no case may the modified order extend beyond the time period of the original order.

SECTION 29. Section 72, Texas Mental Health Code (Article 5547-72, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 72. TERMINATION OF AN ORDER FOR OUT-PATIENT MENTAL HEALTH SERVICES. (a) The head of a facility at which a person has been ordered to participate in temporary or extended out-patient mental health services shall discharge the person upon expiration of the court order.

(b) At any time prior to the expiration of an order for out-patient mental health services, the individual responsible for those services may discharge the person upon his determination [shall request that the order be terminated if he determines] that the person no longer meets the criteria for court-ordered mental health services. A discharge under this subsection terminates the court order. Any person discharged under this subsection shall not again be compelled to submit to involuntary mental health services except pursuant to a new order entered in accordance with the provisions of this code.

(c) Upon discharging a person under this section, the individual responsible for out-patient mental health services shall prepare a Certificate of Discharge and file it with the court that entered the order. [At the request of an individual responsible for court/ordered out/patient mental health services, the court which entered an order directing a person to participate in out/patient care may consider whether the order should be terminated. The request shall specify the reasons why termination is requested. Upon a determination that the person no longer meets the criteria for court/ordered mental health services, the court may terminate the order.]

SECTION 30. Subsection (a), Section 73, Texas Mental Health Code (Article 5547-73, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:

- (1) Voluntary Admission
- (2) Emergency Detention, *Temporary Detention*, or Protective Custody
- (3) Court-Ordered Temporary Mental Health Services
- (4) Court-Ordered Extended Mental Health Services

SECTION 31. Subsection (b), Section 75, Texas Mental Health Code (Article 5547-75, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The head of an *in-patient* [a private] mental health facility [hospital], upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department; *provided, however, that if the person suffers from mental retardation as well as mental illness, the facility may not transfer the person to a mental health facility operated by the Texas Department of Mental Health and Mental Retardation unless the commissioner of the department has determined that space is available in a unit of a departmental facility specifically designed to serve such persons. The head of the in-patient mental health facility shall obtain such determination prior to initiating the transfer.*

SECTION 32. Sections 77 and 79, Texas Mental Health Code (Articles 5547-77 and 5547-79, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 77. **TRANSFER TO AN AGENCY OF THE UNITED STATES.** The department or the head of a private mental hospital may transfer an involuntary patient to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the patient is eligible for care or treatment therein; *provided, however, that the transfer of any involuntary patient to an agency of the United States shall be made only after an order approving the same has been entered by the [county] judge of the committing court [county of residence of the patient].*

Sec. 79. **TRANSFER OF RECORDS.** The head of the *in-patient* mental health facility [hospital] from which a patient is transferred shall send the patient's appropriate hospital records or copy thereof to the head of the mental hospital *or state school* to which the patient is transferred.

SECTION 33. Subsection (c), Section 80, Texas Mental Health Code (Article 5547-80, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) All patients receiving involuntary in-patient mental health services have the right to be informed orally [~~verbally and in writing within 24 hours of admission, in the person's primary language~~], in simple nontechnical terms, of the rights included in Sections 80 and 81 of this code. *In addition, the patients shall be informed in writing of these same rights in their primary language if possible. These rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights.*

SECTION 34. Subsection (d), Section 52, Texas Mental Health Code (Article 5547-52, Vernon's Texas Civil Statutes), is repealed.

SECTION 35. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 24, 1985, by the following vote: Yeas 137, Nays 0, 1 present, not voting; passed by the Senate on April 30, 1985, by the following vote: Yeas 24, Nays 0.

Approved: May 2, 1985

Effective: Immediately