

HEALTH AND SAFETY CODE CHAPTER 571. GENERAL PROVISIONS

HEALTH AND SAFETY CODE

TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE C. TEXAS MENTAL HEALTH CODE

CHAPTER 571. GENERAL PROVISIONS

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.002. PURPOSE. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

(1) facilitating treatment in an appropriate setting;

(2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;

(3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;

(4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;

(5) defining the criteria the state must meet to order involuntary care and treatment;

(6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;

(7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and

(8) safeguarding the rights of the person who voluntarily requests inpatient care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.003. DEFINITIONS. In this subtitle:

(1) "Board" means the Texas Board of Mental Health and Mental Retardation.

(2) "Commissioner" means the commissioner of mental health and mental retardation.

(3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.

(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5) "Department" means the Texas Department of Mental Health and Mental Retardation.

(6) "Facility administrator" means the individual in charge of a mental health facility.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat physically ill persons.

(8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the Texas Department of Health;

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11) "Local mental health authority" means an entity to which the board delegates its authority and responsibility

within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center; or

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state; or

(E) a licensed marriage and family therapist licensed to practice in this state.

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

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

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners.

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

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

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

(22) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 2, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 75, Sec. 1, eff. May 12, 1999; Acts 1999, 76th Leg., ch. 543, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 722, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 367, Sec. 4, 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 27, eff. Sept. 1, 2003.

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

- (1) is available;
- (2) provides the patient with the greatest probability of improvement or cure; and
- (3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.005. TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM. (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.006. DEPARTMENT POWERS. The department may:

- (1) adopt rules as necessary for the proper and efficient treatment of persons with mental illness;
- (2) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;
- (3) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;
- (4) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(5) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient. Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.0065. TREATMENT METHODS. (a) The board by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the board.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the board.

(d) The board shall report annually to the governor, lieutenant governor, speaker of the house of representatives, Senate Health and Human Services Committee, and House Public Health Committee on the treatment methods reviewed under this section and the findings and recommendations made regarding each reviewed treatment method.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.01(a), eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 1, eff. May 27, 1997.

Sec. 571.0066. PRESCRIPTION MEDICATION INFORMATION.

(a) The board by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

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

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.01, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 571.0065 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(32), eff. Sept. 1, 1995.

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

Added by Acts 2005, 79th Leg., Ch. 698, Sec. 6, eff. September 1, 2005.

Sec. 571.007. DELEGATION OF POWERS AND DUTIES. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.008. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE. (a) The department may return a nonresident patient

committed to a department mental health facility to the proper agency of the patient's state of residence.

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

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

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, senility, alcoholism, or mental deficiency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

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

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME.

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 35, Sec. 9, eff. Jan. 1, 2004.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 485, Sec. 1, eff. June 11, 2001.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

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

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

on it:

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

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

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty. Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.42, eff. Aug. 30, 1993.

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a

judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

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

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

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

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.016. REPRESENTATION OF STATE. Unless specified otherwise, in a hearing held under this subtitle:

(1) the county attorney shall represent the state; or

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 322, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 1, eff. June 16, 1995.

Sec. 571.0165. EXTENSION OF DETENTION PERIOD. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during

which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.43, eff. Aug. 30, 1993.

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

Added by Acts 1995, 74th Leg., ch. 770, Sec. 2, eff. June 16, 1995.

Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL.

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

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

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

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

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

services. The costs shall be billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

- (1) attorney's fees;
- (2) physician examination fees;
- (3) compensation for court-appointed personnel listed under Section 571.017;
- (4) expenses of transportation to a mental health facility or to a federal agency not to exceed \$50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;
- (5) costs and salary supplements authorized under Sections 574.031(i) and (j); and
- (6) prosecutor's fees authorized under Section 574.031(k).

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

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

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

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

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h) The state or a county may not pay any costs for a patient committed to a private mental hospital unless:

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

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding

under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.44, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 174, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 3, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 527, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1512, Sec. 1, eff. Sept. 1, 1999.

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

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

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

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

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

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

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

(1) a fine of not less than \$50 or more than \$25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

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

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

(1) a fine of not less than \$100 or more than \$50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.45, eff. Aug. 30,
1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.10(a), eff. Sept. 1,
1993.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

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

- (1) the person's or facility's previous violations;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

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

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

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

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

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

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

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law. Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.024. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring

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

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.025. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person.

The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

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

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

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

(i) The notice of the board's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the

violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

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

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

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

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

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation,

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

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

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

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

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

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.111, eff. Sept. 1, 1993.

Sec. 571.027. ADVISORY COMMITTEE ON INPATIENT MENTAL HEALTH

SERVICES. (a) The board shall appoint an advisory committee on inpatient mental health services to advise the board on:

(1) issues and policies related to the provision of mental health services in a facility described by Section 571.003(9)(B) or (E);

(2) coordination and communication between the department, the Texas Department of Health, and facilities described by Section 571.003(9)(B) or (E) to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and

(3) training for inpatient mental health facility surveyors or investigators.

(b) The board shall appoint to the committee:

(1) three representatives of hospitals, at least two of whom represent a facility described by Section 571.003(9)(B) or (E);

(2) three consumers of mental health services, each of whom has received treatment in a facility described by Section 571.003(9)(B) or (E);

(3) two physicians licensed under Subtitle B, Title 3, Occupations Code, who practice psychiatry and are board certified in psychiatry, at least one of whom is board certified in child and adolescent psychiatry; and

(4) one family member of a person who has been a consumer of mental health services provided by a facility described by Section 571.003(9)(B) or (E).

(c) The Texas Board of Health shall provide the advisory committee with two persons to represent the Texas Department of Health. The representatives may address the advisory committee on any issue relevant to a matter before the advisory committee, but the representatives may not vote on any matter. The Texas Board of Health shall consider designating an inpatient mental health facility surveyor or investigator to be a representative under this subsection.

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

on August 31 of the fourth year following the member's appointment.

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

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

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

Added by Acts 1997, 75th Leg., ch. 1027, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 745, Sec. 1, eff. June 13,

2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.803, eff. Sept. 1,

2001.