

“Civil” Commitments under Chapter 46B of the Texas Code of Criminal Procedure



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Jackson v. Indiana

Limitations on Commitment



- “due process requires that the **nature and duration** of commitment bear some **reasonable relation to the purpose** for which the individual is committed.”
 - ✦ “[A] person [] **cannot be held more than the reasonable period of time** necessary to determine whether there is a **substantial probability that he will attain that capacity in the foreseeable future.**” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)
 - ✦ Continued commitment requires **progress toward competence**, and where such progress was **not likely within a reasonable time**, the accused had to be **released or subjected to civil commitment procedures** *Id.*

Texas's Application of *Jackson*



- Expert must determine whether person will likely be Restored or if unlikely to be Restored
 - 46B.025(b)(2)
- If Likely to Be Restored
 - ✦ Initial Commitment for Restoration Treatment – Subchapter D
- If Not Likely to Be Restored
 - ✦ Go straight to “Civil” Commitment Proceedings – Subchapter E or F
 - 46B.071(b)(1)

Average LOS to Restoration



- Meta-Analysis finds that 81% Restored
- Average Length of Time to Restoration is 90-120 days
 - W. Neil Gowensmith, et al., *Lookin' for Beds in all the Wrong Places: Outpatient Competency Restoration as a Promising Approach to Modern Challenges*, 22 PSYCHOL. PUB. POL'Y & L. 293, 293 (2016)
- Mean 73 days
 - Danzer GS, Wheeler EMA, Alexander AA, Wasser TD: Competency restoration for adult defendants in different environments. *J Am Acad Psychiatry Law* 47:68–81, Table 1 pg. 12 2019

INITIAL RESTORATION TREATMENT



- Treating facility or program must attempt to restore competency
 - 46B.073(b); 46B.077(a)
- Length of stay for initial restoration commitment:
 - 46B.073(b)
 - Up to 120 days for felony charges
 - Up to 60 days for misdemeanors
- One 60 day extension allowed IF treatment team believes “continued commitment [] justified by progress toward [competency]” within another 60 days
 - 46B.079(d); 46B.080; *see also Jackson, 406 U.S. at 738*

Post-Restoration Period or Unlikely to Be Restored



- “If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant”
Jackson, 406 U.S. at 738
- Texas Code of Crim Pro incorporates the Health & Safety Code’s Civil Commitment Standards
 - 46B.102 & 46B.103

46B.102 / .103 Civil Commitment Hearings



○ Criminal Court Conducts Hearing

- Art. 46B.102(b); 46B.103(b)

✦ Application not required

- Art. 46B.102(d)(1); 46B.103(d)(1)

✦ Notice not required

- Art. 46B.102(d)(2); 46B.103(d)(2)

✦ The Defendant is entitled to be present at the hearing.

- H&SC 574.031 (c), 593.050

46B.102 / .103 Civil Commitment Hearings



- Treated in Conformity with H&SC
 - Art. 46B.102(c)(1); 46B.103(c)(1)
- Commitments are Civil not Criminal
 - Art. 46B.102(d)(3); 46B.103(d)(3); *Campbell v. State*, 85 S.W.3d 176, 180 (Tex. 2002)
- MH & PIDDA have very different standards. *In re Commitment of J.A.A.*, No. 11-20-00142-CV, 2021 WL 4097085, at *2 (Tex. App.—Eastland Sept. 9, 2021, no pet.)
- Appeals
 - PIDDA Appeal - 30 days w/ preference setting. H&SC 593.056
 - MH – 10 days H&SC 574.070

Place and Duration of MH Commitment



● MH

○ Time

- ✦ Temp: 45-90 days
- ✦ Extended: year
 - condition is expected to continue for more than 90 days; and
 - received inpatient mental health services for 60 consecutive days during the preceding 12 months

○ Place

- ✦ No Finding of Violence
 - Mental Health Facility
 - Civil Mental Health Outpatient Treatment
 - CCP 46B.106
- ✦ Finding of Violence -
 - State Hospital
 - After Transferred to a Non Max-Facility - Civil Mental Health Outpatient Treatment
 - H&SC 46B.104, CCP 46B.105, and CCP 46B.1055
 - H&SC 593.052(b)

INPATIENT CIVIL COMMITMENT: MENTAL ILLNESS

H&SC 574.034



& H&SC 574.035

- State must prove by clear & convincing evidence that:
 - Person has a mental illness
 - ✦ Not epilepsy, dementia, substance abuse, or intellectual disability
 - TH&SC 571.003(14)
 - ✦ Not Antisocial Personality Disorder
 - *Foucha v. Louisiana*, 504 U.S. 71, 78–79 (1992)
 - Because of the MI
 - ✦ likely to cause serious harm to self or others; or
 - ✦ experiencing substantial mental or physical deterioration of the proposed patient's ability to provide for the patient's basic needs and unable to make a rational decision to submit to treatment.
 - *Addington v. Texas*, 441 U.S. 418 (1979),

Testimony Required - MH Commitment



- “No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony,”
 - Tex. Const. Article I, Section 15-a; CCP 46B.083(a)
 - Temp. hearing expert testimony can be just CME’s
 - Ext. must hear expert testimony
 - H&SC 574.031(d-1) & (d-2)
- To be clear and convincing must include:
 - Recent overt act or a continuing pattern of behavior that is to some degree probative of a finding that serious harm is probable, even though the overt act itself may not be dangerous.
 - *State v. K.E.W.*, 315 S.W.3d 16, 23–24 (Tex. 2010)

Place and Time if ID Commitment



● ID

○ Time

- ✦ Long-term placement

○ Place

- ✦ Finding of Violence –

- State Hospital

- ✦ No Finding of Violence

- “shall commit the [] to a community center or the department when space is available in a residential care facility”

CIVIL COMMITMENT HEARING: INTELLECTUAL DISABILITY

H&SC 593.050



H&SC 593.052

- Four elements must be proven Beyond a Reasonable Doubt:
 - Person has ID – IQ below 70, deficits in adaptive behavior before 18
 - because of ID, the proposed resident:
 - ✦ represents a substantial risk of physical impairment or injury to himself or others; or
 - ✦ is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;
 - the proposed resident cannot be habilitated in an available, less restrictive setting (HCS); and
 - the residential care facility provides services appropriate to the proposed resident's needs.
 - *In re A.W.*, 443 S.W.3d 405, 414 (Tex. App.—Eastland 2014, no pet.); *Pratt v. State*, 907 S.W.2d 38, 44 (Tex. App.—Dallas 1995, writ denied)

Required Testimony for PIDDA Commitment



- DID and IDT Report must be presented in evidence.
 - H&SC 593.050(d); *In re A.W.*, 443 S.W.3d 405, 411- 413 (Tex. App.—Eastland 2014, no pet.)
- IDT is a group of professionals and paraprofessionals who assess the needs of a person with ID and make recommendations for services for that person.
 - H&SC 591.003(8)
- The IDT always includes the person with ID.
 - H&SC 593.013; 40 TAC 2.253(20)(A)(iii); *In re A.W.*, 443 S.W.3d 405, 411- 413 (Tex. App.—Eastland 2014, no pet.)

Release / Recommitment



- Any Time No longer Meet Civil Commitment Criteria
 - *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975)
 - Facility/provider notifies court and sheriff 14 days before release
 - ✦ Can Still Be Incompetent
- Subject to disapproval by the committing criminal court
 - Court “shall” hold a hearing to determine whether person still meets Civil Commitment Criteria
 - 46B.107
- End of Commitment

Out-Patient Commitment



- Applies to Misdemeanor and Felony 46B.1055; 46B.106
- Clear and Convincing Evidence
 - As a result of MI will if not treated deteriorate
 - AOT needed to prevent relapse that would likely result in serious harm
 - Inability to participate in OT effectively and voluntarily
 - H&SC 574.0345 & H&SC 574.0355
- LMHA
 - Where committing court is located or where defendant previously received MH services. 574.037(a)
 - must submit a general treatment plan before the hearing to the court. 574.037((b-2))

Forced Medications



- Need a Hearing
- Two Different Purposes – Two Different Courts
 - Probate – danger and best interests 574.106(a-1)(2)(A); *Sell v. United States*, 539 U.S. 166, 181-82 (2003); *State ex rel. D.B.*, 214 S.W.3d 209, 212 (Tex. App.—Tyler 2007, no pet.)
 - Criminal - Medication for Competency 46B.086(4)(b)
- Where Can Forced Medication Occur
 - Found IST and remains in jail more than 72 hours awaiting transport to SH, SSLC, or OCR.
 - CCP 46B.086(2)(a); 574.106(a-1)(2)(A)
 - While in SH, SSLC, or OCR – expires at end of commitment 574.110(a)
 - Return to Jail – expires earliest of 180 days or acquitted/convicted 574.110(b)

CHARGES DISMISSED

CCP 46B.151



- Released

OR

- Transfer to *Civil* Court to conduct hearing on whether person meets inpatient or outpatient MH or ID commitment standards

Electronic Broadcast Hearings



- Written consent from both the defense and the prosecutor.
- Defendant is able to communicate privately with the defense attorney, without being recorded or heard by the judge or prosecutor.
- Any of the parties, including the Court, may terminate the appearance through electronic broadcast and require the defendant to appear in open court.
- The electronic broadcast system provides for a simultaneous, compressed full motion video and interactive communication of image and sound between all parties
- A recording of the proceeding must be preserved to be accessed by the defendant until all appellate proceedings have been concluded.