

IMPROVING TEXAS STATUTORY PROVISIONS FOR PERSONS WITH MENTAL ILLNESS

*Brian D. Shannon**

I. INTRODUCTION	135
II. THE JUDICIAL COMMISSION ON MENTAL HEALTH	137
III. 2023 LEGISLATIVE REFORMS	138
A. <i>Adults</i>	138
1. <i>Class C Misdemeanors</i>	139
2. <i>Mental Health Bonds</i>	140
3. <i>Electronic Applications</i>	142
4. <i>Peace Officer’s Duties</i>	145
B. <i>Juveniles</i>	147
IV. 2025 LEGISLATIVE EFFORTS.....	150
A. <i>Enacted Initiatives—Emergency Detention</i>	151
B. <i>Enacted Initiatives—Court-Ordered Mental Health Services</i>	154
C. <i>Unsuccessful Proposals</i>	159
1. <i>Diversion</i>	160
2. <i>Competency</i>	161
3. <i>AOT Courts</i>	164
4. <i>Medication Orders</i>	166
V. CONCLUSION	169

I. INTRODUCTION

The Meadows Mental Health Policy Institute has estimated that one in six “adults in Texas experience[s] [a] mental health disorder in a given year” and that “61% [of] young adults (18-25) with mental illness receive no

* Paul Whitfield Horn Distinguished Professor, Texas Tech University School of Law; J.D., with high honors, University of Texas School of Law, 1982; B.S., *summa cum laude*, Angelo State University, 1979. Professor Shannon is in his third term as an appointed Commissioner on the Texas Judicial Commission on Mental Health and chairs the Commission’s Legislative Drafting Committee. In addition, he is an appointed board member for StarCare Specialty Health System (formerly known as Lubbock Regional Mental Health & Mental Retardation Center), is a past chair of the State Bar of Texas Committee on People with Disabilities, and from 2003 to 2011 was a gubernatorial appointee to the Texas Governor’s Committee on People with Disabilities. This Article represents the opinions of the Author, however, and it does not necessarily reflect the views of these other organizations. Shannon also served on the Texas legislative task force that rewrote the Texas statutes pertaining to competency to stand trial, and he is the author or co-author of multiple editions of a book on Texas criminal procedure as it relates to persons diagnosed with mental illness. BRIAN D. SHANNON & DANIEL H. BENSON, TEXAS CRIMINAL PROCEDURE AND THE OFFENDER WITH MENTAL ILLNESS: AN ANALYSIS AND GUIDE (7th ed. 2024), <https://namitexas.org/wp-content/uploads/sites/332/2024/09/7th-Edition-September-2024-with-cropped-book-cover2.pdf>.

treatment.”¹ Additionally, “[a] disproportionate number of people living with mental health and substance use disorders end up in jail instead of getting the mental health treatment and support they need.”² In turn, as part of the rationale for establishing the Texas Judicial Commission on Mental Health (JCMH) in 2018, the Texas Supreme Court and Texas Court of Criminal Appeals observed that “[c]ourts and the justice system have a profound impact on mental health services provided to children, adults, and families in this state, and the stakes are exceedingly high.”³ The state’s two highest courts also recognized that “[a]s gatekeepers for families and individuals in crisis, courts must make life-altering decisions.”⁴

In recent years, the Texas Legislature has endeavored to be responsive to the needs of persons with mental illness. For example, in 2023 the legislature appropriated \$1.5 billion to fund new construction and renovation of multiple state psychiatric hospitals across the state.⁵ The legislature has also considered and enacted a wide array of substantive and procedural changes to the civil and criminal laws regarding persons with mental illness.⁶ This Author has previously addressed key legislative initiatives from the 2017, 2019, and 2021 legislative sessions.⁷

This Article will focus primarily on legislative reforms that the JCMH advanced prior to and during the 2023 and 2025 legislative sessions.⁸ It will not only highlight several enactments from each of the two sessions but also

1. *Working Across the Texas Mental Health Landscape*, MEADOWS MENTAL HEALTH POL’Y INST., <https://mmhpi.org/work/adults/> (last visited Sep. 9, 2025) (referencing data from, respectively, the Substance Abuse and Mental Health Services Administration and the National Survey on Drug Use and Health).

2. TEX. JUD. COMM’N ON MENTAL HEALTH, TEXAS MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES LAW BENCH BOOK 6 (4th ed. 2023–2025) [hereinafter MENTAL HEALTH LAW BENCH BOOK], <https://texasjcmh.gov/media/pskdukma/adult-bench-book-january-2025-with-index.pdf>.

3. Order Establishing Judicial Commission on Mental Health, Supreme Court Misc. Docket No. 18-9025 & Court of Criminal Appeals Misc. Docket No. 18-004, at 1 (Feb. 13, 2018) [hereinafter 2018 Order], <https://www.txcourts.gov/media/1440539/189025.pdf>.

4. *Id.*

5. See Stephen Simpson, *Texas to Begin Construction This Year on Seven New Psychiatric Hospital Projects*, TEX. TRIB. (June 20, 2024, at 15:37 CT), <https://www.texastribune.org/2024/06/20/texas-hospitals-mental-health/> (“Since 2017, lawmakers have provided \$2.5 billion to modernize and increase access to inpatient psychiatric care in Texas.”).

6. See, e.g., TEX. HEALTH & SAFETY CODE § 574.031 (detailing procedure for hearings on court-ordered mental health services); *id.* § 574.0345 (revising the criteria for temporary outpatient court-ordered mental health treatment).

7. See Brian D. Shannon, *Texas Mental Health Legislative Reform: Significant Achievements with More to Come*, 53 TEX. TECH L. REV. 99, 101–23 (2020) [hereinafter *Texas Mental Health Legislative Reform*] (discussing a number of 2017 and 2019 legislative efforts); Brian D. Shannon, *Ethical Challenges in Texas Criminal Proceedings Involving Defendants with Mental Illness*, 55 TEX. TECH L. REV. 1, 10–11 (2022) [hereinafter *Ethical Challenges*] (discussing 2021 legislation relating to jail requirements for providing prescribed medication for a detainee with mental illness). These articles were in connection with the 2020 and 2022 *Texas Tech Law Review* Mental Health Law Symposia, respectively.

8. See *infra* Part III (discussing key 2023 legislation) and Part IV (discussing 2025 legislative initiatives).

address several proposals that did not become law and urge their favorable enactment in the next regular session in 2027.⁹

II. THE JUDICIAL COMMISSION ON MENTAL HEALTH

The Texas Supreme Court and the Texas Court of Criminal Appeals created the JCMH in 2018 “to develop, implement, and coordinate policy initiatives designed to improve the courts’ interaction with—and the administration of justice for—children, adults, and families with mental health needs.”¹⁰ By late 2019, and in recognition “that the Texas Legislature invests heavily each year in behavioral and mental health systems,” the state’s two high courts jointly established a Legislative Research Committee of the JCMH.¹¹ Since that time, the JCMH has engaged in significant efforts relating to mental health legislative initiatives.¹² Indeed, as part of the JCMH’s 2023 strategic plan, the JCMH emphasized the goals of serving “as a leader in mental health law and practice” and “as a resource in the development of policy, legislation, and practice recommendations.”¹³ In that role, the JCMH developed legislative proposals in the periods leading up to the 2021, 2023, and 2025 legislative sessions.¹⁴ The following Sections will discuss the 2023 and 2025 JCMH legislative efforts.¹⁵

9. See *infra* Section IV.C (discussing unsuccessful proposals).

10. See 2018 Order, *supra* note 3, at 3 (describing formation of JCMH). For a more detailed discussion of the formation and purposes of the JCMH, see *Texas Mental Health Legislative Reform*, *supra* note 7, at 123–27.

11. Order of the Supreme Court of Texas and The Texas Court of Criminal Appeals Establishing the Legislative Research Committee of the Judicial Commission on Mental Health, Supreme Court Misc. Docket No. 19-9095, Court of Criminal Appeals Misc. Docket No. 19-010, at 1 (2019) [hereinafter *Legislative Research Committee*], <https://www.txcourts.gov/media/1444893/199095.pdf>.

12. See *JCMH Reports*, TEX. JUD. COMM’N ON MENTAL HEALTH, <https://texasjcmh.gov/publications/jcmh-reports/> (last visited Sep. 9, 2025) (providing links to various legislative reports and summaries for the 86th, 87th, 88th, and 89th Legislative Sessions covering a period from 2019 to 2025); *Texas Mental Health Legislative Reform*, *supra* note 7, at 101–23, 128–37 (discussing 2017 and 2019 mental health legislation and analyzing the JCMH’s 2021 legislative proposals).

13. *JCMH Strategic Plan*, TEX. JUD. COMM’N ON MENTAL HEALTH, at 4 (May 2023), <https://texasjcmh.gov/media/vkzhfhwj/jcmh-strategic-plan-2023.pdf>.

14. See *Tex. Jud. Comm’n on Mental Health, Legislative Recommendations and Reports*, in TEX. JUD. COUNCIL, CRIM. JUST. COMM., 2020 REPORT AND RECOMMENDATIONS, app. A, at 33 (Sep. 2020), https://www.txcourts.gov/media/1449778/criminal-justice-committee-2020_0923_final.pdf

(recommendations for the 2021 legislative session); TEX. JUD. COMM’N ON MENTAL HEALTH, LEGISLATIVE RECOMMENDATIONS AND REPORTS (Sep. 2022) [hereinafter *JCMH 2022 LEGISLATIVE PROPOSALS*], <https://texasjcmh.gov/media/yyzbb1cv/2022-23-jcmh-legislative-recommendations-report-final.pdf> (recommendations for the 2023 legislative session); , TEX. JUD. COMM’N ON MENTAL HEALTH, LEGISLATIVE RECOMMENDATIONS AND REPORTS (Aug. 2024) [hereinafter *JCMH 2024 LEGISLATIVE PROPOSALS*], <https://texasjcmh.gov/media/tr5m3znk/2024-25-jcmh-legislative-recommendations-report-sent-to-tjc-amended-9-4-24.pdf> (recommendations for the 2025 legislative session).

15. See *infra* Part III (discussing key 2023 legislation) and Part IV (discussing 2025 legislative initiatives). For a discussion of the 2021 legislative proposals, see *Texas Mental Health Legislative Reform*, *supra* note 7, at 128–37 (discussing 2021 recommendations).

III. 2023 LEGISLATIVE REFORMS

Prior to the 88th regular session of the Texas Legislature, which commenced in January 2023, the JCMH recommended an array of legislative proposals.¹⁶ The recommendations included potential reforms to “criminal laws relating to adults with mental illness or intellectual disability[,] . . . civil commitment law[, and] . . . civil laws involving children and youth with mental illnesses or intellectual disability.”¹⁷ The JCMH’s Legislative Research Committee had developed the criminal and civil proposals, while a separate “Chapter 55 Advisory Committee evaluated Texas Family Code Chapter 55.”¹⁸ Thereafter, the legislature enacted several of the JCMH proposals during the 2023 legislative session.¹⁹ This Section will focus on the initiatives that the legislature enacted for adults and the measures pertaining to children.²⁰

A. Adults

Several of the 2022 JCMH legislative recommendations were enacted in 2023 by Senate Bill 2479.²¹ This Section will focus on four initiatives included in the legislation that address, respectively, mental health screenings for persons charged only with Class C misdemeanors, mental health bonds, expanded use of electronic applications for mental health emergency detentions, and a peace officer’s duties upon transporting a person to a mental health facility pursuant to a magistrate’s warrant for emergency detention.²²

16. JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14.

17. *Id.* at 2.

18. *Id.* The Texas Supreme Court and Texas Court of Criminal Appeals had jointly ordered the establishment of the Legislative Research Committee in October 2019. *See* Legislative Research Committee, *supra* note 11 (creating committee). As the JCMH summarized, the “committee’s membership comes from across the Texas state courts and health care professions, including law enforcement, physicians, mental health providers, and judges who are experts in their fields.” JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 2. The Author was an appointed member and served as chair of the criminal law subcommittee prior to the 2023 legislative session. Separately, the Chapter 55 Advisory Committee included members with expertise in juvenile law pertaining to children with mental illness or intellectual disability. *See id.* at 5 (listing members of the Chapter 55 Advisory Committee).

19. *See infra* Sections III.A–B (discussing four mental health initiatives the legislature adopted and how to improve the Texas Family Code for children).

20. *See infra* Section III.A (discussing four initiatives in Senate Bill 2479 that pertain to mental health for adults).

21. Act of May 24, 2023, 88th Leg., R.S., ch. 982, 2023 Tex. Gen. Laws 3135, 3135–38. An online version of the full text of S.B. 2479 is available at <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB02479F.pdf#navpanes=0>.

22. *Id.* §§ 1–3. A fourth section of the bill amended the Texas Health and Safety Code to clarify that a court’s order requiring the administration of psychiatric medications also “authorizes the taking of a patient’s blood sample to conduct reasonable and medically necessary evaluations and laboratory tests to safely administer a psychoactive medication authorized by the order.” *Id.* § 4 (adding Texas Health & Safety Code Section 574.106(m)).

I. Class C Misdemeanors

Article 16.22 of the Texas Code of Criminal Procedure provides a mechanism to identify a person’s possible mental illness or intellectual disability shortly after an arrest.²³ The statute requires “a sheriff or municipal jailer to provide notice to a magistrate within [twelve] hours of receiving credible information that may establish reasonable cause to believe that a defendant has a mental illness or is a person with an intellectual disability.”²⁴ In turn, the magistrate must determine whether “there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability.”²⁵ If so, and provided that the defendant both remains in custody and there is not already an article 16.22 report from the previous year on file, the magistrate must “order that the defendant be interviewed by an appropriate expert . . . to: (1) collect information regarding whether the alleged offender has a mental illness or has an intellectual disability, and (2) submit a written report back to the magistrate.”²⁶ The report should include whether the person has a mental illness or intellectual disability, whether the person might be incompetent to stand trial and should thus have a full competency examination, and any recommended treatment.²⁷

As this Author has described previously:

Article 16.22 was enacted with the specific intent to require the sheriff and magistrate to intervene at an *early* stage in the proceedings—shortly following arrest or after a psychiatric “break” in the jail—to have the defendant receive a prompt examination to identify whether he or she has a mental illness (or is a person with an intellectual disability). The clear intent of [a]rticle 16.22 was to assure an expedited evaluation and diagnosis for a defendant who is evidencing behavior or symptoms associated with mental illness and to recommend treatment.²⁸

Prior to 2023, the statute did not apply to persons charged with Class C misdemeanors.²⁹ In proposing that the legislature amend the statute to give courts the discretion to require article 16.22 interviews and reports for

23. TEX. CODE CRIM. PROC. art. 16.22.

24. BRIAN D. SHANNON & DANIEL H. BENSON, TEXAS CRIMINAL PROCEDURE AND THE OFFENDER WITH MENTAL ILLNESS: AN ANALYSIS AND GUIDE, 30 (7th ed. 2024) [hereinafter SHANNON GUIDE], <https://namitexas.org/wp-content/uploads/sites/332/2024/09/7th-Edition-September-2024-with-cropped-book-cover2.pdf>.

25. TEX. CODE CRIM. PROC. art. 16.22(a)(1).

26. SHANNON GUIDE, *supra* note 24. Note that the magistrate need not enter such an order for an expert interview if the defendant has “previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody.” TEX. CODE CRIM. PROC. art. 16.22(a)(1)(A).

27. TEX. CODE CRIM. PROC. art. 16.22(b-2).

28. SHANNON GUIDE, *supra* note 24, at 31.

29. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 9 (describing the rationale for the legislative proposal).

individuals charged only with Class C misdemeanors, the JCMH observed that the “court system often first sees people with severe mental illness in the justice and municipal courts, before their mental health deteriorates to a point where the individual is arrested on a higher-level misdemeanor or felony offense.”³⁰ The goal of the legislative proposal was to provide a tool to judges to help connect persons charged with low-level offenses who might have serious mental illness with mental health services.³¹

Senate Bill 2479 amended article 16.22 by striking its former limitation of applying only to “an offense punishable as a Class B misdemeanor or any higher category of offense.”³² Although not mandatory, a court may now order an article 16.22 interview and report for a defendant who is charged solely with a Class C misdemeanor.³³ This “authority in Class C cases should be utilized [extensively] to help identify and divert persons with mental illness who have been arrested for such minor offenses.”³⁴

2. Mental Health Bonds

Article 17.032 of the Texas Code of Criminal Procedure has long authorized the release on personal bond of a person with mental illness who has neither been charged with nor has been previously convicted of certain violent offenses that are delineated in the statute.³⁵ Of particular significance, subsection (c) of the statute generally requires a magistrate to require as a condition of a mental health bond that the person submit to mental health treatment “unless good cause is shown for not requiring treatment or services.”³⁶ The imposition of a treatment condition requires a finding that either the defendant’s mental illness is “chronic in nature” or the person’s “ability to function independently will continue to deteriorate if the defendant

30. *Id.* The JCMH has also noted that “[c]ourts hearing Class C offenses often first see people with severe mental illness in the justice and municipal courts before their mental health deteriorates to a point where the individual is arrested on a higher-level misdemeanor or felony offense.” JUDITH ZAFFIRINI & JOE MOODY, LEGISLATIVE SUMMARY OF SB 2479, TEX. JUD. COMM’N ON MENTAL HEALTH § 1 [hereinafter S.B. 2479 SUMMARY], <https://texasjcmh.gov/media/1kgfhhpw/2023-legislative-summary-of-sb-2479-final-update.pdf> (last visited Sep. 9, 2025).

31. *See* S.B. 2479 SUMMARY, *supra* note 30 (describing the intent and aim of the proposal).

32. Act of May 24, 2023, 88th Leg., R.S., ch. 982, § 1, 2023 Tex. Gen. Laws 3135, 3135–38.

33. *See id.* § 1 (codified at TEX. CODE CRIM. PROC. art. 16.22(a)(2)(C)) (including language providing that a magistrate is not required to order the interview and report in the event of an arrest or a charge for a Class C misdemeanor).

34. SHANNON GUIDE, *supra* note 24, at 31.

35. TEX. CODE CRIM. PROC. art. 17.032. A release on personal bond means that there is no bail required. *See id.* art. 17.04 (“[N]o sureties are required.”). Personal bonds authorized by article 17.032 “are commonly referred to as ‘mental health bonds.’” MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 145. As this Author has described previously: “Specifically, the provisions of [a]rticle 17.032 direct a magistrate to release a defendant with mental illness on personal bond, unless good cause is shown, if (1) the pending charges do not include any of the violent crimes identified in [s]ubsection (a) of the statute, and (2) the alleged offender has not been previously *convicted* of any such violent crime.” SHANNON GUIDE, *supra* note 24, at 37.

36. TEX. CODE CRIM. PROC. art. 17.032(c).

does not receive the recommended treatment or services.”³⁷

Senate Bill 6, which was enacted during a special-called session of the legislature in 2021, amended Texas Code of Criminal Procedure article 17.03 to preclude a court from releasing a defendant on personal bond if charged with certain listed violent offenses.³⁸ That bill made no mention of article 17.032, however, and the list of excluded violent offenses in article 17.03, as amended, was different from and more extensive than the list in article 17.032.³⁹ Accordingly, the 2021 legislation “inadvertently created a conflict between offenses that permit release on” a mental health bond pursuant to article 17.032.⁴⁰

To resolve the conflict, the JCMH recommended amending Texas Code of Criminal Procedure article 17.03 during the 2023 legislative session to “reconcile[] the conflict” between article 17.03 and article 17.032.⁴¹ Senate Bill 2479 accomplished this reconciliation by simply carving out article 17.032 from the scope of article 17.02’s limits on the use of personal bonds.⁴² Subsection (b-2), which sets forth limits on releasing a defendant on personal bond, already had several statutory exceptions.⁴³ S.B. 2479 specified article 17.032 as an additional carve-out. The bill language amending article 17.03(b-2) stated simply, “Except as provided by articles 15.21, 17.032, 17.033, and 17.151, a defendant may not be released on personal bond if the

37. *Id.* art. 17.032(c)(1)–(2). As the Author has opined previously: “Articles 16.22 and 17.032 collectively represent a clear legislative intent to create opportunities for the provision of mental health treatment or intellectual disability services subsequent to arrest outside of the jail setting for certain alleged offenders with mental illness or an intellectual disability. Particularly for nonviolent offenses, article 17.032 continues to have the potential to provide a mechanism for authorizing and ensuring treatment or services outside the jail environment pending further criminal proceedings.” SHANNON GUIDE, *supra* note 24, at 39–40.

38. Act of Aug. 30, 2021, 87th Leg., 2d C.S., ch. 11, § 6, 2021 Tex. Gen. Laws 3937, 3943 (adding Texas Code of Criminal Procedure article 17.03(b-2)(1), (b-3)(2)).

39. Compare TEX. CODE CRIM. PROC. art. 17.03(b-3)(2) (setting forth a list of violent offenses for which personal bonds are disallowed), with *id.* art. 17.032 (setting forth a different list of violent offenses for which mental health bonds are disallowed). Although there is overlap between the two lists of violent offenses, they are not coextensive. One example of a difference relates to an assault charge. Under article 17.032(a)(6), a magistrate retains the discretion to release a person on a mental health bond if the person with mental illness is charged with assault under Texas Penal Code Section 22.01(a)(1), except for a family violence assault. See *id.* art. 17.032(a)(6) (listing as a “violent offense” an assault charge under Texas Penal Code section 22.01(a)(1) when the “offense involved family violence”). In contrast, as amended by Senate Bill 6, article 17.03(b-3)(2)(1) precluded release on personal bond for not only an assault involving family violence, but also an assault “punishable as a felony of the second degree under [s]ubsection (b-2)” of Texas Penal Code Section 22.01(a)(1). See Act of Aug. 30, ch. 11, § 6 (adding Texas Code of Criminal Procedure article 17.03(b-2)(1) and (b-3)(2), which listed certain “offense[s] involving violence” for which release on personal bond would not be allowed).

40. See S.B. 2479 SUMMARY, *supra* note 30, at 2 (summarizing legislation).

41. JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 10.

42. See Act of May 24, 2023, 88th Leg., R.S., ch. 982, § 2, 2023 Tex. Gen. Laws 3135, 3135–38 (amending Texas Code of Criminal Procedure article 17.03(b-2)).

43. The statute previously had exceptions for Texas Code of Criminal Procedure matters arising under articles 15.21, 17.033, and 17.151. See TEX. CODE CRIM. PROC. art. 17.03(b-2) (listing exceptions).

defendant . . . [for example] is charged with an offense involving violence.”⁴⁴ Although mental health personal bonds are still disallowed for charges involving violent offenses (or a history of previous violent offenses), S.B. 2479’s amendment to article 17.03 resulted in the list of disqualifying violent offenses in article 17.032 to be controlling and correspondingly allowed “for the clear resumption of the release of individuals who are charged with certain non-violent offenses and are eligible for a mental health personal bond.”⁴⁵

3. *Electronic Applications*

Chapter 573 of the Texas Health and Safety Code permits an adult to file an application to seek an emergency detention of another person if “the applicant has reason to believe and does believe that the person evidences mental illness” and “evidences a substantial risk of serious harm to himself or others.”⁴⁶ Although generally the application must be presented “personally to a judge or magistrate,” section 573.012(h) includes an exception that permits a physician to present the application by email with the application “attached as a secure document in a portable document format (PDF).”⁴⁷ In turn, the judge or magistrate may transmit an electronically signed warrant back to the applicant via an email attachment.⁴⁸ This process permits, for example, a physician at a mental health facility or emergency room to seek a mental health emergency detention warrant on an expedited basis directly from the facility without having to go to the courthouse.⁴⁹

Prior to the 2023 legislative session, the JCMH recommended that this exception permitting emailed applications for emergency detention warrants be expanded from physicians to also include licensed mental health professionals at local mental health authorities.⁵⁰ The JCMH provided the following rationale for the recommendation: “In less populated areas, a physician may not be available to electronically request a detention when an emergency detention warrant is needed. The amendment would permit licensed professionals versed in mental health with advanced training and education to electronically make the request.”⁵¹

44. See Act of May 24, 2023, ch. 982, § 2 (amending Texas Code of Criminal Procedure article 17.03(b-2)).

45. S.B. 2479 SUMMARY, *supra* note 30, at 2.

46. TEX. HEALTH & SAFETY CODE § 573.011(a)–(b)(2).

47. *Id.* § 573.012(a), (h).

48. *Id.*

49. See *id.*

50. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 10 (describing recommendation).

51. *Id.*

The concept was enacted as a part of Senate Bill 2479.⁵² As amended, Texas Health and Safety Code subsection 573.012(h) now includes exceptions permitting emailed applications for emergency detention warrants for both physicians and “licensed mental health professional[s] employed by a local mental health authority.”⁵³ Because like physicians, licensed mental health professionals employed by a local mental health authority will often provide direct patient care; this statutory change should assist in affording an opportunity for ongoing mental health care in cases of psychiatric emergencies when an emergency detention order is necessary and timing is critical.⁵⁴

Separate from the JCMH efforts, another piece of 2023 legislation also amended Texas Health and Safety Code section 573.012. Senate Bill 1624 made several important changes to section 574.012.⁵⁵ First, the bill amended subsection 574.012(h) to *require* that a judge or magistrate permit a physician to present an application for emergency detention via an email attachment; under the former law it was merely permissive.⁵⁶ Given that Senate Bill 2479 also extended this authority to licensed mental health professionals employed by a local mental health authority, the combination of both bills now makes mandatory the ability for these professionals and physicians to apply for emergency detention warrants via email.⁵⁷

Senate Bill 1624 also amended Texas Health and Safety Code Section 573.012 by adding a new subsection (h-2).⁵⁸ That subsection provides:

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

52. See Act of May 24, 2023, 88th Leg., R.S., ch. 982, § 3, 2023 Tex. Gen. Laws 3135, 3135–38 (amending Texas Health and Safety Code section 573.012(h)).

53. *Id.* Local mental health authorities are defined and described at TEX. HEALTH & SAFETY CODE § 533.035. The local mental health authorities provide community-based mental health services for adults and children. See *Adult Mental Health*, TEX. COUNCIL OF CMTY. CTRS., <https://txcouncil.com/public-policy/adult-mental-health/> (last visited Sep. 9, 2025) (describing adult mental health services offered by local mental health authorities in Texas); *Children’s Mental Health*, TEX. COUNCIL OF CMTY. CTRS., <https://txcouncil.com/public-policy/childrens-mental-health/> (last visited Sep. 9, 2025) (describing children’s mental health services Texas local mental health authorities offer).

54. See TEX. HEALTH & SAFETY CODE § 573.012(h).

55. Act of May 24, 2023, ch. 939, § 18. An online version of the full text of S.B. 1624 is available at <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB01624F.HTM>.

56. See *id.* (amending Texas Health & Safety Code section 573.012(h) by changing “may” to “shall”).

57. Under the Texas Code Construction Act, Texas Government Code section 311.001–.036, the two amendments to section 573.012(h) of the Texas Health and Safety Code, which are different statutes enacted in the same legislative session, do not conflict and can readily be harmonized. See TEX. GOV’T CODE § 311.025(b) (“[I]f amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each.”).

58. See Act of May 24, 2023, ch. 939, § 18 (adding Texas Health and Safety Code section 573.012(h-2)).

- (1) a judge or magistrate transmits a warrant to the facility under [s]ubsection (h-1) for the detention of the person; and
- (2) the person is not under an order under this chapter or Chapter 574.⁵⁹

This amendment to section 573.012 is important with regard to a small segment of persons who voluntarily seek care at a hospital or emergency room, are identified as needing emergency psychiatric treatment, but who then seek to depart the facility.⁶⁰ Under Texas law, there are detailed statutory provisions governing the steps to be taken when a voluntary patient at an inpatient mental health facility requests to be discharged.⁶¹ That has not been the case, however, with regard to patients who voluntarily seek care at a general hospital or emergency room, are deemed to need emergency psychiatric care, but who instead decide to leave the facility.⁶²

In such a case, a facility now has a few options if there is a concern the person is in need of emergency psychiatric care and should not simply depart the facility without medical intervention.⁶³ As one option, the facility can seek to have a peace officer come to the scene and determine whether a peace officer's warrantless emergency detention is appropriate.⁶⁴ Alternatively, and

59. *Id.*

60. *Compare id.* (providing a new process for obtaining an emergency detention warrant on an expedited basis), with *infra* note 62 and accompanying text (describing the previous lack of authority to conduct an involuntary hold).

61. TEX. HEALTH & SAFETY CODE § 572.004. If a voluntary patient at an inpatient mental health facility requests to be discharged, the facility then has four hours to notify the patient's physician about the request for discharge. *Id.* § 572.004(b). The facility has a duty to "discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention." *Id.* § 572.004(c). In such a case, the physician must examine the person "as soon as possible" within twenty-four hours after the request for discharge, and if the physician determines "that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention." *Id.* § 572.004(d). In turn, the patient is not entitled to leave the facility before the end of that period. *Id.* § 572.004(f)(2).

62. If a voluntary patient in a hospital emergency department wants to leave, "the physician and hospital staff have no legal basis for holding the patient and preventing them from leaving." MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 58. Governor Greg Abbott vetoed legislation in 2015 that would have authorized a facility or a physician at the facility to detain a person for up to four hours if the physician had reason to believe that the person had mental illness, that the person because of mental illness posed a risk of harm to self or others, and there was not time to seek an emergency detention or order of protective custody. See Morgan Smith, *Scientology Group Urged Veto of Mental Health Bill*, TEX. TRIB. (July 14, 2015, at 6:00 CT), <https://www.texastribune.org/2015/07/14/scientology-group-urged-veto-mental-health-bill/> (discussing veto of Texas Senate Bill 359); Tex. S.B. 359, 84th Leg., R.S. (2015), <https://capitol.texas.gov/tlodocs/84R/billtext/pdf/SB00359F.pdf#navpanes=0>.

63. See TEX. HEALTH & SAFETY CODE § 573.012(h-2).

64. See MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 58 (discussing option for a peace officer determine whether a warrantless emergency detention is warranted under section 573.001 of the Texas Health and Safety Code). The officer may, without a warrant, take the person into custody if the officer has reason to believe that the person has mental illness and because of the illness poses a substantial risk of harm to self or others. TEX. HEALTH & SAFETY CODE § 573.001(a)(1). The statute directs the peace officer to transfer the person immediately to "the nearest appropriate mental health facility." *Id.*

given the addition of section 573.012(h-2) from Senate Bill 1624, a physician at the facility can submit an application for an emergency detention warrant to the court via an email attachment, and the facility may detain the person to perform a preliminary mental health exam if the judge or magistrate has electronically transmitted the emergency detention warrant back to facility.⁶⁵

4. Peace Officer's Duties

One additional section of Senate Bill 2479 is noteworthy. As described above, a peace officer who has made a warrantless apprehension of a person in a mental health crisis, when authorized under Chapter 573 of the Texas Health and Safety Code, has an obligation to transport that person immediately to a nearby mental health facility.⁶⁶ Upon arriving at the facility, the officer is required to complete and file with the facility a peace officer's notification of detention.⁶⁷ The facility may then proceed with a preliminary examination of the person, pursuant to section 573.021, which requires that a physician "examine the person as soon as possible within [twelve] hours after the time the person is apprehended by the peace officer."⁶⁸

Prior to the 2023 legislative session, concerns had emerged that peace officers often had to wait for many hours after transporting a person with mental illness to a facility for the hospital to conduct medical clearance prior to accepting the person for assessment under the Health and Safety Code.⁶⁹ The JCMH had summarized the issue as follows: "Law enforcement officers often need to wait while the individual they have transported for emergency mental health services is medically screened or treated before they can leave the healthcare facility or emergency room."⁷⁰ It is far more desirable to allow

§ 573.001(d)(1)(A). Of course, if the facility itself has contacted the officer, that transportation obligation could be moot; the patient is already at an appropriate facility. *See id.* It is possible, however, that the local mental health authority has designated a different mental health facility in the community to be the appropriate facility. *Id.* § 573.001(d)(1)(B).

65. TEX. HEALTH & SAFETY CODE § 573.012(h-2)(1). The requirements for the preliminary examination are set forth in section 573.021 of the Texas Health and Safety Code. For further analysis, see MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 60–61 (discussing same). Note that the warrant also "serves as an application for detention in the facility." TEX. HEALTH & SAFETY CODE § 573.012(f).

66. TEX. HEALTH & SAFETY CODE § 573.001(d).

67. *Id.* § 573.002(a).

68. *Id.* § 573.021(c).

69. *See* HOUS. POLICE DEP'T, RESPONDING TO THE MENTALLY ILL: A GUIDE FOR TEXAS PEACE OFFICERS 43–45 (May 2018), <https://www.texascit.org/docs/Texas-Peace-Officer-Guide-for-Responding-to-the-Mentally-Ill-May-2018.pdf>. These concerns arose at some hospitals in cases of both peace officers' warrantless emergency detentions and when officers transported patients subject to magistrates' warrants for emergency detention. *See id.* A national survey concluded, "Often, the biggest issue facing law enforcement is not the time or distance needed to travel for a mental illness transport, but the time spent waiting at hospital emergency departments for transfer of custody to occur." TREATMENT ADVOC. CTR., ROAD RUNNERS: THE ROLE AND IMPACT OF LAW ENFORCEMENT IN TRANSPORTING INDIVIDUALS WITH SEVERE MENTAL ILLNESS, A NATIONAL SURVEY 9 (May 2019), <https://www.tac.org/wp-content/uploads/2024/01/Road-Runners.pdf>.

70. *See* S.B. 2479 SUMMARY, *supra* note 30, at 2 (discussing the reason for the legislation).

officers to quickly return to their law enforcement responsibilities. Accordingly, the JCMH proposed legislation to clarify “that a peace officer has no duty to remain at a facility or an emergency room once the officer delivers a person for emergency mental health services, together with the proper completed documentation.”⁷¹

Senate Bill 2479 addressed this concern in part.⁷² The bill amended section 573.012 of the Texas Health and Safety Code by adding subsection (d-1).⁷³ The new subsection provides:

(d-1) A peace officer who transports an apprehended person to a facility in accordance with this section:

(1) is not required to remain at the facility while the person is medically screened or treated or while the person’s insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate facility staff; and

(B) the peace officer provides to the facility the required documentation.⁷⁴

As the JCMH later summarized, this addition to section 573.012 “clarifie[d] that a law enforcement officer does not have a duty to remain at a healthcare facility or emergency room once the officer responsibly delivers an individual under a warrant for emergency detention.”⁷⁵ Section 573.012 focuses on procedures relating to emergency detention warrants that a judge or magistrate issues following an application for an emergency detention.⁷⁶ Typically, if the statutory criteria are met, the magistrate will then issue a warrant to a peace officer to apprehend and transport the person subject to the mental health warrant to “the nearest appropriate [treatment] facility” or to “a mental health facility deemed suitable by the local mental health authority.”⁷⁷ Accordingly, because new subsection (d-1) amended section 573.012—which focuses on mental health warrants—subsection (d-1) pertains only to the duties of peace officers who have transported persons subject to emergency detention warrants to mental health facilities.⁷⁸ It did not, however, address identical issues of undue delays when officers transport persons with mental illness who meet criteria under section 573.001 of the Health and Safety Code for a peace officer’s warrantless emergency

71. JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 11.

72. *See* S.B. 2479 SUMMARY, *supra* note 30, at 2.

73. *See* Act of May 24, 2023, 88th Leg., R.S., ch. 982, § 3, 2023 Tex. Gen. Laws 3135, 3135–38 (adding Texas Health and Safety Code section 573.012(d-1)).

74. TEX. HEALTH & SAFETY CODE § 573.012(d-1).

75. *See* S.B. 2479 SUMMARY, *supra* note 30, at 2 (summarizing new subsection).

76. TEX. HEALTH & SAFETY CODE § 573.012. In fact, the title of this section is, “Issuance of Warrant.” *Id.*

77. *See id.* § 573.012(d)–(e).

78. *Id.* § 573.012(d-1).

detention.⁷⁹ As described below, the legislature addressed that gap in scope in 2025.⁸⁰

Although the sections enacted as part of Senate Bill 2479 are significant, the bill as initially filed included several additional JCMH proposals that ultimately were not enacted.⁸¹ Many of these were revisited in 2025 and will be discussed below.⁸²

B. Juveniles

Chapter 55 of the Texas Family Code addresses proceedings related to children with mental illness or an intellectual disability.⁸³ Prior to the 2023 legislative session, the JCMH created a Chapter 55 Advisory Committee to review the legislation and make recommendations for improvement.⁸⁴ Because many of the provisions in Chapter 55 had been “borrowed from laws for adults[,] [t]he committee examined the specific needs of children and youth in the context of juvenile proceedings, with the aim of streamlining processes, improving the use of evaluations and experts, and expanding the use of outpatient restoration and services when appropriate and available.”⁸⁵

The Chapter 55 Advisory Committee accordingly recommended adoption of an array of recommendations to improve Chapter 55.⁸⁶

The legislature responded and enacted Senate Bill 1585 during the 2023 regular session.⁸⁷ The legislation amended the Texas “Family Code to revise and consolidate provisions relating to proceedings for children with mental illness or an intellectual disability.”⁸⁸ The revisions included “provisions relating to the forensic mental examination process for identifying children

79. See *id.* § 573.001 (authorizing apprehension and transport to a mental health facility of a person in a mental health crisis by a peace officer without a warrant when the statutory criteria are met).

80. See *infra* notes 111–17 and accompanying text (discussing 2025 legislation relating to a peace officer’s duties when transporting a person subject to a peace officer’s warrantless apprehension).

81. See Tex. S.B. 2479, 88th Leg., R.S. (2023), <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB02479I.pdf#navpanes=0> (introduced version of bill). The bill as filed included JCMH recommendations to limit the use of inpatient competency restoration for persons charged with nonviolent misdemeanors; address gaps in article 46B.084 of the Texas Code of Criminal Procedure relating to steps to take when a criminal defendant who has been restored to competency then deteriorates prior to trial; permit good time credits for participation in outpatient competency restoration; allow for possible dismissal of Class C misdemeanors for an adult who appears incompetent to stand trial; and defer arrests for certain nonviolent offenses for persons subject to emergency detention orders. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 8–10 (describing recommendations).

82. See *infra* Part IV (discussing 2025 legislative efforts).

83. TEX. FAM. CODE § 55.01–.68.

84. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 2 (describing committee’s work).

85. *Id.* For a list of the members of the Chapter 55 Advisory Committee, see *id.* at 5.

86. See *id.* at 12–18 (describing legislative proposals).

87. Act of May 24, 2023, 88th Leg., R.S., ch. 1166, 2023 Tex. Gen. Laws 3542, 3542–57. An online version of the full text of S.B. 1585 is available at <https://capitol.texas.gov/tlodocs/88R/billtext/html/SB01585F.htm>.

88. Enrolled Bill Summary, Tex. S.B. 1585, 88th Leg., R.S. (2023), <https://capitol.texas.gov/BillLookup/BillSummary.aspx?LegSess=88R&Bill=SB1585>.

who are unfit to proceed in juvenile court or lack responsibility for conduct due to mental illness or an intellectual disability.”⁸⁹ In large part, Senate Bill 1585 “rewrote, reorganized, and updated Chapter 55 of the Texas Family Code, which governs proceedings in juvenile court for children with mental illness and intellectual disabilities.”⁹⁰

Several of Senate Bill 1585’s modifications are noteworthy. First, the bill updated and replaced the outdated term “mental retardation” with “intellectual disability” throughout Chapter 55.⁹¹ The legislation also replaced the term “commitment” with “court-ordered mental health services” and “court-ordered intellectual disability services” throughout the Chapter and incorporated the criteria for court-ordered mental health and intellectual disability services direction into Chapter 55.⁹² The legislation also updated the qualifications for experts who conduct mental examinations under the Chapter, as well as the criteria for those examinations and follow-up reports to the court and counsel.⁹³ A forensic mental examination under Chapter 55 is intended to assess whether a child subject to juvenile proceedings “is a child with mental illness, is unfit to proceed in juvenile court due to mental illness or an intellectual disability, or lacks responsibility for conduct due to mental illness or an intellectual disability.”⁹⁴

89. *Id.*

90. See KEVIN SPARKS & CHARLES PERRY, LEGISLATIVE SUMMARY OF S.B. 1585 1 (2023), <https://texasjcmh.gov/media/qbgldeka/2023-legislative-summary-of-sb-1585-final.pdf>.

91. See *id.* For a discussion of why the term “mental retardation” is now disfavored, see *Rosa’s Law Signed into Law by President Obama*, SPECIAL OLYMPICS, <https://www.specialolympics.org/stories/news/rosas-law-signed-into-law-by-president-obama#:~:text=Champions%20of%20Rosa's%20law%20made,over%20the%20next%20several%20years> (last visited Sep. 9, 2025).

92. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 12 (recommending terminology change). The bill incorporated the criteria for court-ordered services as new sections 55.05 and 55.06. See Act of May 24, 2023, 88th Leg., R.S., ch. 1166, § 2, 2023 Tex. Gen. Laws 3542, 3542–57 (adding Texas Family Code section 55.05–.06). This change should assist juvenile court judges in not having to flip between codes when applying criteria for court-ordered services. See *id.*

93. See Act of May 24, 2023, ch. 1166, § 2 (adding Texas Family Code section 55.04 regarding criteria for appointment of experts to conduct forensic mental examinations); *id.* § 6 (adding Texas Family Code section 55.31(d)–(e) specifying factors for the examinations and requirements for experts’ reports).

94. TEX. FAM. CODE § 55.04(a). Under Chapter 55, the juvenile law counterpart to a lack of competency to stand trial is styled, “unfitness to proceed.” *Id.* § 55.31. “[J]uveniles who face delinquency charges in the juvenile justice system must have the capacity to understand the juvenile court proceedings and to assist in their defense.” SHANNON GUIDE, *supra* note 24, at 132. Correspondingly, the insanity defense for juveniles is instead described as a “[I]lack of responsibility for conduct” because of mental illness or an intellectual disability. TEX. FAM. CODE § 55.51. In addition, the test under the Family Code for juveniles is broader. See *id.* Unlike the narrow test for adults under Texas Penal Code article 8.01(a)(1) regarding whether, because of mental illness or intellectual disability, the defendant did not know that the defendant’s conduct was wrong, the Family Code test “asks whether the juvenile respondent, at the time of the conduct, as a result of mental illness or an intellectual disability, lacked the substantial capacity either to appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of the law.” TEX. JUD. COMM’N ON MENTAL HEALTH, TEXAS JUVENILE MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES LAW BENCH BOOK 129 (3d ed. 2023–2025) [hereinafter JUVENILE BENCH BOOK], <https://texasjcmh.gov/media/secdb2j/jbb-2023-corrected-formatting-with-links-4-26-24.pdf>.

If the court or jury in a juvenile proceeding determines that a child is unfit to proceed because of a mental illness or intellectual disability, Chapter 55 permits the court to order that the child receive inpatient mental health services or residential intellectual disability services for up to ninety days “provided that the child meets the inpatient mental health services or residential intellectual disability services criteria under [s]ection 55.05 or 55.06.”⁹⁵ Prior to the 2023 legislative session, the JCMH Chapter 55 Advisory Group recognized that there was an apparent gap or ambiguity in Family Code section 55.33 for a situation in which a child was determined to be unfit to proceed because of mental illness or an intellectual disability, but did “not meet the criteria for court-ordered [inpatient mental health or residential intellectual disability] services.”⁹⁶ The Chapter 55 Advisory Group recommended amending section 55.33 to clarify that the court has authority “to order appropriate and available treatment or services for the child in this situation.”⁹⁷

Senate Bill 1585 directly addressed this issue by expressly authorizing court-ordered outpatient services.⁹⁸ As amended, section 55.33(c) now provides that if the child who has been found unfit to proceed does not meet the criteria for court-ordered inpatient services, the court may “order the child to receive treatment for mental illness or services for the child’s intellectual disability, as appropriate, on an outpatient basis for a period of [ninety] days, with the possibility of extension as ordered by the court.”⁹⁹ The court must also determine whether “the child may be adequately treated or served in an alternative setting,” and before issuing an order for outpatient services must “consult with the local juvenile probation department, . . . local treatment or service providers, . . . the local mental health authority, and . . . the local intellectual and developmental disability authority to determine the appropriate treatment or services and restoration classes for the child.”¹⁰⁰

Senate Bill 1585 made nearly identical changes to Family Code section 55.52 to authorize court-ordered outpatient mental health or intellectual disability services for a child who is determined to be “not responsible for the child’s conduct” because of mental illness or intellectual disability, but who is determined not to meet the statutory criteria for court-ordered

95. TEX. FAM. CODE § 55.33(a)(1).

96. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 15 (discussing “ambiguity” in scope of section 55.33 of the Family Code). The JCMH later summarized that prior to Senate Bill 1585’s enactment, “it was possible that a child could be found unfit to proceed and to not meet criteria for court-ordered services . . . [yet] [n]o services could be ordered . . . and the juvenile case would pend indefinitely.” JUVENILE BENCH BOOK, *supra* note 94, at 110.

97. JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 15.

98. See Act of May 24, 2023, ch. 1166, § 7 (amending Texas Family Code section 55.33).

99. See *id.* (amending Texas Family Code section 55.33(a)(3)).

100. TEX. FAM. CODE § 55.33(a)(3), (d).

inpatient services.¹⁰¹ The changes to sections 55.33 and 55.52 provide courts in juvenile cases with needed tools to assure that treatment services can be authorized.¹⁰²

IV. 2025 LEGISLATIVE EFFORTS

Prior to the 2025 legislative session, the JCMH once again proposed a package of statutory reforms.¹⁰³ The JCMH's Legislative Research Committee again spearheaded the efforts.¹⁰⁴ The proposals focused on six main areas: emergency detention, civil commitment, early identification of persons within the criminal justice system and diversion to treatment, specialty courts, competency restoration, and court-ordered medication proceedings.¹⁰⁵ During the ensuing 2025 legislative session, legislators divided the JCMH proposals into two separate bills: Senator Judith Zaffirini filed Senate Bill 1164 that included the JCMH's civil law proposals relating to emergency detention and civil commitment,¹⁰⁶ and Representative Joe Moody introduced House Bill 5465 that set forth the JCMH's various proposals addressing early identification and referral to treatment, specialty courts, competency restoration, and court-ordered medication proceedings.¹⁰⁷ The legislature enacted Senate Bill 1164.¹⁰⁸ The efforts to pass House Bill 5465, however, were ultimately unsuccessful.¹⁰⁹ This Section will describe

101. See Act of May 24, 2023, ch. 1166, § 14 (amending Texas Family Code section 55.52). The Chapter 55 Advisory Committee had similarly flagged the prior ambiguity in the scope of the court's authority under section 55.52. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 16 (discussing "ambiguity" in scope of section 55.52 of the Family Code).

102. See Act of May 24, 2023, ch. 1166, § 14, secs. 55.33, 55.52.

103. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14 (identifying and discussing proposals).

104. *Id.* at 2. The Honorable Bill Boyce chaired the Legislative Research Committee, and the Author of this Article led the Legislative Drafting Committee. *Id.*

105. *Id.* at 6–14.

106. See Tex. S.B. 1164, 89th Leg., R.S. (2025), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB01164I.pdf#navpanes=0> (introduced version of bill). Representative Joe Moody filed an identical companion bill in the Texas House. See Tex. H.B. 5463, 89th Leg., R.S. (2025), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/HB05463I.pdf#navpanes=0>. Although the house version was referred to the House Committee on Judiciary and Civil Jurisprudence, the house took no further action on this companion bill. H.J. of Tex., 89th Leg., R.S. 1015 (2025).

107. See Tex. H.B. 5465, 89th Leg., R.S. (2025), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/HB05465I.pdf#navpanes=0>. Senator Judith Zaffirini filed an identical companion bill in the Texas Senate. See Tex. S.B. 2213, 89th Leg., R.S. (2025), <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB02213I.pdf#navpanes=0>. Although the senate version was referred to the Senate Committee on Criminal Justice, the senate took no further action on this companion bill. S.J. of Tex., 89th Leg., R.S. 702 (2025).

108. Act of May 28, 2025, 89th Leg., R.S., S.B. 1164, ch. 800. An online version of the full text of S.B. 1164 is available at <https://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB01164F.pdf#navpanes=0>.

109. Although the House Committee on Criminal Jurisprudence advanced House Bill 5465 to the full house, and the Calendars Committee placed the bill on the house's General State Calendar, the bill stalled on the house floor without a vote prior to the deadline for the house to take up and consider bills originally filed in the house. See H.B. 5465, 89th Leg., R.S. (2025), <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB5465> (noting that the bill was placed on the General State Calendar on May 13, 2025, but no later vote took place).

the various changes that were enacted as part of Senate Bill 1164, analyze the recommendations included in House Bill 5465 that failed to pass, and discuss why the legislature should revisit those latter proposals during the 2027 legislative session.¹¹⁰

A. Enacted Initiatives—Emergency Detention

One of JCMH’s recommendations prior to the 2025 legislative session was to clarify a peace officer’s duties after transporting a person to a facility pursuant to a warrantless emergency detention.¹¹¹ As discussed above, Senate Bill 2479 in 2023 enacted changes to a peace officer’s duties upon transporting a person to a facility pursuant to a magistrate’s warrant for emergency detention.¹¹² As amended, a peace officer in such situation need not remain at the facility after delivering the transported person and completing the required paperwork.¹¹³ In 2025 the JCMH recommended that a parallel provision be enacted to address a peace officer’s duties in the case of a warrantless emergency detention.¹¹⁴ Specifically, it urged the following:

To make the two provisions consistent, this proposal adds subsection (f) to [s]ection 573.002 to state that a peace officer has no duty to remain at a facility or an emergency room once the officer presents a person for emergency mental health services under an Apprehension by a Peace Officer Without a Warrant and completes the required documentation.¹¹⁵

The legislature adopted the recommendation, and Senate Bill 1164 amended Texas Health and Safety Code section 573.002 by adding language specifying that a peace officer who transports a person apprehended under a warrantless emergency detention:

- (1) is not required to remain at the facility while the apprehended person is medically screened or treated or while the person’s insurance coverage is verified; and
- (2) may leave the facility immediately after:
 - (A) the person is taken into custody by appropriate facility staff; and
 - (B) the notification of emergency detention required by this section is

110. See *infra* Section IV.A (discussing the various 2025 enactments and unsuccessful proposals).

111. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 6 (discussing recommendation).

112. See *supra* notes 55–82 and accompanying text (discussing the 2023 amendments to section 573.012 of the Health and Safety Code).

113. See S.B. 2479 SUMMARY, *supra* note 30, at 2 (summarizing 2023 changes to section 573.012 of the Health and Safety Code).

114. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 6 (discussing recommendation and noting that because of “an apparent oversight from a past legislative session[,] . . . peace officers presenting an individual without a warrant . . . remain at the facility, often for hours”).

115. *Id.*

provided to the facility.¹¹⁶

As the JCMH has summarized, “This language largely parallels the 2023 addition of § 573.012(d-1) [pertaining to an emergency detention authorized by a magistrate’s warrant].”¹¹⁷

Consistent with another JCMH recommendation, Senate Bill 1164 also amended the emergency detention statutes by updating the required statutory form that a responding officer must complete at the facility upon presenting a person subject to a warrantless emergency detention.¹¹⁸ Section 573.002(d) of the Texas Health and Safety Code sets forth a prescribed form for the “Notification of Emergency Detention” that section 573.002 generally requires.¹¹⁹ To provide for consistency for law enforcement around the state, mental health facilities and emergency rooms may not require a peace officer to complete “any form other than . . . [the statutory form] as a predicate to accepting for temporary admissions a person detained by a peace officer under” a warrantless emergency detention.¹²⁰ The JCMH recommended changes to the statutory form to add “prompts to elicit necessary information . . . [and] add areas for officers to explain the bases for affirmative declarations of evidence of mental illness, substantial risk of harm, and the need for temporary restraint.”¹²¹

As revised by Senate Bill 1164, however, there is some room for minor modifications to the prescribed form. Specifically, as amended, the introductory phrase in subsection (d) of section 573.002 now provides that a “peace officer shall provide the notification of emergency detention in substantially the following form.”¹²² This is helpful language because the specified changes to the statutory form included in Senate Bill 1164 inadvertently did not include other substantive revisions also set forth in Senate Bill 1164, which will be discussed below.¹²³

Prior to the 2025 legislative session, the JCMH also recommended amending several “provisions of Health and Safety Code . . . [Chapters]

116. See Act of May 28, 2025, 89th Leg., R.S., S.B. 1164, ch. 800, § 3 (adding Texas Health and Safety Code section 573.002(f)). The new subsection also applies to “emergency medical services personnel of an emergency medical services provider who transports a person to a facility.” *Id.*

117. See TEX. JUD. COMM’N ON MENTAL HEALTH, LEGISLATIVE SUMMARY, 1, <https://texasjcmh.gov/media/t45dt5qp/jcmh-2025-bill-summaries.pdf> (last visited Sep. 9, 2025) (summarizing changes).

118. See Act of May 28, ch. 800, § 2 (amending section 573.002(d) of the Health and Safety Code).

119. TEX. HEALTH & SAFETY CODE § 573.002(d).

120. *Id.* § 573.002(e).

121. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 6.

122. TEX. HEALTH & SAFETY CODE § 573.002(d) (emphasis added).

123. See *infra* notes 130–36 and accompanying text (discussing changes to court-ordered inpatient mental health services). Compare Act of May 28, ch. 800, § 3 (amending section 573.002(d) to make revisions to the terms of the statutory form), with *id.* § 1 (amending section 573.001(a) to modify the criteria for a warrantless emergency detention by a peace officer). The limited flexibility authorized by the “in substantially” language permits including the substantive revision to section 573.001(a) in the form.

573-574 to improve access to mental health care when a person has anosognosia, a neurological condition that causes people to be unaware of their psychiatric condition and can be diagnosed in connection with psychotic disorders, including schizophrenia and bipolar disorder.”¹²⁴ The recommendations were drawn from concepts included in the work of a national task force that had developed model legislative language, along with “legislation in other states, notably Michigan and Arizona.”¹²⁵

Regarding the standard for an emergency detention of a person experiencing a mental health crisis, the JCMH proposed statutory changes to clarify “that evidence of severe emotional distress and deterioration may include an inability of the person to recognize symptoms or appreciate the risks and benefits of treatment.”¹²⁶ Senate Bill 1164, as enacted, included amendments to chapter 573 of the Health and Safety Code to add language relating to the possibility that a person might lack capacity to make voluntary treatment decisions because of the symptoms of a serious mental illness.¹²⁷

124. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7. As the Treatment Advocacy Center has described, “Anosognosia, also called lack of insight, is a biological condition that prevents some people with severe mental illness . . . from knowing that they are experiencing symptoms of a brain disorder. Anosognosia is thought to be the most common reason for not seeking or maintaining treatment for people with severe mental illness.” *Anosognosia – Definition, Videos, and Stats*, TREATMENT ADVOC. CTR., <https://www.tac.org/anosognosia/> (last visited Sep. 9, 2025); *see Anosognosia*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diseases/22832-anosognosia> (last visited Sep. 9, 2025) (“Anosognosia is a condition where your brain can’t recognize one or more other health conditions you have. It’s extremely common with mental health conditions like schizophrenia and Alzheimer’s disease.”); *Ethical Challenges*, *supra* note 7, at 11 (discussing anosognosia in the context of court-ordered medication statutes).

125. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7. The Model Legal Processes Work Group, working in conjunction with the National Judicial Task Force to Examine State Courts’ Response to Mental Illness, had developed model mental health statutes for consideration by states. *See THE EQUITAS PROJECT, MENTAL HEALTH COLO., MODEL LEGAL PROCESSES TO SUPPORT CLINICAL INTERVENTION FOR PERSONS WITH SERIOUS MENTAL ILLNESSES AND PATHWAYS TO CARE: A ROADMAP FOR COORDINATING CRIMINAL JUSTICE, MENTAL HEALTH CARE, AND CIVIL COURT SYSTEMS TO MEET THE NEEDS OF INDIVIDUALS AND SOCIETY 1 (2022) [hereinafter MODEL LEGAL PROCESSES]*, <https://www.mentalhealthcolorado.org/wp-content/uploads/2022/09/Model-Legal-Processes-to-Support-Clinical-Intervention-for-Persons-with-Serious-Mental-Illnesses-Final-9.2.2022.pdf> (describing the group’s formation and purpose). The Author was a part of the national workgroup and has summarized and analyzed the recommendations in a previous article. *See generally* Brian D. Shannon, *Model Legal Processes for Court Ordered Mental Health Treatment – A Modern Approach*, 18 FIU L. REV. 113 (2023), <https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1593&context=lawreview> (summarizing the findings). The JCMH recommended legislation to add an alternative “lack of capacity standard for inpatient court-ordered mental health treatment.” JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7. In particular, the proposal was based on a lack of capacity criterion included in the model law provisions. *See supra* MODEL LEGAL PROCESSES, at 7–8 (including a lack of capacity alternative for court-ordered mental health services). Michigan and Arizona have similar statutes. *See* MICH. COMP. LAWS § 330.1401(1)(c) (2025) (defining “person requiring treatment” to include someone “whose judgment is impaired” by mental illness and who lacks “understanding of the need for treatment”); ARIZ. REV. STAT. ANN. § 36-501(33) (2025) (defining “persistent or acute disability” to include a person’s substantially impaired capacity to make informed decisions regarding treatment).

126. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7 (internal quotation marks omitted).

127. *See* Act of May 28, ch. 800, §§ 1, 4–6 (amending, respectively, sections 573.001(a), 573.003(a), 573.012(b), and 573.022(a) of the Health and Safety Code relating to emergency detentions).

For example, for a warrantless emergency detention by a peace officer, Senate Bill 1164 added an alternative basis for law enforcement intervention if the officer believes that a person has mental illness and “the person evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment.”¹²⁸ The new law added similar language relating to a person’s lack of insight because of mental illness to the criteria for emergency detention warrants issued by magistrates.¹²⁹

B. Enacted Initiatives—Court-Ordered Mental Health Services

Senate Bill 1164 also included amendments relating to court-ordered inpatient mental health services.¹³⁰ The first of these addressed the proper venue for filing an application for court-ordered mental health services.¹³¹ Under prior law, the application could be filed with the county clerk of the county in which the proposed patient “resides,” “is found,” or “is receiving mental health services by court order or under [an] [e]mergency [d]etention.”¹³² The language “is found” was problematic—the JCMH had summarized the issue as follows: “Argument has been had over the meaning of the words ‘is found’ in this statute. Some believe it means the location where the patient was apprehended under an emergency detention. Others

128. *Id.* § 1. This change expanded on the prior alternative criteria of “substantial risk of serious harm to the person or others” or “severe emotional distress and deterioration in the person’s mental condition.” *Id.* As amended, section 573.001(a) provides:

(a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer has reason to believe and does believe that:

- (1) the person is a person with mental illness and because of that mental illness:
 - (A) there is a substantial risk of serious harm to the person or to others;
 - (B) the person evidences severe emotional distress and deterioration in the person’s mental condition; or
 - (C) the person evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment;
- (2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person; and
- (3) there is not sufficient time to obtain a warrant before taking the person into custody.

TEX. HEALTH & SAFETY CODE ANN. § 573.001(a).

129. *See* Act of May 28, ch. 800, § 5 (amending section 573.012(b) to add, as an alternative criterion, the person’s “inability to recognize symptoms or appreciate the risks and benefits of treatment”). The bill added the same language to the criteria authorizing a guardian to transport an adult ward to a mental health facility, and to provisions relating to the showing necessary for a physician’s preliminary examination that is prerequisite to admission to a facility for emergency detention. *See id.* §§ 4, 6 (amending, respectively, sections 573.003(a) and 573.022(a) of the Health and Safety Code).

130. *See id.* §§ 7–11 (amending sections 574.001(b), 574.011(a)–(b), 574.034(a), (d), 574.035(a), (e), and 574.064(a-1) of the Health and Safety Code).

131. *See id.* § 7 (amending section 574.001(b)).

132. *See* MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 73 (referencing section 574.001(b) prior to S.B. 1164’s 2025 amendments). Separately, and unchanged in 2025, another subsection authorizes venue for an application for a proposed patient who is a “child in the custody of the Texas Juvenile Justice Department . . . [to] be filed in the county in which the child’s commitment to the Texas Juvenile Justice Department was ordered.” TEX. HEALTH & SAFETY CODE § 574.001(f).

interpret it to mean where the patient is located at the time the application is filed.”¹³³ The issue can arise when, for example, a peace officer apprehends a person who is experiencing a mental health crisis in one county and transports the person to a mental health facility that is in another county. For purposes of the former version of the venue statute, where was the proposed patient “found”?¹³⁴

The JCMH recommended that the “unclear language regarding where the person ‘is found’” be deleted and replaced with language allowing venue in either a county in which “the person ‘is located at the time the application is filed’ or [the county where the proposed patient] ‘was apprehended under chapter 573’” for an emergency detention.¹³⁵ Senate Bill 1164 codified the recommended approach.¹³⁶

Senate Bill 1164 also amended the criteria for court-ordered inpatient mental health services, but unfortunately not in the manner the JCMH intended or recommended.¹³⁷ Similar to the amendments discussed above regarding the standard for an emergency detention,¹³⁸ the JCMH proposed adding “a lack of capacity standard for inpatient court-ordered mental health treatment” as an additional basis for state intervention.¹³⁹ Under prior law, there were three alternative bases for court-ordered temporary or extended inpatient mental health services for a person with mental illness.¹⁴⁰ For an inpatient commitment order, there needed to be clear and convincing evidence that as a result of the proposed patient’s mental illness the proposed patient:

133. MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 74. The ambiguity has had consequences because “[s]ome counties have rejected an application for court-ordered mental health services because of [the] unclear language.” See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 6–7 (discussing concern about the “is found” language in the former venue law).

134. See, e.g., *Designated Local Authority*, STARCARE SPECIALTY HEALTH SYS., <https://www.star-carelubbock.org/about-us/#service> (last visited Sep. 9, 2025). This is not uncommon; StarCare Specialty Health System is the local mental health authority for both Lubbock County and four surrounding counties. *Id.* StarCare also operates the primary adult psychiatric hospital for the five counties—Sunrise Canyon Hospital. *Sunrise Canyon Hospital*, STARCARE SPECIALTY HEALTH SYS., <https://www.starcarelubbock.org/services/mental-health-services/sunrise-canyon-hospital/> (last visited Sep. 9, 2025). A peace officer in one of the more rural counties adjacent to Lubbock County that is in StarCare’s service area can transport a person in a mental health crisis pursuant to an emergency detention to Sunrise Canyon, which would be “the nearest appropriate mental health facility.” TEX. HEALTH & SAFETY CODE § 573.001(d)(1); see MENTAL HEALTH LAW BENCH BOOK, *supra* note 2, at 73 (discussing practical examples of proper venue when the circumstances involve more than one county).

135. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7 (discussing proposal to revise the venue provisions).

136. See Act of May 28, ch. 800, § 7 (amending section 574.001(b) of the Health and Safety Code).

137. See *id.* § 7; JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7.

138. See *supra* notes 115–21 and accompanying text (discussing amendments to the emergency detention statutes).

139. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7.

140. Act of March 26, 2015, 84th Leg., R.S., ch. 1, §§ 3.1379–.1380, 2015 Tex. Gen. Laws 1, 617–18, amended by Act of May 28, ch. 800, §§ 9–10 (amending section 574.034(a)(2) and .035(a)(2) of the Health and Safety Code).

- (A) is likely to cause serious harm to the proposed patient;
- (B) is likely to cause serious harm to others; or
- (C) is:
 - (i) suffering severe and abnormal mental, emotional, or physical distress;
 - (ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and
 - (iii) unable to make a rational and informed decision as to whether or not to submit to treatment.¹⁴¹

The JCMH recommended adding a fourth alternative basis for a possible inpatient commitment based on the person's lack of "capacity to recognize their symptoms of a serious mental illness" so that they "are thereby unable to make a rational and informed treatment decision or appreciate the risks or benefits of treatment, and, in the absence of treatment, are likely to experience a relapse or deterioration resulting in risks of serious harms to self or others."¹⁴²

Consistent with the JCMH recommendation, as introduced, Senate Bill 1164 proposed adding the following alternative criterion to the other three alternative bases for court intervention to focus on whether the person with mental illness:

- (D) lacks the capacity to recognize the proposed patient is experiencing symptoms of a serious mental illness and is:
 - (i) unable to make a rational and informed decision regarding voluntary inpatient mental health treatment;
 - (ii) unable to appreciate the risks or benefits of mental health treatment or understand, use, weigh, or retain information relevant to making informed treatment decisions; and
 - (iii) in the absence of court-ordered temporary inpatient mental health services, likely to experience a relapse or deterioration of the proposed patient's mental or physical condition that would satisfy the criteria under Paragraph (A), (B), or (C).¹⁴³

141. *Id.*

142. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 7.

143. Tex. S.B. 1164, § 10, 89th Leg., R.S. (2025) (proposing alternative basis for court-ordered services). The bill as filed included comparable language for extended court-ordered mental health services. *Id.* § 11. The initial bill language was comparable to the JCMH recommendation. *See* JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, app. D, at 25–26 (recommending bill language).

The enacted version of Senate Bill 1164, however, included apparent drafting errors that resulted in confusing and unintended statutory language regarding the criteria for court-ordered mental health services.¹⁴⁴ First, sections 9 and 10 of the enacted bill, rather than creating a fourth alternative basis for court-ordered mental health services, instead inserted a person’s “inability to recognize symptoms or appreciate the risks and benefits of treatment” as a fourth criterion for the previously existing third alternative basis for court-ordered services focused on the person’s substantial deterioration in ability to function independently.¹⁴⁵

Also, and particularly problematic, additional apparent drafting errors involving misplaced “or’s” and “and’s” potentially altered both existing law and the intended purpose of these sections of the bill.¹⁴⁶ For example, and as described above, the former statute permitted court-ordered mental health services upon proof of any one of three alternative bases (A), (B), or (C).¹⁴⁷ Inexplicably, however, sections 9 and 10 of Senate Bill 1164 each struck the “or” in between alternatives (B) and (C).¹⁴⁸ In addition, the bill added an “and” following the amended commitment basis (C) and inserted a new subsection (D).¹⁴⁹ The striking of the word “or” and insertion of “and”

144. See Act of May 28, ch. 800, § 10.

145. See *id.* §§ 9–10 (amending sections 574.034(a)(2)(C) and 574.035(a)(2)(C) by adding a new subsection (iv) to alternative commitment basis (C), rather than creating a new fourth alternative (D)). Moreover, the final version of the bill removed the “and” that previously connected the three needed findings under the third alternative basis for commitment and inserted an “or” between the third criterion and new subpart (iv) focusing on the person’s inability to recognize symptoms. See *id.* § 9, at 14, lines 9 and 13, and § 10, at 15, lines 22 and 24 (both amending the former versions of sections 574.034(a)(2)(C) and 574.035(a)(2)(C) of the Health and Safety Code). As amended, the new language suggests that the four findings under commitment basis (C) regarding a person’s distress and deterioration are each now alternatives. See *id.*

146. See TEX. HEALTH & SAFETY CODE §§ 574.034(a)(2)(A)–(C), 574.035(a)(2)(A)–(C).

147. See *supra* notes 140–41 and accompanying text (discussing and quoting the three alternative bases for inpatient commitment set forth in the former versions of sections 574.034(a)(2)(A)–(C) and 574.035(a)(2)(A)–(C) of the Texas Health and Safety Code).

148. See Act of May 28, ch. 800, § 9, at 13, line 27, and § 10, at 15, line 13 (both striking the word “or”).

149. See *id.* § 9, at 13, line 27, and § 10, at 15, line 13 (both inserting the word “and” and adding subsection (D)). New subsection (D) would have required an additional showing that without court-ordered inpatient mental health services, the proposed patient “is likely to suffer serious risk of harm or to inflict serious harm on another person.” *Id.* § 9, at 14, § 10, at 15–16. This language is peculiar in that it duplicates the requirement to show a likelihood of serious harm to self or others already set forth in sections 574.034(a)(2)(A)–(B) and 574.035(a)(2)(A)–(B) and appears to engraft a further requirement to prove dangerousness for the other bases for commitment. See *id.* In sum, the enacted bill language relating to the criteria for court-ordered inpatient mental health services provided the following for sections 574.034(a)(2) and 574.035(a)(2):

“(2) as a result of . . . mental illness[,] the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; [☐]

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient’s ability to function independently, which is exhibited by the proposed patient’s inability, except for reasons

following subsection (C) could potentially require the state to make affirmative, conjunctive findings on each criterion, rather than having the criteria be alternative bases for court-ordered services.¹⁵⁰ This result was a far cry from the JCMH's recommendation to add a fourth alternative basis for court-ordered services.¹⁵¹

Fortunately, however, the legislature took note of these apparent drafting errors. During the second special session of the Texas Legislature in August 2025, the legislature enacted an extensive bill focused on the Texas Judiciary that included provisions essentially repealing the three problematic sections of Senate Bill 1164.¹⁵² These revisions served to reinstate the three

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

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

or

(iv) evidencing an inability to recognize symptoms or to appreciate the risks and benefits of treatment; and

(D) in the absence of court-ordered temporary inpatient mental health services, is likely to suffer serious risk of harm or to inflict serious harm on another person."

Act of May 28, ch. 800, § 9, at 13–14, and § 10, at 15–16 (quoting bill language including deletions and insertions described above to sections 574.034(a)(2) and 574.035(a)(2)).

150. See Act of May 28, ch. 800, §§ 9–10.

151. See *supra* note 142 and accompanying text (discussing JCMH's recommendation). Additional apparent drafting errors changed the proof necessary to demonstrate a basis for court-ordered mental health services to include evidence of *both* a "likelihood of serious harm to the proposed patient or others" *and* "the proposed patient's distress and the deterioration of the proposed patient's ability to function;" *or* proof of "the proposed patient's inability to recognize symptoms or appreciate the risks and benefits of treatment." See Act of May 28, ch. 800, § 9, at 14, and § 10, at 16 (amending, respectively, former Texas Health and Safety Code sections 574.034(d) and 574.035(e)). Prior to amendment, these sections required proof of either a likelihood of harm to the person or others or the person's distress and deterioration in the ability to function. See *id.* Finally, section 8 of Senate Bill 1164 also included misplaced "or's" and "and's" that have created unintended requirements for physicians who complete the necessary certificates of medical examination that are prerequisite to a court order for inpatient mental health services. See *id.* § 8 (amending former Health and Safety Code section 574.011(a)(7) and (b) to require an examining physician to provide an opinion as to which of *five* criteria now listed disjunctively form the basis for the physician's opinion).

152. See Tex. H.B. 16, 89th Leg., 2nd C.S. (2025) (amending several sections of chapter 574 of the Texas Health and Safety Code to roll back the changes made by sections 8, 9, and 10 of S.B. 1164). An online version of the relevant sections of H.B. 16 is available at <https://capitol.texas.gov/tlodocs/892/billtext/pdf/HB00016F.pdf#navpanes=0>. Because the bill passed by greater than a two-thirds majority in each chamber, it became effective immediately upon the governor's signature. See Tex. H.B. 16, art. 11B, at 86-91, § 11.05, at 91 (authorizing immediate effect upon a two-thirds majority vote in each chamber) and *id.* at 125 (reflecting near-unanimous support). Note that article 11A of H.B. 16 would have provided for an express repeal of sections 8, 9, and 10 of S.B. 1164, but only if the second special session ended on or before September 1, 2025. See *id.* § 11A.01–.02, at 85–86 (providing for a direct repeal, but with a September 1 deadline). Because the second special session did not end on or before September 1, 2025, article 11A was inoperative; however, article 11B became effective. See *id.* Representative Jeff Leach, Chair of the House Judiciary and Civil Jurisprudence Committee, sponsored the legislation. Chairman Leach had introduced a comparable bill during the first special session, but there was no progress because of the lack of a quorum. See Tex. H.B. 244, §§ 11.01–.03, at 76-81, 89th Leg., 1st C.S. (2025) available at <https://capitol.texas.gov/tlodocs/891/billtext/pdf/HB00244I.pdf#navpanes=0> (proposing similar provisions to those introduced in the second special session); Kayla Guo & Eleanor Klibanoff, *Texas House Democrats Flee the State in Bid to Block GOP's Proposed Congressional Map*, TEX. TRIB. (last updated Aug. 3, 2025, at 21:00 CT), <https://www.texastribune.org/2025/08/03/texas-democrats-quorum->

alternative bases for court-ordered mental health services, as under prior law.¹⁵³ Any effort to expand the criteria for court-ordered inpatient mental health services to add a fourth alternative basis for court intervention regarding a person's lack of capacity, however, will have to await another day.

C. Unsuccessful Proposals

House Bill 5465 included the JCMH's recommendations for revisions to various criminal law statutes relating to persons with mental illness or intellectual disabilities.¹⁵⁴ Although the House Committee on Criminal Jurisprudence reported the bill favorably by a 10-1 vote, and the bill was placed on the house calendar, the house did not reach the bill prior to the legislative session's deadline for consideration of house bills.¹⁵⁵ Nobody testified against the bill during the house committee hearing.¹⁵⁶ Given the lack of opposition and the importance of the subject matter, the legislature should take up and consider the concepts included in House Bill 5465 during the next legislative session. Sometimes it simply takes more than one legislative session for proposals to become law.¹⁵⁷ The following subsections highlight several of the key concepts from House Bill 5465 that addressed diversion of offenders, competency in criminal matters, AOT Courts, and court-ordered medication proceedings.¹⁵⁸

break-redistricting-map/ (describing actions by most Democratic house members to leave the state resulting in a lack of a quorum to conduct house business during the first special session).

153. See *supra* notes 140–41 and accompanying text (discussing the three alternative bases for court-ordered mental health services).

154. See Tex. H.B. 5465, 89th Leg., R.S. (2025) (introduced version of bill). This alternative criterion, as proposed, was comparable to the Model Legal Processes Work Group's proposed language for a lack of capacity alternative. See MODEL LEGAL PROCESSES, *supra* note 125, at 8 (specifying a basis for court-ordered mental health services when a person with mental illness, in part, "lacks the capacity to recognize that they are experiencing symptoms of a serious mental illness").

155. See House Rsch. Org., Bill Analysis, Tex. H.B. 5465, 89th Leg., R.S. (2025) (reporting the 10–1 favorable committee vote); *History H.B. 5465*, 89th Leg., R.S. (2025), TEX. LEG. ONLINE, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=HB5465> (last visited Sep. 9, 2025) (noting the bill's placement on the General State Calendar on May 13, 2025, but no later vote took place). The final day for the house to consider bills that originated in the house was May 15. Jordan Wat, *Legislative Session Enters the Final Stretch: What You Need to Know*, TEX. 2036, <https://texas2036.org/posts/legislative-session-enters-the-final-stretch-what-you-need-to-know/> (last visited Sep. 9, 2025).

156. HOUSE COMM. ON CRIM. JURIS., WITNESS LIST, TEX. H.B. 5465, (Apr. 29, 2025), <https://capitol.texas.gov/tlodocs/89R/witlistbill/html/HB05465H.htm>.

157. See Maria Mendez, *Texas Legislature 101: How Bills Become Laws – and How You Can Participate in the Process*, TEX. TRIB. (Jan. 13, 2025, at 5:00 CT) <https://www.texastribune.org/2025/01/13/texas-legislature-2025-bills-laws-how-works/> (describing legislation banning texting while driving that Senator Judith Zaffirini first introduced in 2009 that finally became law in 2017 and quoting Senator Zaffirini's statement that "[p]ersistence is the name of the game").

158. See Tex. H.B. 5465, 89th Leg., R.S. (2025).

I. Diversion

Article 16.23 of the Texas Code of Criminal Procedure requires each law enforcement agency in Texas to “make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency’s jurisdiction” if certain conditions are met.¹⁵⁹ There must be an available diversion center in the agency’s jurisdiction, the diversion must be reasonable, the offense involved must be a non-violent misdemeanor, and a “mental health crisis or substance abuse issue” must be “suspected to be the reason the person committed the alleged offense.”¹⁶⁰ House Bill 5465 would have amended article 16.23 to require diversion in proper cases to a “facility or program where the person can receive treatment or services for the person’s mental health crisis or substance abuse issue” as opposed to a “proper treatment center in the agency’s jurisdiction.”¹⁶¹

The rationale for these proposed changes to article 16.23 was two-fold. First, the legislation would have permitted “diversion to a mental health treatment program such as a Mobile Crisis Outreach Team, where the current statute requires a ‘treatment center’—often interpreted as requiring a brick-and-mortar location.”¹⁶² The second purpose for the revisions was to eliminate the requirement that the diversion facility (or program) be located in the law enforcement agency’s jurisdiction, given that some rural counties do not have an appropriate facility or program.¹⁶³ Although the legislature did not enact these changes, they are not controversial, and it is to be hoped that the legislature will revisit the concepts during the next legislative session.

Although not specifically a diversion statute, another section of House Bill 5465 could have led to greater diversion had the legislature enacted it. Section 2 of the bill would have created a mechanism for a justice of the peace or a municipal court judge to dismiss a Class C misdemeanor charge if the justice or judge determined that “a defendant with a mental illness or intellectual or developmental disability[] lacks the capacity to understand the proceedings in criminal court or to assist in the defendant’s own defense and is unfit to proceed.”¹⁶⁴

159. TEX. CODE CRIM. PROC. art. 16.23(a).

160. *Id.* art. 16.23(a)(1)–(4). Subsection (b) carves out several offenses, as well. *Id.* art. 16.23(b).

161. *See* Tex. H.B. 5465, § 1, at 1, 89th Leg., R.S. (2025) (proposing amendments to article 16.23 of the Texas Code of Criminal Procedure).

162. *See* JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 8 (discussing recommendation).

163. *Id.* The legislation would have also required local law enforcement agencies to prepare a diversion plan and submit annual reports with local governing bodies and the Texas Commission on Law Enforcement. *See* Tex. H.B. 5465, § 1, at 2 89th Leg., R.S. (2025) (proposing amendments to article 16.23).

164. *See* Tex. H.B. 5465, § 2, at 2, 89th Leg., R.S. (2025) (proposing to add article 42A.109(a) to the Texas Code of Criminal Procedure). Justice of the peace courts and municipal courts each have jurisdiction over certain Class C misdemeanors. *About Texas Courts: Trial Courts*, TEX. JUD. BRANCH, <https://www.txcourts.gov/about-texas-courts/trial-courts/> (last visited Sep. 9, 2025).

Texas law does not permit competency evaluations and proceedings for persons charged only with Class C misdemeanors.¹⁶⁵ Instead, Chapter 46B of the Texas Code of Criminal Procedure applies to persons charged with offenses that are Class B misdemeanors or higher.¹⁶⁶ Nonetheless, the state's or a municipality's prosecution of a person facing a Class C misdemeanor who is incompetent to stand trial is of dubious constitutionality.¹⁶⁷ Prior to the legislative session, the JCMH observed that because "as a matter of constitutional law, the [s]tate is not allowed to proceed with the prosecution of a case against an individual who is not competent," justice and municipal courts are left "with a subset of stagnant criminal cases on their dockets."¹⁶⁸ Accordingly, the JCMH proposed amendments to Chapter 45A of the Code of Criminal Procedure to "permit the state, the defendant, a person standing in a parental relation to the defendant, or the [c]ourt to move to dismiss [a] Class C misdemeanor charge because the defendant lacks the capacity to understand the criminal proceedings or to assist in the defendant's own defense."¹⁶⁹

Had the legislature enacted this measure, a justice of the peace or municipal court judge would have had the discretion to dismiss the complaint.¹⁷⁰ Nonetheless, the justice of the peace or judge in such a matter would potentially be able to connect and divert the person to mental health services.¹⁷¹ The legislature should revisit this concept in the next legislative session.

2. Competency

Chapter 46B of the Texas Code of Criminal Procedure sets forth the standards and processes relating to defendants who are incompetent to stand

165. See TEX. CODE CRIM. PROC. art 46B.002.

166. See *id.* (making the chapter regarding competency to stand trial applicable "to a defendant charged with a felony or with a misdemeanor punishable by confinement"); TEX. PENAL CODE §§ 12.21–.23 (stating that Class A and Class B misdemeanors can be punished by confinement, but that Class C misdemeanors are to be punished by "a fine not to exceed \$500").

167. See *Texas Mental Health Legislative Reform*, *supra* note 7, at 133 (discussing constitutional concerns); SHANNON GUIDE, *supra* note 24, at 47–48 ("Constitutional requirements for competency should nonetheless be applicable to minor offenses.").

168. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 13 (discussing the concern regarding the prosecution of Class C misdemeanors when the defendant may be incompetent to stand trial).

169. *Id.*

170. See Tex. H.B. 5465, § 2, 89th Leg., R.S. (2025) (proposing to add article 42A.109(b) to the Texas Code of Criminal Procedure).

171. For example, if appropriate, the state could consider filing an application for court-ordered mental health services under the Health and Safety Code. TEX. HEALTH & SAFETY CODE § 574.001. Also, given 2023 legislation discussed above, the court may have discretion to order an article 16.22 interview of the person. See *supra* notes 20–31 and accompanying text (discussing 2023 amendments to article 16.22 relating to a person facing a Class C misdemeanor and who is suspected of having a mental illness or intellectual disability).

trial.¹⁷² Leading up to the 2025 legislative session, the JCMH recommended several fine-tuning amendments to chapter 46B that were included in House Bill 5465.¹⁷³ These proposals included creating limits on utilization of inpatient competency restoration for persons charged with nonviolent misdemeanors, expanding the use of jail-based competency restoration, adding procedures to address defendants whose mental condition deteriorates after competency restoration but prior to final case adjudication, and providing a mechanism for a possible step-down from a state facility to a community-based placement for certain defendants with intellectual disabilities whose competency has not been restored.¹⁷⁴

The first of these concepts—limiting inpatient competency restoration for persons charged with nonviolent misdemeanors—represents another effort at possible diversion.¹⁷⁵ The JCMH recommended:

[T]hat[] when a defendant found to be mentally incompetent to stand trial is charged with a . . . Class B misdemeanor or a nonviolent [Class A] misdemeanor and has not been convicted in the previous two years of an offense that resulted in bodily injury to another person, then the default procedure would be to order outpatient competency restoration . . . services. If there is no [outpatient competency restoration program] available, either because the community does not [offer the program] or the defendant cannot be placed in [a] program within [fourteen] days of the Judge's order, then the matter would be set for a referral to civil commitment.¹⁷⁶

The primary goal of the proposal was to reduce state hospital waiting lists, particularly given that an alleged misdemeanant who is incompetent might have to wait for an inpatient bed longer than the maximum sentence for the charged offense.¹⁷⁷

House Bill 5465 proposed revising Chapter 46B to implement the JCMH recommendation.¹⁷⁸ As with the other JCMH concepts, the legislature should revisit this proposal in a future session.¹⁷⁹

The JCMH also recommended that the legislature should amend chapter 46B to permit the possibility of jail-based competency restoration for

172. TEX. CODE CRIM. PROC. arts. 46B.01–.171 (sections within Chapter 46B).

173. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 10–13 (describing proposals); Tex. H.B. 5465, §§ 3–27, 89th Leg., R.S. (2025) (proposing amendments).

174. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 10–13 (describing proposals).

175. *Id.* at 8.

176. *Id.*

177. *Id.* at 10–11. Accordingly, “many people charged with misdemeanors who are incompetent ‘time out’ and must be released before ever receiving competency restoration services.” See *id.* at 10 (referencing requirements of articles 46B.0095 and 46B.010 of the Texas Code of Criminal Procedure).

178. See Tex. H.B. 5465, §§ 5–9, 89th Leg., R.S. (2025).

179. See JCMH 2022 LEGISLATIVE PROPOSALS, *supra* note 14, at 8 (discussing a comparable recommendation JCMH made in 2022 prior to the 2023 legislative session). For further analysis of the 2022 proposal and its rationale, see *Ethical Challenges*, *supra* note 7, at 13–15.

incompetent defendants charged with violent offenses.¹⁸⁰ Under current law, jail-based competency restoration is not an option if the defendant is charged with a violent offense.¹⁸¹ Recognizing that “[j]ails with competency restoration programs provide considerable security within the jail for their efforts,” the JCMH recommended giving courts discretion to order jail-based competency restoration for an incompetent defendant charged with a violent offense.¹⁸² House Bill 5465 would have enacted the recommendation had it become law.¹⁸³

The JCMH also proposed legislation to “amend article 46B.084 to clarify a process for identifying and evaluating recently restored defendants whose mental health has deteriorated while in custody awaiting disposition of their case.”¹⁸⁴ In doing so, the JCMH pointed out that article “46B.084 does not address individuals who deteriorate between competency restoration and the resumption of adjudicative proceedings.”¹⁸⁵ House Bill 5465 included provisions that would have addressed this gap in the scope of article 46B.084.¹⁸⁶ Once again, the legislature should revisit these concepts.

The final JCMH recommendation to amend the competency provisions in Chapter 46B would have added new language to permit “judges to order a stepdown plan for a person with intellectual and developmental disabilities charged with a nonviolent offense from a [state] residential care facility into court-ordered community-based services after an unsuccessful attempt at 46B competency restoration.”¹⁸⁷ Current law permits the possibility of a stepdown from an inpatient commitment placement to an outpatient commitment order for an incompetent defendant with mental illness; however, there is no comparable provision for a similar stepdown to a community placement for a person with an intellectual or developmental

180. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 11–12 (describing proposal).

181. See TEX. CODE CRIM. PROC. art. 46B.073(c) (mandating the use of inpatient competency restoration at a state facility for defendants charged with violent offenses as listed articles 17.032(a) and 42A.054(c)).

182. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 12.

183. See Tex. H.B. 5465, §§ 5, 10, 40, 89th Leg., R.S. (2025) (proposing to amend articles 46B.071(a) and 46B.073(a)–(b) and repeal article 46B.073(c)). Another section of House Bill 5465 would have also permitted a court to consider ordering a stepdown from a jail-based competency restoration program to an outpatient competency restoration program in an appropriate case. See *id.* § 16 (setting forth proposed amendments to articles 46B.091(j) to (j-1)).

184. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 12.

185. *Id.* This Author has previously described in detail issues relating to the lack of guidance under article 46B.084. See *Ethical Challenges*, *supra* note 7, at 23–31 (describing challenges the lack of appropriate statutory language pose).

186. See Tex. H.B. 5465, §§ 13–14, 89th Leg., R.S. (2025) (proposing to amend article 46B.084(a-1)–(b) of the Code of Criminal Procedure and add a new article, 46B.0855, to provide a process for such cases).

187. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 13.

disability.¹⁸⁸ The JCMH proposed doing so.¹⁸⁹ In turn, House Bill 5465 included language that would have added a new article to Chapter 46B to authorize the stepdown option.¹⁹⁰ The legislature should revisit the concept in 2027 at the next regular session.¹⁹¹

3. AOT Courts

The Treatment Advocacy Center describes assisted outpatient treatment (AOT) as “the practice of providing outpatient treatment under [a] civil court order to individuals with severe mental illness . . . who have demonstrated difficulty engaging with treatment on a voluntary basis.”¹⁹² It includes “providing community-based mental health treatment under civil court commitment as a means of . . . motivating an adult with mental illness who struggles with voluntary treatment adherence to engage fully with their treatment plan.”¹⁹³ These programs have proven to be effective.¹⁹⁴ As the American Psychiatric Association stated, “Involuntary outpatient commitment programs have demonstrated their effectiveness when systematically implemented, linked to intensive outpatient services and prescribed for extended periods of time.”¹⁹⁵ Texas has several AOT court programs and “is home to one of the nation’s pioneering AOT programs (established in Bexar County in 2005).”¹⁹⁶ Participants in a Texas AOT court program must meet the statutory criteria for court-ordered outpatient mental

188. See TEX. CODE CRIM. PROC. art. 46B.1055 (authorizing modification orders in appropriate cases).

189. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 12–13 (describing recommendation and rationale).

190. See Tex. H.B. 5465, § 23, 89th Leg., R.S. (2025) (proposing to add article 46B.1075).

191. Because the proposed language in section 23 of House Bill 5465 departed in part from the JCMH’s recommended language, the starting point for drafting the concept in the next legislative session should be the JCMH’s proposal. Compare *id.* (proposing to add article 46B.1075), with JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, app. K, at 43–45 (recommending language for article 46B.1075).

192. See *What Is Assisted Outpatient Treatment?*, TREATMENT ADVOC. CTR., <https://www.tac.org/aot/> (last visited Sep. 9, 2025) (defining assisted outpatient treatment (AOT)).

193. BRIAN STETTIN ET AL., TREATMENT ADVOC. CTR. ET AL., TEXAS AOT PRACTITIONER’S GUIDE 5 (2022) [hereinafter AOT GUIDE], <https://texasjcmh.gov/media/svlj5114/texas-aot-practitioners-guide.pdf>.

194. See *id.*

195. AM. PSYCH. ASSOC., POSITION STATEMENT ON INVOLUNTARY OUTPATIENT COMMITMENT AND RELATED PROGRAMS OF ASSISTED OUTPATIENT TREATMENT 1 (Dec. 2020), <https://www.psychiatry.org/getattachment/d50db97b-59aa-4dd4-a0ec-d09b4e19112e/Position-Involuntary-Outpatient-Commitment.pdf>; see Jeffrey W. Swanson, *Study: Court-Ordered Assisted Outpatient Treatment (AOT) Improved Broad Range of Outcomes in People with ‘Serious Mental Illness’*, BRAIN & BEHAVIOR RSCH. FOUND. (May 29, 2025), <https://bbrfoundation.org/content/study-court-ordered-assisted-outpatient-treatment-aot-improved-broad-range-outcomes-people> (“Evidence suggests court-ordered Assisted Outpatient Treatment (AOT) programs, especially [six] months or longer, for people with serious mental illness, can be quite effective, associated with better treatment adherence, less violent and suicidal behavior, and reduced hospitalization and homelessness.”).

196. AOT GUIDE, *supra* note 193.

health services.¹⁹⁷

Under Texas law, specialty courts such as mental health courts, drug treatment courts, and veterans' treatment courts are governed by provisions set forth in Subtitle K of the Texas Government Code.¹⁹⁸ Chapter 125 of the Government Code focuses on mental health court programs.¹⁹⁹ As defined in Chapter 125, Texas mental health court programs generally focus on “persons who: (1) have been arrested for or charged with a misdemeanor or felony; and (2) are suspected by a law enforcement agency or a court of having a mental illness or an intellectual disability.”²⁰⁰ The programs serve as a means to divert “defendants who potentially have a mental illness or an intellectual disability to needed services as an alternative to subjecting those defendants to the criminal justice system.”²⁰¹ In contrast, participants in AOT court programs are subject to civil court-ordered outpatient services and may be referred by hospitals, the community, law enforcement, or from the criminal justice system.²⁰²

Because the Government Code's definition of a mental health court program applies only to persons facing criminal charges, prior to the 2025 legislative session the JCMH recommended “expand[ing] the definition of a ‘mental health court program’ in Government Code [section] 125.001 to include civil courts operating an Assisted Outpatient Treatment program if they otherwise meet the statutory criteria.”²⁰³ In turn, doing so “would allow both criminal and civil courts to be recognized as mental health court programs where appropriate.”²⁰⁴

In making the recommendation, the JCMH had two goals: (1) to generate greater “collaboration between criminal and civil mental health court programs,” and (2) “to open funding opportunities to civil Assisted Outpatient Treatment court programs.”²⁰⁵ As to the former, the JCMH urged that “[i]t would be beneficial for the civil and criminal courts to work together

197. See TEX. HEALTH & SAFETY CODE §§ 574.0345, 574.0355 (specifying criteria, respectively, for temporary outpatient mental health services and extended outpatient mental health services). In turn, section 574.037 governs various aspects of court-ordered outpatient services. *Id.* § 574.037.

198. TEX. GOV'T CODE Chs. 121–30. Texas “Specialty Courts provide specialized direct services (usually substance use or mental health treatment) to participants as an alternative to incarceration in criminal cases or to address child protection issues in civil or family cases. . . . Specialty Court Programs in Texas must comply with best practice standards approved by the Texas Judicial Council.” *Specialty Courts in Texas*, TEX. JUD. BRANCH, <https://www.txcourts.gov/about-texas-courts/specialty-courts/#:%7E:text=Specialty%20Courts%20in%20Texas,in%20civil%20or%20family%20cases> (last visited Sep. 9, 2025).

199. TEX. GOV'T CODE § 125.001–.005.

200. *Id.* § 125.002(1)–(2).

201. *Id.* § 125.001(a)(6).

202. See AOT GUIDE, *supra* note 193, at 7–10 (describing sources of participant referrals).

203. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 9 (discussing recommendation).

204. *Id.*

205. *Id.*

more seamlessly to avoid further justice involvement where possible.”²⁰⁶ Regarding funding opportunities to develop new AOT court programs, expanding the statutory definition of mental health courts to include AOT courts would open the door to potential grant funding from the Office of the Governor.²⁰⁷

House Bill 5465, had it been enacted, would have amended section 125.001 of the Texas Government Code to expand the definition of a mental health court program to include “an assisted outpatient treatment court program for persons subject to court-ordered outpatient mental health services under Chapter 574 of the Health and Safety Code.”²⁰⁸ Correspondingly, the bill would have permitted counties to establish mental health court programs not only for persons with mental illness or an intellectual disability who have been arrested or charged criminally, but also programs for persons who meet the requirements for court-ordered outpatient mental health services.²⁰⁹

The legislature should endeavor to revisit and pass this legislation in the next session. Expanding opportunities to recognize and potentially fund more AOT courts can provide additional tools to permit “earlier intervention in the lives of . . . individuals [with serious mental illness] before they [possibly] commit serious crimes.”²¹⁰

4. Medication Orders

One final JCMH recommendation included in House Bill 5465 worthy of highlighting pertains to proceedings for court-ordered medication.²¹¹ Two different statutes are potentially applicable to persons who have been adjudicated incompetent to stand trial and either remain in jail or are receiving services under orders for inpatient or jail-based competency

206. *Id.* For a detailed discussion of various pathways for diverting persons with mental illness from the criminal justice system into an AOT court program, see AOT GUIDE, *supra* note 193, at 35–50.

207. *See* JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 9 (noting that a qualification for such funding is that the program “meet the definition of a specialty court program”).

208. *See* Tex. H.B. 5465, § 29, 89th Leg., R.S. (2025) (proposing to amend Texas Government Code section 125.001(a)).

209. *See id.* § 30 (proposing to add a new subsection to section 125.002 of the Government Code to authorize counties to establish AOT Court programs). Another section of House Bill 5465 would have amended Chapter 121 of the Government Code to assure that a judge overseeing a specialty court program such as a mental health court program has jurisdiction over cases in that program referred by other courts. *See id.* § 28 (proposing to add section 121.005 to the Texas Government Code). This would “ensure that specialty court programs presided over by a County Court-at-Law Judge could have jurisdiction to preside over both misdemeanor and felony cases when those defendants are admitted to a specialty court program overseen by the County Court-at-Law Judge.” *See* JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 9 (discussing recommendation). Although usually “addressed by local administrative orders,” a statutory change would offer consistency around the state. *See id.* (noting typical local practices).

210. *See* JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 9 (discussing rationale for bill concept).

211. *See id.* at 14 (discussing proposal).

restoration.²¹² Both statutes require physician involvement.²¹³ For medication proceedings under the Texas Health and Safety Code, a physician who is treating the patient must file the application for court-ordered medication and will typically testify at the ensuing hearing.²¹⁴ Comparably, medication proceedings under article 46B.086 of the Code of Criminal Procedure require two physicians to testify.²¹⁵

At one level, these requirements for physician engagement are quite sensible. After all, the proponents are urging a court to order the administration of appropriate medication.²¹⁶ Texas, however, is facing a significant shortage of mental health professionals.²¹⁷ The shortages are more pronounced in rural counties.²¹⁸ Moreover, the JCMH found that “[m]ost communities in Texas, therefore, do not have access to psychiatrists or physicians with mental health expertise for the[] statutory requirements” for court-ordered medication proceedings.²¹⁹ Accordingly, the JCMH recommended that both statutes be amended to permit applications and testimony by, in addition to physicians, other medical professionals such as advance practice registered nurses and physician’s assistants who are

212. See TEX. HEALTH & SAFETY CODE § 574.106(a)–(a-1) (authorizing consideration of court-ordered medication for persons subject to court orders for competency restoration or persons who have been adjudicated incompetent to stand trial, but who have not been transferred for treatment seventy-two hours or more after the court’s order); TEX. CODE CRIM. PROC. art. 46B.086 (authorizing consideration of a medication order for a person who is incompetent to stand trial and who was determined by a court with probate jurisdiction of not meeting the criteria for court-ordered medication under Health and Safety Code art. 46B.086(a)(4)). The Texas procedures relating to court-ordered medication proceedings are complicated and beyond the scope of this Article. See SHANNON GUIDE, *supra* note 24, at 104–08 (discussing the two statutes and their interplay); Brian D. Shannon, *Prescribing a Balance: The Texas Legislative Responses to Sell v. United States*, 41 ST. MARY’S L.J. 309, 319–44 (2009) (discussing the history of article 46B.086).

213. See TEX. HEALTH & SAFETY CODE § 574.106(a)–(a-1); TEX. CODE CRIM. PROC. art. 46B.086.

214. See TEX. HEALTH & SAFETY CODE § 574.104 (requiring treating physician to file application); *id.* § 574.106 (describing hearing requirements).

215. See TEX. CODE CRIM. PROC. art. 46B.086(d) (requiring testimony by two physicians “one of whom is the physician at or with the applicable facility or program who is prescribing the medication as a component of the defendant’s continuity of care plan and another who is not otherwise involved in proceedings against the defendant”). The statute further provides that “[t]he court may require either or both [of the] physicians to examine the defendant and report . . . to the court.” *Id.*

216. See *id.*

217. See JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 14 (relying on 2024 data indicating that “[i]n Texas, all but eight of our 254 counties are considered Mental Health Professional Shortage Areas, with two of those eight considered to be partial shortage areas”). Those findings remained the same in July 2025. See *Health Professional Shortage Areas: Mental Health, by County, July 2025 – Texas*, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/charts/?state=TX> (last visited Sep. 9, 2025) (Texas chart).

218. See Stephen Simpson, *A Look at the Texas Mental Health Workforce Shortage*, TEX. TRIB. (July 17, 2024, at 5:00 CT), <https://www.texastribune.org/2024/07/17/texas-mental-health-workforce-explainer/> (discussing the significant dearth of mental health professionals in rural Texas counties); JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 14 (“Rural jurisdictions, in particular, have significant difficulty finding physicians who are able and willing to participate in medication hearings.”).

219. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 14.

providing mental health care to persons subject to the statutes.²²⁰ In many situations, the change would allow a “medical professional who is actually providing services to make an application to the court for court-ordered medications, rather than only a supervising physician who may not have regular direct contact with the patient.”²²¹ In addition, the JCMH recommended that only one mental health professional be required to testify in medication hearings under article 46B.086 of the Code of Criminal Procedure, as opposed to two physicians.²²²

Given the shortage of physicians with mental health expertise, House Bill 5465 included the JCMH recommendations regarding expanding the list of medical professionals who can take part in court-ordered medication proceedings.²²³ As with the other unsuccessful measures set forth in House Bill 5465 and given the state-wide shortage of mental health professionals, the legislature should revisit the concept in the next legislative session. If that should occur, however, the legislature should revise the language included in House Bill 5465 that attempted to create a definition for “primary care provider” for purposes of these medication statutes.

In section 33 of House Bill 5465, the bill included a broad definition of “primary care provider” to mean “a health care professional, including a physician, advanced practice registered nurse, or physician assistant licensed in this state.”²²⁴ That definition overshoots the mark. The JCMH’s intent was to expand the statute to permit certain medical professionals other than physicians to file applications and testify in court-ordered medication hearings, but only for those medical professionals “who are providing health care services to persons receiving . . . inpatient mental health services” or to persons with mental illness in jail.²²⁵ Accordingly, the JCMH had recommended a more tailored approach to focus on medical professionals who are providing mental health services:

220. *Id.*

221. *Id.*

222. *See id.*, app. M, at 51 (setting forth draft legislation to amend article 46B.086(d)’s requirement for the testimony of two physicians with testimony from the primary care provider who is providing the mental health services).

223. *See* Tex. H.B. 5465, § 15, 89th Leg., R.S. (2025) (proposing to amend article 46B.086 by substituting “primary care provider” for “physician” and “psychiatrist” and cross-referencing a new definition of “primary care provider” in the Health and Safety Code). *Id.* §§ 33–35 (proposing to amend sections 574.101 and 574.104 of the Health and Safety Code by creating a new definition of “primary care provider” and substituting “primary care provider” for “physician”). House Bill 5465 also included language to strike the requirement for testimony by two physicians in article 46B.086 and replace it with a requirement for testimony by one primary care provider. *See id.* § 15 (proposing to amend article 46B.086(d) of the Texas Code of Criminal Procedure).

224. *Id.* § 33 (proposing to add the definition as a new subsection of section 574.101). In turn, section 15 of the Bill would have incorporated that definition by reference in article 46B.086 of the Code of Criminal Procedure. *See id.* § 15 (proposing to add a new subsection to article 46B.086 of the Texas Code of Criminal Procedure stating that “[i]n this article, ‘primary care provider’ has the meaning assigned by [s]ection 574.001, Health and Safety Code”).

225. JCMH 2024 LEGISLATIVE PROPOSALS, *supra* note 14, at 14.

“Primary Care Provider” means a health care professional who provides mental health care services to a defined population of patients subject to court-ordered inpatient mental health services. The term includes a physician licensed by the Texas Medical Board, an advanced practice registered nurse licensed by the Texas Board of Nursing, and a physician assistant licensed by the Texas Physician Assistant Board.²²⁶

The legislature in the next legislative session should endeavor to include this narrower definition to authorize those medical professionals who are directly engaged in providing mental health services to defendants with mental illness to be authorized to participate in court-ordered medication processes.

V. CONCLUSION

Five years ago, I concluded a previous article focused on earlier Texas mental health legislation by observing that the “Texas Legislature has made significant strides in enacting mental health legislation in recent years, particularly during the 2017 and 2019 legislative sessions.”²²⁷ I cautioned, however, that “without more community-based services—and sufficient funding for those services—the promise offered by the legislation cannot be fully realized or implemented.”²²⁸

The same holds true today. As described above, the Texas Legislature, assisted and informed by the JCMH, enacted an array of mental health policy improvements during the 2023 and 2025 sessions.²²⁹ In addition, in recent years, the legislature has admirably appropriated significant amounts for new public psychiatric hospitals.²³⁰ But, building new hospitals, while laudable, is not enough. Appropriately funding a robust array of community-based services is also necessary not only to provide treatment for persons with mental illness, but also to reduce hospital overutilization and to address the challenges of overrepresentation of persons with mental illness caught up in the criminal justice system.²³¹ The Texas Legislature should continue to

226. See *id.*, app. M, at 47 (recommending quoted definition to amend section 574.101 of the Health and Safety Code); *id.* at 51 (proposing that the quoted definition be incorporated by reference in article 46B.086 of the Code of Criminal Procedure).

227. *Texas Mental Health Legislative Reform*, *supra* note 7, at 137.

228. *Id.* at 138.

229. See *supra* Part III (discussing the 2023 legislative session) and Part IV (discussing the 2025 legislative session).

230. See *supra* note 5 and accompanying text (discussing new public psychiatric hospital proposals).

231. See Tracey McManus, *Dallas County's Overcrowded Jail 'Is Broken.' Officials Look to Miami for Solutions*, DALL. MORNING NEWS (last updated June 13, 2025, at 20:01 CT), <https://www.dallasnews.com/news/crime/2025/06/11/dallas-countys-overcrowded-jail-is-broken-officials-look-to-miami-for-solutions/> (reporting that “[i]n 2024, 57% of all people booked into the jail had received mental health services from the state system within the prior three years” and that Dallas County officials were exploring diversion programs and solutions such as those that Miami had successfully implemented). With cuts in federal funding, there will be greater pressure for the Texas Legislature to fund services. See Stephen

modernize and improve the state's mental health laws, but also recognize that without a continuum of needed services, substantive legislation—standing alone—is insufficient.

Simpson, *Mental Health Programs Could Bear the Brunt of \$600M Federal Cuts to Texas Schools*, TEX. TRIB. (July 14, 2025, at 5:00 CT), <https://www.texastribune.org/2025/07/14/texas-schools-budget-cuts-mental-health/> (reporting that cuts to federal funding for Texas schools could impact mental health programs).