

FAMILY CODE

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS OR MENTAL RETARDATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 55.01. MEANING OF "HAVING A MENTAL ILLNESS". For purposes of this chapter, a child who is described as having a mental illness means a child who suffers from mental illness as defined by Section 571.003, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.02. MENTAL HEALTH AND MENTAL RETARDATION JURISDICTION. For the purpose of initiating proceedings to order mental health or mental retardation services for a child or for commitment of a child as provided by this chapter, the juvenile court has jurisdiction of proceedings under Subtitle C or D, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.03. STANDARDS OF CARE. (a) Except as provided by this chapter, a child for whom inpatient mental health services is ordered by a court under this chapter shall be cared for as provided by Subtitle C, Title 7, Health and Safety Code.

(b) Except as provided by this chapter, a child who is committed by a court to a residential care facility for mental retardation shall be cared for as provided by Subtitle D, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

SUBCHAPTER B. CHILD WITH MENTAL ILLNESS

Sec. 55.11. MENTAL ILLNESS DETERMINATION; EXAMINATION. (a) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision has a mental illness. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(b) If the court determines that probable cause exists to believe that the child has a mental illness, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child has a mental illness and whether the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code. If ordered by the court, the information must also include expert opinion as to whether the child is unfit to proceed with the juvenile court proceedings.

(c) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, proceed under Section 55.12; or

(2) if the court determines that evidence does not exist to support a finding that the child has a mental illness or that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, dissolve the stay and continue the juvenile court proceedings.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.12. INITIATION OF COMMITMENT PROCEEDINGS. If, after considering all relevant information, the juvenile court determines that evidence exists to support a finding that a child has a mental illness and that the child meets the commitment criteria under Subtitle C, Title 7, Health and Safety Code, the court shall:

(1) initiate proceedings as provided by Section 55.13 to order temporary or extended mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.14 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subchapter C, Chapter 574, Health and Safety Code.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.02(a) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.13. COMMITMENT PROCEEDINGS IN JUVENILE COURT. (a) If the juvenile court initiates proceedings for temporary or extended mental health services under Section 55.12(1), the prosecuting attorney or the attorney for the child may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) The burden of proof at the hearing is on the party who filed the application.

(c) The juvenile court shall appoint the number of physicians necessary to examine the child and to complete the certificates of medical examination for mental illness required under Section 574.009, Health and Safety Code.

(d) After conducting a hearing on an application under this section, the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services for the child; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services for the child.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.14. REFERRAL FOR COMMITMENT PROCEEDINGS. (a) If the juvenile court refers the child's case to the appropriate court for the initiation of commitment proceedings under Section 55.12(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to the clerk of a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.15. STANDARDS OF CARE; EXPIRATION OF COURT ORDER FOR MENTAL HEALTH SERVICES. If the juvenile court or a court to which the child's case is referred under Section 55.12(2) orders mental health services for the child, the child shall be cared for, treated, and released in conformity to Subtitle C, Title 7, Health and Safety Code, except:

(1) a court order for mental health services for a child automatically expires on the 120th day after the date the child becomes 18 years of age; and

(2) the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or the juvenile court that referred the case to a court that ordered the mental health services of the intent to discharge the child at least 10 days prior to discharge.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, Sec. 20 and 21, eff. Sept. 1, 1975; Acts 1991, 72nd Leg., ch. 76, Sec. 9, eff. Sept.

1, 1991; Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.02(c) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.16. ORDER FOR MENTAL HEALTH SERVICES; STAY OF PROCEEDINGS. (a) If the court to which the child's case is referred under Section 55.12(2) orders temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's order for mental health services.

(b) If the juvenile court orders temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the proceedings under this title then pending in juvenile court shall be stayed.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.02(d) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.17. MENTAL HEALTH SERVICES NOT ORDERED; DISSOLUTION OF STAY. (a) If the court to which a child's case is referred under Section 55.12(2) does not order temporary or extended inpatient mental health services for the child, the court shall immediately notify in writing the referring juvenile court of the court's decision.

(b) If the juvenile court does not order temporary or extended inpatient mental health services for the child or if the juvenile court receives notice under Subsection (a) from the court to which the child's case is referred, the juvenile court shall dissolve the stay and continue the juvenile court proceedings.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.18. DISCHARGE FROM MENTAL HEALTH FACILITY BEFORE REACHING 18 YEARS OF AGE. If the child is discharged from the mental health facility before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of mental health services had been made.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.02(e) by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.19. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY. (a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred under Section 55.12(2) has ordered inpatient mental health services if:

(1) the child is not discharged or furloughed from the inpatient mental health facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the inpatient mental health facility. The criminal court shall, within 90 days of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from Sec. 55.02(f) and (g) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 7, eff. Jan. 1, 2004.

SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

Sec. 55.31. UNFITNESS TO PROCEED DETERMINATION; EXAMINATION. (a) A child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision who as a result of mental illness or mental retardation lacks capacity to understand the proceedings in juvenile court or to assist in the child's own defense is unfit to proceed and shall not be subjected to discretionary transfer to criminal court, adjudication, disposition, or modification of disposition as long as such incapacity endures.

(b) On a motion by a party, the juvenile court shall determine whether probable cause exists to believe that a child who is alleged by petition or who is found to have engaged in delinquent conduct or conduct indicating a need for supervision is unfit to proceed as a result of mental illness or mental retardation. In making its determination, the court may:

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

(c) If the court determines that probable cause exists to believe that the child is unfit to proceed, the court shall temporarily stay the juvenile court proceedings and immediately order the child to be examined under Section 51.20. The information obtained from the examination must include expert opinion as to whether the child is unfit to proceed as a result of mental illness or mental retardation.

(d) After considering all relevant information, including information obtained from an examination under Section 51.20, the court shall:

(1) if the court determines that evidence exists to support a finding that the child is unfit to proceed, proceed under Section 55.32; or

(2) if the court determines that evidence does not exist to support a finding that the child is unfit to proceed, dissolve the stay and continue the juvenile court proceedings.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.04(a) and (b) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.32. HEARING ON ISSUE OF FITNESS TO PROCEED. (a) If the juvenile court determines that evidence exists to support a finding that a child is unfit to proceed as a result of mental illness or mental retardation, the court shall set the case for a hearing on that issue.

(b) The issue of whether the child is unfit to proceed as a result of mental illness or mental retardation shall be determined at a hearing separate from any other hearing.

(c) The court shall determine the issue of whether the child is unfit to proceed unless the child or the attorney for the child demands a jury before the 10th day before the date of the hearing.

(d) Unfitness to proceed as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) If the court or jury determines that the child is fit to proceed, the juvenile court shall continue with proceedings under this title as though no question of fitness to proceed had been raised.

(f) If the court or jury determines that the child is unfit to proceed as a result of mental illness or mental retardation, the court shall:

(1) stay the juvenile court proceedings for as long as that incapacity endures; and

(2) proceed under Section 55.33.

(g) The fact that the child is unfit to proceed as a result of mental illness or mental retardation does not preclude any legal objection to the juvenile court proceedings which is susceptible of fair determination prior to the adjudication hearing and without the personal participation of the child.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Redesignated from V.T.C.A., Family Code Sec. 55.04(c) to (f) and (h) and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.33. PROCEEDINGS FOLLOWING FINDING OF UNFITNESS TO PROCEED. (a) If the juvenile court or jury determines under

Section 55.32 that a child is unfit to proceed with the juvenile court proceedings for delinquent conduct, the court shall:

(1) if the unfitness to proceed is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the unfitness to proceed is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment for mental illness on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.34. TRANSPORTATION TO AND FROM FACILITY. (a) If the court issues a placement order under Section 55.33(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.35. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT. (a) If the juvenile court issues a placement order under Section 55.33(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.33(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is fit or unfit to proceed.

(c) The court shall provide a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.36. REPORT THAT CHILD IS FIT TO PROCEED; HEARING ON OBJECTION. (a) If a report submitted under Section 55.35(b) states that a child is fit to proceed, the juvenile court shall find that the child is fit to proceed unless the child's attorney objects in writing or in open court not later than the second day after the date the attorney receives a copy of the report under Section 55.35(c).

(b) On objection by the child's attorney under Subsection (a), the juvenile court shall promptly hold a hearing to determine whether the child is fit to proceed, except that the hearing may be held after the date that the placement order issued under Section

55.33(a) expires. At the hearing, the court shall determine the issue of the fitness of the child to proceed unless the child or the child's attorney demands in writing a jury before the 10th day before the date of the hearing.

(c) If, after a hearing, the court or jury finds that the child is fit to proceed, the court shall dissolve the stay and continue the juvenile court proceedings as though a question of fitness to proceed had not been raised.

(d) If, after a hearing, the court or jury finds that the child is unfit to proceed, the court shall proceed under Section 55.37.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.37. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS. If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.38 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.39 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.38. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. (a) If the juvenile court initiates commitment proceedings under Section 55.37(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.39. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.37(2), the juvenile court shall:

(1) send all papers relating to the child's unfitness to proceed, including the verdict and judgment of the juvenile court finding the child unfit to proceed, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A RESULT OF MENTAL RETARDATION. If a report submitted under Section 55.35(b) states that a child is unfit to proceed as a result of mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of the affidavit, the court shall:

(1) initiate proceedings as provided by Section 55.41 in the juvenile court for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.42 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION. (a) If the juvenile court initiates commitment proceedings under Section 55.40(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court's order, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall admit the child to a residential care facility.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1297, Sec. 30, eff. Sept. 1, 2001.

Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.40(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.43. RESTORATION HEARING. (a) The prosecuting attorney may file with the juvenile court a motion for a restoration hearing concerning a child if:

(1) the child is found unfit to proceed as a result of mental illness or mental retardation; and

(2) the child:

(A) is not:

(i) ordered by a court to receive inpatient mental health services;

(ii) committed by a court to a residential care facility; or

(iii) ordered by a court to receive treatment on an outpatient basis; or

(B) is discharged or furloughed from a mental health facility or outpatient center before the child reaches 18 years of age.

(b) At the restoration hearing, the court shall determine the issue of whether the child is fit to proceed.

(c) The restoration hearing shall be conducted without a jury.

(d) The issue of fitness to proceed must be proved by a preponderance of the evidence.

(e) If, after a hearing, the court finds that the child is fit to proceed, the court shall continue the juvenile court proceedings.

(f) If, after a hearing, the court finds that the child is unfit to proceed, the court shall dismiss the motion for restoration.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.44. TRANSFER TO CRIMINAL COURT ON 18TH BIRTHDAY OF CHILD. (a) The juvenile court shall transfer all pending proceedings from the juvenile court to a criminal court on the 18th birthday of a child for whom the juvenile court or a court to which the child's case is referred has ordered inpatient mental health services or residential care for persons with mental retardation if:

(1) the child is not discharged or furloughed from the facility before reaching 18 years of age; and

(2) the child is alleged to have engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045 and no adjudication concerning the alleged conduct has been made.

(b) The juvenile court shall send notification of the transfer of a child under Subsection (a) to the facility. The criminal court shall, before the 91st day after the date of the transfer, institute proceedings under Chapter 46B, Code of Criminal Procedure. If those or any subsequent proceedings result in a determination that the defendant is competent to stand trial, the defendant may not receive a punishment for the delinquent conduct described by Subsection (a)(2) that results in confinement for a period longer than the maximum period of confinement the defendant could have received if the defendant had been adjudicated for the delinquent conduct while still a child and within the jurisdiction of the juvenile court.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 35, Sec. 8, eff. Jan. 1, 2004.

Sec. 55.45. STANDARDS OF CARE; NOTICE OF RELEASE OR FURLOUGH. (a) If the juvenile court or a court to which the child's case is referred under Section 55.37(2) orders mental health services for the child, the child shall be cared for, treated, and released in accordance with Subtitle C, Title 7, Health and Safety Code, except that the administrator of a mental health facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered mental health services or that referred the case to a court that ordered mental health services of the intent to discharge the child on or before the 10th day before the date of discharge.

(b) If the juvenile court or a court to which the child's case is referred under Section 55.40(2) orders the commitment of the child to a residential care facility, the child shall be cared for, treated, and released in accordance with Subtitle D, Title 7, Health and Safety Code, except that the administrator of the residential care facility shall notify, in writing, by certified mail, return receipt requested, the juvenile court that ordered commitment of the child or that referred the case to a court that ordered commitment of the child of the intent to discharge or furlough the child on or before the 20th day before the date of discharge or furlough.

Added by Acts 2001, 77th Leg., ch. 1297, Sec. 31, eff. Sept. 1, 2001.

#### SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF MENTAL ILLNESS OR MENTAL RETARDATION

Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT DETERMINATION; EXAMINATION. (a) A child alleged by petition to

have engaged in delinquent conduct or conduct indicating a need for supervision is not responsible for the conduct if at the time of the conduct, as a result of mental illness or mental retardation, the child lacks substantial capacity either to appreciate the wrongfulness of the child's conduct or to conform the child's conduct to the requirements of law.

(b) On a motion by a party in which it is alleged that a child may not be responsible as a result of mental illness or mental retardation for the child's conduct, the court shall order the child to be examined under Section 51.20. The information obtained from the examinations must include expert opinion as to whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation.

(c) The issue of whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation shall be tried to the court or jury in the adjudication hearing.

(d) Lack of responsibility for conduct as a result of mental illness or mental retardation must be proved by a preponderance of the evidence.

(e) In its findings or verdict the court or jury must state whether the child is not responsible for the child's conduct as a result of mental illness or mental retardation.

(f) If the court or jury finds the child is not responsible for the child's conduct as a result of mental illness or mental retardation, the court shall proceed under Section 55.52.

(g) A child found to be not responsible for the child's conduct as a result of mental illness or mental retardation shall not be subject to proceedings under this title with respect to such conduct, other than proceedings under Section 55.52.

Acts 1973, 63rd Leg., p. 1460, ch. 544, Sec. 1, eff. Sept. 1, 1973. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 47, eff. May 31, 1995. Renumbered from V.T.C.A., Family Code Sec. 55.05 and amended by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.52. PROCEEDINGS FOLLOWING FINDING OF LACK OF RESPONSIBILITY FOR CONDUCT. (a) If the court or jury finds that a child is not responsible for the child's conduct under Section 55.51, the court shall:

(1) if the lack of responsibility is a result of mental illness or mental retardation:

(A) provided that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, order the child placed with the Texas Department of Mental Health and Mental Retardation for a period of not more than 90 days, which order may not specify a shorter period, for placement in a facility designated by the department; or

(B) on application by the child's parent, guardian, or guardian ad litem, order the child placed in a private psychiatric inpatient facility for a period of not more than 90 days, which order may not specify a shorter period, but only if the placement is agreed to in writing by the administrator of the facility; or

(2) if the child's lack of responsibility is a result of mental illness and the court determines that the child may be adequately treated in an alternative setting, order the child to receive treatment on an outpatient basis for a period of not more than 90 days, which order may not specify a shorter period.

(b) If the court orders a child placed in a private psychiatric inpatient facility under Subsection (a)(1)(B), the state or a political subdivision of the state may be ordered to pay any costs associated with the child's placement, subject to an express appropriation of funds for the purpose.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.53. TRANSPORTATION TO AND FROM FACILITY. (a) If the court issues a placement order under Section 55.52(a)(1), the court shall order the probation department or sheriff's department to transport the child to the designated facility.

(b) On receipt of a report from a facility to which a child has been transported under Subsection (a), the court shall order the probation department or sheriff's department to transport the child from the facility to the court. If the child is not transported to the court before the 11th day after the date of the court's order, an authorized representative of the facility shall transport the child from the facility to the court.

(c) The county in which the juvenile court is located shall reimburse the facility for the costs incurred in transporting the child to the juvenile court as required by Subsection (b).  
Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.54. INFORMATION REQUIRED TO BE SENT TO FACILITY; REPORT TO COURT. (a) If the juvenile court issues a placement order under Section 55.52(a), the court shall order the probation department to send copies of any information in the possession of the department and relevant to the issue of the child's mental illness or mental retardation to the public or private facility or outpatient center, as appropriate.

(b) Not later than the 75th day after the date the court issues a placement order under Section 55.52(a), the public or private facility or outpatient center, as appropriate, shall submit to the court a report that:

(1) describes the treatment of the child provided by the facility or center; and

(2) states the opinion of the director of the facility or center as to whether the child is mentally ill or mentally retarded.

(c) The court shall send a copy of the report submitted under Subsection (b) to the prosecuting attorney and the attorney for the child.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.55. REPORT THAT CHILD IS NOT MENTALLY ILL OR MENTALLY RETARDED; HEARING ON OBJECTION. (a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or mental retardation, the juvenile court shall discharge the child unless:

(1) an adjudication hearing was conducted concerning conduct that included a violation of a penal law listed in Section 53.045(a) and a petition was approved by a grand jury under Section 53.045; and

(2) the prosecuting attorney objects in writing not later than the second day after the date the attorney receives a copy of the report under Section 55.54(c).

(b) On objection by the prosecuting attorney under Subsection (a), the juvenile court shall hold a hearing without a jury to determine whether the child has a mental illness or mental retardation and whether the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(c) At the hearing, the burden is on the state to prove by clear and convincing evidence that the child has a mental illness or mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle C or D, Title 7, Health and Safety Code.

(d) If, after a hearing, the court finds that the child does not have a mental illness or mental retardation and that the child does not meet the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall discharge the child.

(e) If, after a hearing, the court finds that the child has a mental illness or mental retardation and that the child meets the commitment criteria under Subtitle C or D, Title 7, Health and Safety Code, the court shall issue an appropriate commitment order.  
Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.56. REPORT THAT CHILD HAS MENTAL ILLNESS; INITIATION OF COMMITMENT PROCEEDINGS. If a report submitted under Section 55.54(b) states that a child has a mental illness and that the child meets the commitment criteria for civil commitment under Subtitle C, Title 7, Health and Safety Code, the director of the public or private facility or outpatient center, as appropriate, shall submit to the court two certificates of medical examination for mental illness. On receipt of the certificates, the court shall:

(1) initiate proceedings as provided by Section 55.57 in the juvenile court for commitment of the child under Subtitle C, Title 7, Health and Safety Code; or

(2) refer the child's case as provided by Section 55.58 to the appropriate court for the initiation of proceedings in that court for commitment of the child under Subtitle C, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1,

1999.

Sec. 55.57. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL ILLNESS. (a) If the juvenile court initiates commitment proceedings under Section 55.56(1), the prosecuting attorney may file with the juvenile court an application for court-ordered mental health services under Section 574.001, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 574.005 and 574.006, Health and Safety Code; and

(2) conduct the hearing in accordance with Subchapter C, Chapter 574, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035, Health and Safety Code, are satisfied, order extended mental health services. Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.58. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL ILLNESS. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.56(2), the juvenile court shall:

(1) send all papers relating to the child's mental illness, including the verdict and judgment of the juvenile court finding that the child was not responsible for the child's conduct, to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for mental health services under Section 574.001, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.59. REPORT THAT CHILD HAS MENTAL RETARDATION; INITIATION OF COMMITMENT PROCEEDINGS. If a report submitted under Section 55.54(b) states that a child has mental retardation and that the child meets the commitment criteria for civil commitment under Subtitle D, Title 7, Health and Safety Code, the director of the residential care facility shall submit to the court an affidavit stating the conclusions reached as a result of the diagnosis. On receipt of an affidavit, the juvenile court shall:

(1) initiate proceedings in the juvenile court as provided by Section 55.60 for commitment of the child under Subtitle D, Title 7, Health and Safety Code; or

(2) refer the child's case to the appropriate court as provided by Section 55.61 for the initiation of proceedings in that court for commitment of the child under Subtitle D, Title 7, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.

Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR MENTAL RETARDATION. (a) If the juvenile court initiates commitment proceedings under Section 55.59(1), the prosecuting attorney may file with the juvenile court an application for placement under Section 593.041, Health and Safety Code. The juvenile court shall:

(1) set a date for a hearing and provide notice as required by Sections 593.047 and 593.048, Health and Safety Code; and

(2) conduct the hearing in accordance with Sections 593.049-593.056, Health and Safety Code.

(b) After conducting a hearing under Subsection (a)(2), the juvenile court may order commitment of the child to a residential care facility only if the commitment criteria under Section 593.052, Health and Safety Code, are satisfied.

(c) On receipt of the court's order, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall admit the child to a residential care facility. Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1297, Sec. 32, eff. Sept. 1, 2001.

Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR MENTAL RETARDATION. (a) If the juvenile court refers the child's case to an appropriate court for the initiation of commitment proceedings under Section 55.59(2), the juvenile court shall:

(1) send all papers relating to the child's mental retardation to the clerk of the court to which the case is referred;

(2) send to the office of the appropriate county attorney or, if a county attorney is not available, to the office of the appropriate district attorney, copies of all papers sent to the clerk of the court under Subdivision (1); and

(3) if the child is in detention:

(A) order the child released from detention to the child's home or another appropriate place;

(B) order the child detained in an appropriate place other than a juvenile detention facility; or

(C) if an appropriate place to release or detain the child as described by Paragraph (A) or (B) is not available, order the child to remain in the juvenile detention facility subject to further detention orders of the court.

(b) The papers sent to a court under Subsection (a)(1) constitute an application for placement under Section 593.041, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1477, Sec. 14, eff. Sept. 1, 1999.