

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PAROLE DIVISION**



**POLICY AND
OPERATING PROCEDURE**

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SUBJECT: SUPERVISION OF OFFENDERS ADMITTED TO MENTAL HOSPITALS OR TEXAS HEALTH AND HUMAN SERVICES COMMISSION (HHSC) STATE INSTITUTIONS, AND NURSING HOME PLACEMENT

AUTHORITY: TEXAS CODE OF CRIMINAL PROCEDURE CHAPTERS 46.03 and 46 B; TEXAS HEALTH & SAFETY CODE CHAPTERS 574 and 614

PURPOSE: The purpose of this policy is to establish procedures regarding the supervision of offenders with mental impairments or Intellectual Development Disorder (IDD) who are confined in a mental hospital or state institution, ensure continuity of treatment and that supervision is maintained upon the offender's return to the community or county jail, and outline the criteria and applicable statutory provisions relating to the treatment of offenders with mental impairments. In addition, this policy establishes procedures for offenders who are elderly, terminally ill, chronically ill or physically handicapped and require placement in nursing homes.

PROCEDURE:

I. OFFICER RESPONSIBILITIES IN THE PLACEMENT OF OFFENDERS IN MENTAL HOSPITALS OR HEALTH AND HUMAN SERVICE COMMISSION (HHSC) STATE INSTITUTIONS

Regular and specialized officers are responsible for continuing to provide supervision to those offenders who are admitted or committed to mental hospitals or state institutions. If an offender is temporarily residing in an institution located outside of the supervising officer's jurisdiction, the case shall not be transferred unless the move exceeds (30) calendar days. A specialized agent officer shall be assigned as a courtesy to complete required contacts, paperwork and documentation in the Offender Information Management System (OIMS). Communication between the supervising and specialized agent officers shall be maintained at least one (1) time per month. Supervision of this potentially high-risk population requires officers to develop special skills and knowledge regarding commitment laws, confidentiality, and interagency treatment planning.

A. Disclosure of Information

1. The supervising officer is responsible for completion of several Disclosure of Information and Waiver of Confidentiality (PMS-33) forms when offenders are hospitalized locally for inpatient mental health services or incarcerated in the county jail pending civil or criminal mental health commitment.
2. TEXAS HEALTH & SAFETY CODE § 614.017 allows identified state agencies, to disclose and receive confidential information relating to a convicted felon without a disclosure of information form if the purpose of the disclosure is to provide continuity of care to elderly offenders and to offenders with mental impairments, IDD, terminal or significant illness, or physical disabilities. The identified state agencies include: Texas Health and Human Services Commission (HHSC), through the Department of State and Health Services (DSHS), which includes Local Mental Health Authorities (LMHA) and the Department of Aging and Disability Services (DADS). Despite this law, allowing disclosure, many treatment providers may require an offender's consent prior to releasing confidential information. Parole officers shall obtain the offender's signature on the PMS-33 to ensure open communication is maintained. However, information shall not be withheld if the offender's signature has not been obtained.
3. Human Immunodeficiency Virus (HIV) confidentiality is further protected by TEXAS HEALTH & SAFETY CODE ANN. § 85.115.
4. The contact and documentation standards contained in this Parole Division policy require an officer to develop an ongoing relationship with clinical staff directly involved with an offender's treatment. Professional rules of confidentiality shall be maintained with treatment providers.
5. Offenders shall sign the PMS-33 containing the name of each facility noted below:
 - a. The local hospital, institution, or treatment facility where the offender is receiving treatment.
 - b. The state hospital, state institution, Veteran's Administration hospital, or any other facility to which the offender may be committed or transferred.
 - c. The local DADS or LMHA.
6. If, prior to signing the PMS-33, an offender is transferred to a facility outside the supervising officer's jurisdiction, the following procedures shall be completed:
 - a. Prepare and submit a Lotus Notes email requesting agent assistance from the District Parole Office (DPO) serving the area where the offender is located.

- b. Attach a PMS-33 to the email, requesting that the offender's signature be obtained on three (3) copies of the form.
- c. The agent officer shall forward two (2) of the fully executed PMS-33 forms to the supervising officer within five (5) business days of the offender's transfer. One (1) PMS-33 form shall be provided to the offender's assigned social worker or treatment team coordinator at the facility where the offender is housed.

B. Case Status and Contact Requirements

The following guidelines address the actions to be taken by officers with regard to admission of an offender to a public or private mental hospital or state institution:

1. Within seven (7) calendar days of being notified, the supervising officer shall establish contact with the offender's assigned social worker or treatment team coordinator via telephone or in person. The officer shall furnish to the offender's assigned social worker or treatment team coordinator a written statement containing the following information: the officer's name, office address and phone number, the offender's name and status within the criminal justice system, and request that the officer be notified immediately in the event of the offender's unauthorized departure or discharge from the facility. The officer shall provide the offender's assigned social worker or treatment team coordinator with one (1) of the original PMS-33 forms authorizing the facility to release confidential information to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).
2. If the offender is hospitalized in a facility, not in the County of Residence (COR) for more than thirty (30) consecutive days, the supervising officer shall submit an E-transmittal for Approved County of Residence (ACOR) change in OIMS. Upon approval of the ACOR transmittal the case shall be transferred to the new district parole office (DPO) through OIMS and a new supervising parole officer shall be assigned.
3. The following contact standards shall be maintained throughout an offender's hospitalization or institutionalization. Contacts shall be updated in OIMS within three (3) business days after contact or within three (3) business days after return to designated headquarters.
 - a. The officer shall complete a minimum of one (1) face-to-face or telephone contact per month with the offender. The officer shall coordinate each contact with facility staff.
 - b. The officer shall complete a minimum of one (1) collateral contact with the offender's social worker or treatment team coordinator per month. This contact may be accomplished in person or via telephone, and it may occur prior to or following the monthly contact with the offender.

- c. The supervising parole officer shall conduct a minimum of one (1) telephone contact with the criminal court every thirty (30) calendar days for offenders committed to a facility as a result of a criminal commitment (incompetent to stand trial). The officer shall ascertain, via this contact, the status of the pending charge(s) to include the court's intention regarding the possibility of dismissing the pending charge(s). Documentation of each of these contacts shall be included in OIMS.
- d. Prior to the offender's discharge or furlough, the officer shall contact the local Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) Human Service Specialist (HSS) workers, DADS or LMHA's continuity of care liaison to confirm the offender's aftercare treatment plan and schedule of appointments. The officer shall provide the liaison with the PMS-33 authorizing the local DADS or LMHA to release confidential information to the TDCJ-PD.
- e. Upon notification of the offender's unauthorized departure from the facility, the officer shall attempt to ascertain the offender's whereabouts and proceed with the revocation process in compliance with PD/POP-4.1.1 *Processing Violations of the Rules and Conditions of Release*.
- f. The officer shall document in OIMS all information regarding the offender's progress, medication and treatment regimen, discharge plans, aftercare appointments, and other relevant data compiled during monthly contacts.

C. Continuity of Treatment and Supervision

Offenders with IDD or mental impairments require consistent supervision by officers who are familiar with the offender's history and current functioning. Effective supervision of this special population shall be coordinated with other agencies and service providers. Continuity of treatment and supervision is essential to offenders with mental impairments who receive treatment in a mental hospital or state institution.

The officer shall adhere to the following guidelines to ensure interagency collaboration and treatment planning:

1. The officer shall share confidential information with service providers in order to provide continuity of care for offenders with special needs. Pursuant to TEXAS HEALTH & SAFETY CODE § 614.017, such disclosure is allowed without the offender's consent.
2. Within 30 days of the offender's discharge, the supervising officer shall request a copy of the official medical records from the treating facility for inclusion in the offender's parole file by sending a fully executed PMS-33 to the facility's medical records department.

Additionally, the officer shall initiate the imposition of appropriate special conditions relative to the offender's ongoing treatment needs (e.g., medication compliance, DADS or LMHA treatment, alcohol abstinence, specialized caseload placement).

3. The supervising officer shall contact the HSS worker assigned and the local DADS or LMHA in person or via telephone a minimum of once a month to verify the offender's compliance with aftercare treatment and document the contact in OIMS.
4. The officer shall support and encourage the offender's participation in the prescribed program of aftercare treatment and shall address treatment resistance or refusal in accordance with PD/POP-4.1.1 *Processing Violations of the Rules and Conditions of Release*.

II. CRIMINAL COMMITMENT, CIVIL COMMITMENT, AND VOLUNTARY ADMISSION TO A MENTAL HOSPITAL OR STATE INSTITUTION

Offenders with mental impairments may be admitted to mental hospitals or state institutions voluntarily or as a result of a criminal or civil commitment.

A. Criminal Commitment

1. Definition

TEXAS CODE OF CRIMINAL PROCEDURE Chapter 46B relates to whether a criminal defendant possesses sufficient mental competency to stand trial with respect to the charged offense(s).

The statute further allows for the commitment to a mental institution of defendants found to be incompetent to stand trial but likely to regain competency in the foreseeable future. This type of commitment is commonly referred to as a criminal commitment.

2. Potential for Release from Custody

The following information is provided to assist officers responsible for supervising offenders who are determined to be incompetent to stand trial but likely to regain competency. Officers shall utilize this information to determine an offender's potential for release from custody while in this process.

- a. All criminal commitments are for a period not to exceed 18 months.
- b. The defendant's criminal charges remain pending during the court-ordered treatment. If the prosecutor chooses to dismiss the charges while the defendant is being treated, the facility shall discharge the defendant when notification of dismissal is received from the court.

- c. If the incompetency is based on IDD, commitment to a maximum-security facility (Vernon State Hospital) of the HHSC system is required.
- d. If the incompetency is based on mental impairments and the pending charge is a misdemeanor, commitment to the HHSC facility (one of the 10 state hospitals or state centers) designated to serve the area in which the court is located is required.
- e. If the incompetency is based on mental impairments and the pending charge is a felony, commitment to an HHSC system maximum-security facility (Vernon State Hospital) is required.
- f. The facility providing treatment shall furnish a progress report to the court at least every 90 days.

3. Return to Court

The defendant is always returned to the court for further proceedings when one of the following occurs:

- a. Sufficient competency to stand trial has been attained;
- b. The facility determines there is no substantial probability that competency to stand trial will ever be attained in the foreseeable future;
- c. The 18-month commitment is about to expire. At this point, the court has several alternatives:
 - i. The court may resume criminal proceedings if the defendant is found to have attained competency.
 - ii. The court must either release the defendant or proceed with pending Civil Commitment charges if the defendant is found incompetent to stand trial and the prosecutor has not dismissed the criminal charge(s).
 - iii. The court must either release the defendant or proceed with dismissal of the Civil Commitment charges if the defendant is found to be incompetent to stand trial and the prosecutor has dismissed the criminal charge(s).

B. Civil Commitment

1. Definition

As noted, a civil commitment may be pursued after the issue of competency to stand trial has been appropriately addressed by the criminal court. Civil commitment may also take place following acquittal by reason of insanity.

The TEXAS HEALTH AND SAFETY CODE Chapter 574 (commonly referred to as the Texas Mental Health Code) is the law set forth to provide "access to humane care and treatment for all persons who suffer from severe mental illness." The court with probate jurisdiction in a county resides over matters arising under the Mental Health Code.

2. Criteria for Inpatient or Outpatient Treatment

Most commonly, the civil mental health commitment process is utilized to allow a court to order an individual to submit to inpatient or outpatient treatment when, as a result of mental illness, the person is:

- a. Likely to cause serious harm to self;
- b. Likely to cause serious harm to others;
- c. Likely to continue to suffer severe and abnormal mental, emotional, or physical distress if not treated;
- d. Unable to make a rational and informed decision as to whether to submit to treatment.

Although the Texas Mental Health Code seeks to define clearly the commitment criteria, it is subject to the interpretation of individual judges, physicians, attorneys, and peace officers. As a result, the application of the Mental Health Code may vary dramatically in different counties.

3. Types of Inpatient Commitments

The Texas Mental Health Code contains provisions for two (2) types of inpatient commitments, as outlined below:

- a. Temporary Mental Health Services – not to exceed 90 days
- b. Extended Mental Health Services – not to exceed 12 months. (The individual shall have received inpatient court-ordered services for at least 60 consecutive days during the previous 12 months and the condition described must be expected to continue for more than 90 days.)

4. Facility Release

An offender may be discharged or furloughed from a facility prior to the expiration of the court-ordered commitment. Discharge effectively terminates the court order for mental health services. Furlough from a facility is a status similar to parole. Generally, a furlough is for a specific length of time (usually 30 days) and contains provisions regarding compliance with aftercare treatment. The furlough may be revoked by the facility if the individual does not comply with outpatient treatment.

C. Voluntary Admission

1. Admission Criteria

Some facilities have an internal policy restricting the acceptance of involuntary patients. An offender may be admitted voluntarily to a public or private institution as long as the facility staff determines the following conditions are met:

- a. The offender will benefit from services;
- b. The offender is likely to be mentally ill;
- c. A bed is available.

Occasionally, a state hospital will continue to provide inpatient treatment to an offender after the expiration of the offender's commitment for temporary mental health services. This treatment would also be considered voluntary.

2. Discharge

Once a patient formally requests release, the hospital or institution has 96 hours (four days) to affect the release or to begin the process of seeking court-ordered mental health services. Other facilities may be reluctant to initiate mental health commitment proceedings when a voluntary patient requests a discharge. Consequently, a voluntary patient who persists in requesting discharge may be discharged by the facility. This type of discharge is often classified as "against medical advice."

III. NURSING HOME PLACEMENT

- A. Offenders on parole or mandatory supervision who are in need of skilled nursing care may be placed in a nursing home upon release from the TDCJ-Correctional Institutions Division (TDCJ-CID), Intermediate Sanction Facility (ISF), Substance Abuse Felony Punishment Facility (SAFPF), or from the field if medical eligibility requirements are met.

1. TDCJ-CID placement

- a. The Huntsville Placement & Release Unit (HPRU)-Huntsville notifies the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) Program Specialist, Huntsville, of offenders eligible for parole or mandatory supervision who may be in need of a nursing home placement. TCOOMMI coordinates determination of medical eligibility with the nursing home.
- b. If the offender is determined to be medically eligible for nursing home placement, TCOOMMI (Huntsville) notifies the HPRU, Review & Release Processing-Huntsville, and the district parole office (DPO) where the offender will be reporting.
- c. TCOOMMI arranges transportation for the offender to the nursing home and advises the local DPO of the release date and transportation arrangements.
- d. Offenders released on Medically Recommended Intensive Supervision (MRIS) who need skilled nursing care are placed at an approved nursing home.
- e. The offender shall be placed on the Special Needs Offender Program (SNOP) caseload and the SNOP officer shall complete a PMS-33 for the offender to sign.

2. ISF or SAFPF Placement

- a. In the event that an offender in need of skilled nursing care is scheduled for release from ISF or SAFPF, Central Coordination Unit (CCU) is responsible for placing that offender in a nursing home. CCU shall contact TCOOMMI (Austin) to initiate the process of determining medical eligibility for placement in a nursing home.
- b. If eligibility has been determined for placement in a nursing home, TDCJ-PD is responsible for transportation arrangements once the offender is placed. Transportation arrangements include the following: the parole officer shall contact the offender's family/sponsor and the receiving nursing home in an attempt to coordinate transportation. If transportation cannot be coordinated, TDCJ-PD is responsible for the transportation arrangements, to include expenses. TCOOMMI (Austin) shall provide technical assistance when necessary.
- c. The offender shall be placed on the SNOP caseload and the SNOP officer shall complete a PMS-33 and obtain offender's signature.

3. Field Placement

- a. The following procedures shall occur prior to an offender being placed in a DADS approved nursing home facility:
 - i. The parole officer submits an interoffice memorandum by fax or email to TCOOMMI (Austin) which shall include medical diagnosis and any available medical records to be utilized in determining nursing home eligibility. If nursing home eligibility is determined, TCOOMMI (Austin) shall initiate the placement at the nursing home. If the offender is determined to be ineligible for nursing home placement, the parole officer shall submit a Halfway House Placement request (RRC-10) to the HPRU, according to established TDCJ-PD procedures, if necessary.
 - ii. TCOOMMI (Austin) shall notify the supervising parole officer of the nursing home placement. The supervising officer shall utilize the transfer process, if applicable, according to TDCJ-PD procedures. Transportation arrangements include the following: the parole officer shall attempt contact with the offender's family/sponsor and the receiving nursing home in an attempt to coordinate transportation.

If transportation cannot be coordinated, TDCJ-PD is responsible for the transportation arrangements, to include expenses. TCOOMMI (Austin) shall provide technical assistance when necessary.
 - iii. The offender shall be placed on the SNOP caseload and the SNOP officer shall complete a PMS-33 and obtain offender signature.
- b. Offender's Termination Notice (30 day notice)
 - i. The behavior of the offender may result in the offender receiving a (30) day termination notice. The parole officer and unit supervisor shall contact the nursing home administration and the offender, within 2 business days, upon receipt of the notification, to verify whether or not additional interventions with the offender can rectify the problem.
 - ii. If the nursing home administration maintains the offender termination from the nursing home, TCOOMMI (Austin) will assist in obtaining alternative nursing home placement.
 - iii. TCOOMMI (Austin) shall notify the supervising officer of the nursing home placement. The officer shall utilize the transfer process, if applicable, according to TDCJ-PD procedures.

Transportation arrangements include the following: the parole officer shall attempt contact with the offender's family/sponsor and the receiving nursing home in an attempt to coordinate transportation. If transportation cannot be coordinated, TDCJ-PD is responsible for the transportation arrangements, to include expenses. TCOOMMI (Austin) shall provide technical assistance when necessary.

B. RELEASE FROM THE NURSING HOME

1. If the offender is to be transferred to another nursing home at the offender or the offender's family/sponsor request, the offender or his family/sponsor shall be responsible for finding a satisfactory alternative placement for the offender and coordinating communication between the involved facilities. TCOOMMI (Austin) will provide technical assistance to the family/sponsor.
2. If the offender is to be transferred to a home placement, it is the responsibility of the offender or the offender's family/sponsor to inform the parole officer of the proposed home plan and what medical care has been arranged.
3. Upon receipt of the proposed placement plan, the parole officer shall initiate the transfer process in accordance with PD/POP-3.2.17 Transfer Investigation.
 - a. Once the transfer is approved, it is the responsibility of the offender or his family/sponsor to arrange transportation to the new facility or home placement.
 - b. The parole officer shall transfer the case file to the receiving officer according to established Parole Division procedures and shall notify TCOOMMI (Austin) of the transfer and new placement plan.
 - c. TCOOMMI (Austin) shall notify contract staff of the new placement plan.

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