

**TEXAS FAMILY CODE CHAPTER 55:
MENTAL HEALTH PROCEEDINGS**

**A Practical Guide to Navigating Fitness To Proceed and Lack of
Responsibility because of Mental Illness Or Mental Retardation In the
Juvenile Delinquency System**

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CHAPTER 7

Speaker's Background:

Bill Cox grew up in Dallas, and received his Bachelor's Degree the University of Texas at Austin. He received his law degree from Saint Mary's University School of Law, and he has been a member of the El Paso County Public Defender's Office since 1995. He has handled juvenile cases during much of that time. He is currently the Division Chief overseeing the Juvenile, Mental Health, Child Support and Child Protective Service Units. He is a Fellow of the College of the State Bar of Texas, and also serves on the Juvenile Mental Health Diversion Committee. Bill is also a frequent speaker on juvenile mental health and mental retardation issues.

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TEXAS FAMILY CODE CHAPTER 55: MENTAL HEALTH PROCEEDINGS

A Practical Guide to Navigating Fitness To Proceed and Lack of Responsibility because of Mental Illness Or Mental Retardation In the Juvenile Delinquency System

INTRODUCTION TO JUVENILE MENTAL ILLNESS

Before any discussion of the issues involved with juvenile fitness to proceed or lack of responsibility, this paper would be remiss not to provide some context about the presence of mental illness among young people in the juvenile delinquency system. Estimates from the National Alliance on Mental Illness (NAMI) identify seventy percent of the children in the juvenile system with at least one mental health disorder and twenty percent with significant disabilities due a serious mental illness. While only a small portion of these youth's impairments rise to the level of preventing fitness to stand trial or establishing lack of responsibility, the presence of mental health issues in nearly three-quarters of the youth we serve illustrates how significant mental health issues are in the Juvenile Justice System.

The effects of mental illness and mental retardation on youth are further compounded by the fact that mental illness and/or mental retardation proceedings are one of the most infrequent and least understood areas of juvenile law. Before beginning mental health proceedings, counsel must be familiar with the terminology and issues of Chapter 55.

Mental Illness

An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that: (a) substantially impairs a person's thought, perception of reality, emotional process, or judgement; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior. Tex. Health & Safety Code § 571.003(14)(West).

Mental Retardation

Significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. Tex. Health & Safety Code § 591.003(7)(West).

Practice Tip: By definition all juvenile are “in their developmental period” (under age 18), and as such, diagnosis as having a pervasive developmental disorder in psychological/psychiatric reports probably qualifies as mentally retarded.

While the terms mental illness and mental retardation provide general parameters for the basic issues addressed by Chapter 55, there are a number of other terms with which counsel needs to be familiar. The most helpful reference when dealing with mental health is the DSM IV; (the full name is the Diagnostic and Statistical Manual of Mental Disorders, 4th Revision), published by the American Psychiatric Association. While the DSM IV provides descriptions, characteristics, and diagnostic information for the recognized mental disorders, its structure into five different axis is also used as the basis for many mental health diagnoses.

The proceedings for juveniles with mental illness and mental retardation are similar (and in some cases identical), however there are differences, and the two are governed by different sections of Chapter 55 of the Family Code. Because of these differences practitioners who handle both criminal law and juvenile law need to review Chapter 55 prior to handling juvenile mental health matters as there are some significant differences in criminal (adult) and juvenile procedures.

The general descriptions for each axis are:

Axis I

Adjustment Disorders; Anxiety Disorders; Childhood Disorders; Cognitive Disorders; Dissociative Disorders; Eating Disorders; Factitious Disorders; Impulse Control Disorders; Mood Disorders; Psychotic Disorders; Sexual and Gender Identity Disorders; Sleep Disorders; Somatoform Disorders; Substance-Related Disorders

Axis II

Personality Disorders | Mental Retardation

Axis III

General Medical Conditions

Axis IV

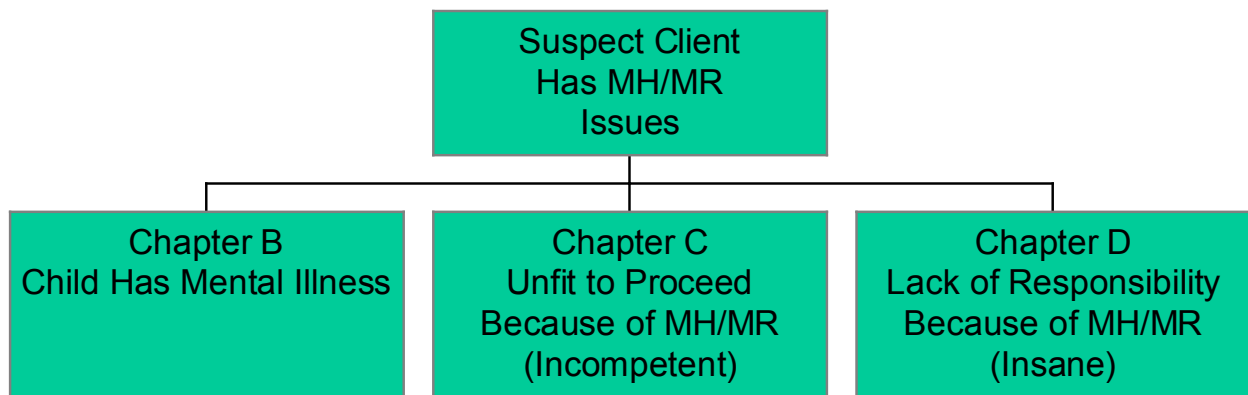
Psychosocial and Environmental Stressors

Axis V

Global Assessment of Functioning

In addition to the authority contained in Chapter 55 of the Family Code, Title 7 of the Texas Health and Safety Code (Subtitles C and D) also governs juvenile mental illness/mental retardation proceedings.

Once counsel has determined that a Chapter 55 issue or issues is present, there are three options:



While proceedings under Chapter B and C are similar, both focused on the present mental state of the juvenile, Chapter D examines the mental state of the juvenile at the time of the alleged offense. The remainder of this paper is divided into three sections, one for each of the three above chapters to provide a step-by-step guide for practitioners.

**CHILD WITH MENTAL ILLNESS
CHAPTER 55 - CHAPTER B
(§ 55.11 THROUGH § 55.19)**

Proceedings under Chapter 55 Chapter B are relatively unique. While proceedings under Chapters C and D have similar versions in criminal law (competency and insanity respectively), there is not a similar provision for Chapter B. All that is required to proceed under Chapter B is that the child has a mental illness and meets the commitment criteria of the Texas Health and Safety Code, Title 7, Subchapter C.

There is no requirement that the child be unfit to proceed or lack responsibility because of mental illness/mental retardation.

When the issue of mental illness is raised by a party (either prosecution or defense), the juvenile court determines if there is probable cause to believe the child has mental illness.¹ The probable cause determination may be based on the motion raising the issue, any supporting documents, counsel's statements, witness testimony, and the Court's observations of the child.² If probable cause is found, then proceedings are stayed and an examination is ordered under § 51.20 which must include the expert's opinion on whether the child has a mental illness and if the child meets Title 7, Subchapter C commitment criteria.³ Note that examination is controlled by a section of Chapter 51 of the family code dealing with Physical or Mental Examinations. In addition to the required elements of the examination, the court can also order the report include an opinion on the child's fitness to proceed.⁴

Examinations require a disinterested expert to perform the examination. Note than an expert can include:

- Physician;
- Psychiatrist; or
- Psychologist

However the expert must also be qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation to determine whether the child has a mental illness. Further if fitness to proceed is part of the ordered examination the requirements of Chapter 46B of the Code of Criminal Procedure must also be met.⁵ If, after the examination, there is reason to believe that child has a mental illness, then the probation department is required to refer the child to the local MH/MR authority for evaluation and services, unless the petition has already been filed.⁶

After the evaluation report is received, if the juvenile court determines there is evidence of mental illness and the child meets commitment criteria, commitment proceedings are begun,⁷ otherwise the stay is dissolved, and the case proceeds normally.⁸

With commitment proceedings the juvenile court may either hear the case itself pursuant to § 55.13 or refer the case to an appropriate court under § 55.14.⁹

Proceeding in front of the juvenile court either party may file an application for court-ordered mental health services AKA commitment.

- Hearing is governed by the Health and Safety Code;
- Burden of proof is on the moving party
- Court appoints physicians to complete certificates of medical examination for mental illness.¹⁰

¹ Tex. Family Code Chapter 55, § 55.11 (a).

² Tex. Family Code Chapter 55, § 55.11 (a) (1)-(2).

³ Tex. Family Code Chapter 55, § 55.11 (b).

⁴ Tex. Family Code Chapter 55, § 55.11 (b)

⁵ Tex. Family Code Chapter 51, § 51.20 (a)

⁶ Tex. Family Code Chapter 51, § 51.20 (b)

⁷ Tex. Family Code § 55.11 (c) (1)

⁸ Tex. Family Code § 55.11 (c) (2)

⁹ Tex. Family Code § 55.12

Again, the Health and Safety Code determines how the case proceeds, § 574.034 defines the requirements for temporary mental health services, and § 574.035 lists those for extended mental health services.¹¹

If the juvenile court refers the commitment proceedings, then the filings on the child's mental illness are sent to the clerk of the receiving office (these documents constitute an application for mental health services) as well as to the receiving prosecuting office. If the child is detained, then the child must be released from detention, transferred to an appropriate place, or kept in detention if no appropriate place is available.¹² If the case is referred to another court, that court is required to notify the juvenile court in writing if temporary or extended mental health services are ordered.¹³ Similarly, the court receiving the referral is required to notify the juvenile court if services are not ordered.¹⁴

After commitment, the Health and Safety Code governs care, treatment, and release, except for the following:¹⁵

- Orders for services expire 120 days after child's 18th Birthday¹⁶
- At least 10 days before discharge, facility administrator must notify committing court by certified mail of intent to discharge.¹⁷

The juvenile court is required to stay the proceedings if a child is ordered to receive either temporary or extended mental health services.¹⁸ If the child not ordered to receive either type of mental health services, then the stay is lifted, and the juvenile case proceeds.¹⁹

If a child is released from treatment before turning 18, the court can dismiss the case, or lift the stay and proceed with the case.²⁰

If the child:

- Has not been adjudicated;
- Has a determinate sentencing charge
- Is still committed on 18th birthday
- Case is transferred to adult court, for proceedings under Chapter 46B of the Code of Criminal Procedure
- If competency is regained as an adult, punishment is limited to maximum possible as a juvenile

¹⁰ Tex. Family Code § 55.13 (a) - (c)

¹¹ Tex. Family Code § 55.13 (d)

¹² Tex. Family Code § 55.14

¹³ Tex. Family Code § 55.16 (a)

¹⁴ Tex. Family Code § 55.17(a)

¹⁵ Tex. Family Code § 55.15

¹⁶ Tex. Family Code § 55.15 (1)

¹⁷ Tex. Family Code § 55.15 (2)

¹⁸ Tex. Family Code § 55.16 (b)

¹⁹ Tex. Family Code § 55.17 (b)

²⁰ Tex. Family Code § 55.18

**CHILD UNFIT TO PROCEED
CHAPTER 55 - CHAPTER C
(§ 55.31 THROUGH § 55.45)**

Note:

- This chapter deals with unfitness (incompetence) because of both mental illness and mental retardation.
- Raising fitness issues does not bar legal objections to juvenile court proceedings if they do not require the child's personal participation.²¹
- Like the issues in Chapter B, Unfitness to proceed is raised and ruled upon pre-adjudication.

A child who cannot assist in his/her own defense and/or who doesn't understand the proceedings against him/her shall not be tried, certified, or modified. Either party may raise the issue of fitness to proceed, triggering a probable cause evaluation by the court. In evaluating whether there is probable cause the court may consider the motion, supporting documents, statements of counsel, witness testimony, and its observations of the juvenile. If probable cause is found, the proceedings are stayed, and an examination is ordered pursuant to § 51.20. The examination must include expert opinion on unfitness to proceed as the result of mental illness/mental retardation.²²

Examinations require a disinterested expert to perform the examination. Note than an expert can include:

- Physician;
- Psychiatrist; or
- Psychologist

However the expert must also be qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation to determine whether the child has a mental illness. Further if fitness to proceed is part of the ordered examination the requirements of Chapter 46B of the Code of Criminal Procedure must also be met.²³ If, after the examination, there is reason to believe that child has a mental illness, then the probation department is required to refer the child to the local MH/MR authority for evaluation and services, unless the petition has already been filed.²⁴

After the examination reports are received and juvenile court determines evidence exists to support unfitness, a hearing is held under § 55.32, otherwise the stay is lifted and juvenile proceedings continue.²⁵

The Fitness Hearing:

- Issue of unfitness to proceed because of mental illness or mental retardation is decided at a separate hearing.²⁶
- Issue decided at bench hearing unless juvenile request jury at least 10 days before hearing;²⁷
- Standard is preponderance of the evidence.²⁸

²¹ Tex. Family Code § 55.32 (g)

²² Tex. Family Code § 55.31 (a) - (c)

²³ Tex. Family Code Chapter 51, § 51.20 (a)

²⁴ Tex. Family Code Chapter 51, § 51.20 (b)

²⁵ Tex. Family Code Chapter 55, § 55.31

²⁶ Tex. Family Code Chapter 55, § 55.32 (b)

²⁷ Tex. Family Code Chapter 55, § 55.32 (c)

If the child is found to be fit to proceed, the stay is lifted,²⁹ if found unfit, proceedings continue to be stayed and proceedings are held pursuant to § 55.33.³⁰

Regardless of whether the unfitness is due to mental illness or mental retardation, a commitment for up to 90 days is required.³¹ If the unfitness stems from mental illness there are three placement options:

- Placement with the Texas Department of Mental Health and Mental Retardation³²
- In a private psychiatric inpatient facility³³
 - On application of parent or guardian
 - Facility administrator must agree in writing
- An outpatient setting if the court finds it suitable³⁴

If the unfitness stems from mental retardation, then only placement with Texas Department of MH/MR or a private inpatient facility is available.³⁵

Note: If funds are specifically budgeted for it, the government can be ordered to pay the costs of placement in a private psychiatric facility.³⁶

Orders from the court are required to transport the juvenile to and from inpatient treatment facilities. The default is for the probation department or sheriff to provide transportation, however if the child is not picked up by either by the 11th day after court's order for the child's return, then the facility is required to transport the child at the County's expense.³⁷

As part of the commitment ordered under § 55.34, the court is required to order the probation department to send copies of all relevant information in its possession to the treatment provider.³⁸

The facility's report is due to the court by the 75th day after the commitment order, and must describe the treatment provided, and the facility director's opinion of the child's competency.³⁹ The court then provides a copy of the report to prosecution and defense counsel.⁴⁰ **If the report indicates the child to be fit to proceed, the court is required to find the child fit, unless defense counsel objects in open court or files a written objection by the 2nd day after receiving a copy of the report.**⁴¹ If a written objection is made,

²⁸ Tex. Family Code, § 55.32 (d)

²⁹ Tex. Family Code, § 55.32 (e)

³⁰ Tex. Family Code § 55.32 (f)

³¹ Tex. Family Code § 55.33

³² Tex. Family Code § 55.33 (a) (1) (A)

³³ Tex. Family Code § 55.33 (a) (1) (B)

³⁴ Tex. Family Code § 55.33 (a) (2)

³⁵ Tex. Family Code § 55.33 (a) (1) - (2)

³⁶ Tex. Family Code § 55.33(b)

³⁷ Tex. Family Code § 55.34

³⁸ Tex. Family Code § 55.35 (a)

³⁹ Tex. Family Code § 55.35 (b)

⁴⁰ Tex. Family Code § 55.35 (c)

⁴¹ Tex. Family Code § 55.36 (a)

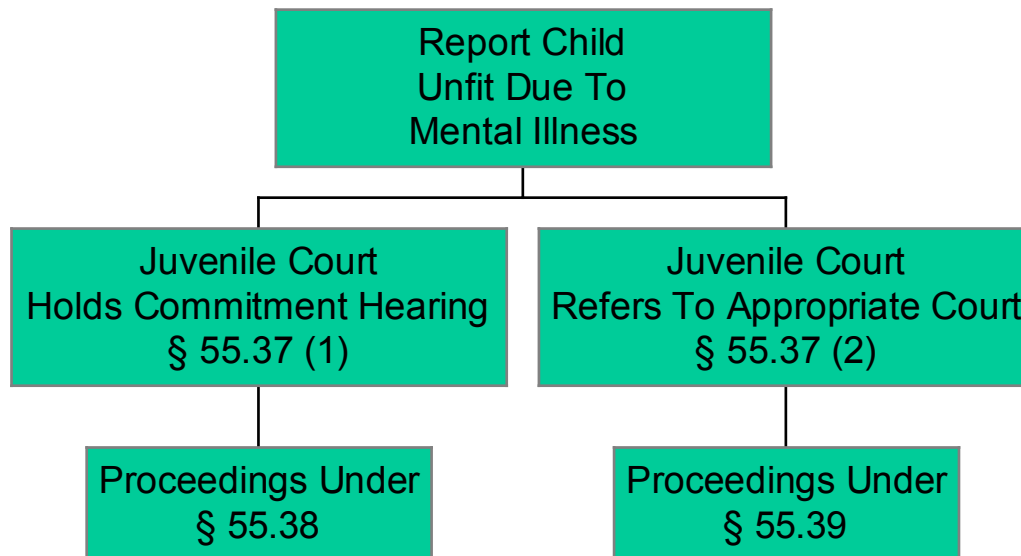
a fitness hearing must be held, again this is a bench hearing unless a jury is requested.⁴² If the child is found fit to proceed, the stay is lifted and proceedings continue normally;⁴³ if the child is found unfit a commitment hearing must be held.⁴⁴

Commitment Proceedings:

Note:

At this point the procedures for commitment because of mental illness and mental retardation become separate: §§55.37 through 55.39 govern mental illness while §§ 55.40 through 55.42 apply to mental retardation.

Mental Illness Commitments



If the child is unfit to proceed because of mental illness, and meets the commitment requirements of Chapter 574 of the Health and Safety Code, the court may either hold a commitment hearing or refer the matter to an appropriate court.⁴⁵

For proceedings in juvenile court, the prosecutor files the application for mental health services under the Health and Safety Code (Chapter 574.001). Based on the evidence presented, the court orders either temporary or extended mental health services.⁴⁶

If the case is being referred, then the documentation is forwarded to the receiving court and prosecuting office. The child may be released to home detention, transferred to an appropriate placement, or kept in detention.⁴⁷

⁴² Tex. Family Code § 55.36 (b)

⁴³ Tex. Family Code § 55.36 (c)

⁴⁴ Tex. Family Code § 55.36 (d)

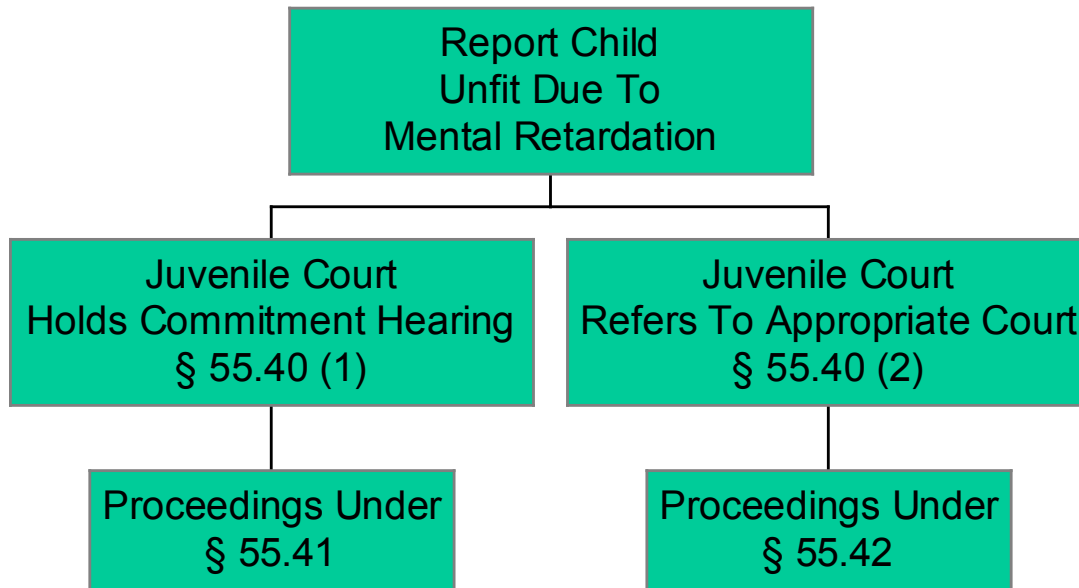
⁴⁵ Tex. Family Code § 55.37

⁴⁶ Tex. Family Code § 55.38

⁴⁷ Tex. Family Code § 55.39

The standard of care and treatment is defined by Subtitle C, Title 7 of the Health and Safety Code, with the exception of requiring notice by certified mail from the facility administrator to the committing court 10 days before the juvenile is released.⁴⁸

Mental Retardation Commitments



The procedures for mental retardation are very similar to mental illness, however they are controlled by a different chapter of the Health and Safety Code. If the child is unfit to proceed because of mental retardation, and meets the commitment requirements of Chapter 593 of the Health and Safety Code, the court may either hold a commitment hearing or refer the matter to an appropriate court.⁴⁹

For proceedings in juvenile court, the prosecutor files the application for mental health services under the Health and Safety Code (Chapter 593.041). Based on the evidence presented the court orders commitment to a residential care facility if 593.052 of the Health and Safety Code is met.⁵⁰ The Texas Department of Mental Health and Mental Retardation or other community center is required to accept the juvenile if placement is ordered.⁵¹

If the case is being referred, then the documentation is forwarded to the receiving court and prosecuting office. The child may be released to home detention, transferred to an appropriate placement, or kept in detention.⁵²

The standard of care and treatment is defined by Subtitle C, Title 7 of the Health and Safety Code, with the exception of requiring notice by certified mail from the facility administrator to the committing court 10 days before the juvenile is released.⁵³

⁴⁸ Tex. Family Code § 55.45 (a)

⁴⁹ Tex. Family Code § 55.40

⁵⁰ Tex. Family Code § 55.41

⁵¹ Tex. Family Code § 55.41 (c)

⁵² Tex. Family Code § 55.42

⁵³ Tex. Family Code § 55.45 (b) requires that the facility administration request authorization for any action which will release the child from the facility for a period over 48 hours if the underlying offense is listed in Article 42.12 (3)(g) of the Code of Criminal Procedure. The request must show good cause for the release, and must be sent to the state as well. The state can

Restoration of Fitness:

The prosecutor may move for a restoration hearing if:⁵⁴

- The child is found unfit and
 - The child is not ordered to receive inpatient services
 - The child is not committed to residential treatment
 - The child is not ordered into outpatient services
- The child is released from the above before his/her 18th birthday

The hearing is a to the court (no jury);⁵⁵ the burden is on the movant (usually the State) by a preponderance of the evidence.⁵⁶ If the motion is successful, the stay is dissolved, otherwise the motion is dismissed.⁵⁷

If the child is charged with a determinate sentencing offense and is still committed on his/her 18th birthday, the juvenile court is required to transfer the case to district court for proceedings under Chapter 46B of the Code of Criminal Procedure.⁵⁸

**CHILD LACKS RESPONSIBILITY FOR CONDUCT
CHAPTER 55 - CHAPTER D
(§ 55.51 THROUGH § 55.61)**

Note:

- This chapter deals with both lack of responsibility (insanity) because of both mental illness and mental retardation.
- Unlike child with mental illness and unfitness to proceed, lack of responsibility is a defensive issue presented to the judge or jury at the adjudication hearing.⁵⁹

If the child lacks substantial capacity to either appreciate the wrongfulness of his/her conduct or to confirm his/her conduct to the requirements of the law, he/she is no legally responsible for his/her conduct.⁶⁰

Either party may raise the issue of lack of insanity before the Court; once the issue is raised an examination is ordered under 51.20 which must include the expert's opinion as to whether the child lacks responsibility because of mental illness or mental retardation.⁶¹

Examinations require a disinterested expert to perform the examination. Note than an expert can include:

request a hearing on the application; at which the rules of evidence do not apply, from which there is no right to appeal. If there is no request for a hearing, the trial court rules on the application.

⁵⁴ Tex. Family Code § 55.43 requires the notice to the court of both releases or any furlough from the treatment facility.

⁵⁵ Tex. Family Code § 55.43 (c)

⁵⁶ Tex. Family Code § 55.43 (d)

⁵⁷ Tex. Family Code § 55.43 (e) - (f)

⁵⁸ Tex. Family Code § 55.44 states that the prosecutor can request a fitness hearing unless the child has been discharged from the treatment facility or has been released on furlough.

⁵⁹ Tex. Family Code § 55.51 (c)

⁶⁰ Tex. Family Code § 55.51 (a); Note according to *W.D.A. v. State* 835 S.W.2d 277 (Tex. App. – Waco, 1992, no writ), the Family Code definition of insanity is used; not the Penal Code definition.

⁶¹ Tex. Family Code, § 55.51 (b)

- Physician;
- Psychiatrist; or
- Psychologist

However the expert must also be qualified by education and clinical training in mental health or mental retardation and experienced in forensic evaluation to determine whether the child has a mental illness.⁶²

At the adjudication hearing, lack of responsibility must be proven by a preponderance of the evidence,⁶³ and a special issue must be submitted in the charge regarding whether the child lacks responsibility and indicate whether it is due to mental illness or mental retardation.⁶⁴ A finding of lack of responsibility bars any further proceedings against the child for the charges, other than the commitment process.⁶⁵

After a finding of lack of responsibility, the court is required to order the child be evaluated, regardless of whether the unfitness is due to mental illness or mental retardation.⁶⁶ If the unfitness stems from mental illness there are three placement options:

- Placement with the Texas Department of Mental Health and Mental Retardation⁶⁷
- In a private psychiatric inpatient facility⁶⁸
 - On application of parent or guardian
 - Facility administrator must agree in writing
- An outpatient setting if the court finds it suitable⁶⁹

If the unfitness stems from mental retardation, then only placement with Texas Department of MH/MR or a private inpatient facility is available.⁷⁰

Note: If funds are specifically budgeted for it, the government can be ordered to pay the costs of placement in a private psychiatric facility.⁷¹

Orders from the court are required to transport the juvenile to and from inpatient treatment facilities. The default is for the probation department or sheriff to provide transportation, however if the child is not picked up by either by the 11th day after court's order for the child's return, then the facility is required to transport the child at the County's expense.⁷² As part of the commitment ordered under § 55.34, the court is required to order the probation department to send copies of all relevant information in its possession to the treatment provider.⁷³

⁶² Tex. Family Code Chapter 51, § 51.20 (a)

⁶³ Tex. Family Code , § 55.51 (d)

⁶⁴ Tex. Family Code, § 55.51 (e)

⁶⁵ Tex. Family Code, § 55.51 (g)

⁶⁶ Tex. Family Code § 55.52

⁶⁷ Tex. Family Code § 55.52 (a) (1) (A)

⁶⁸ Tex. Family Code § 55.52 (a) (1) (B)

⁶⁹ Tex. Family Code § 55.52 (a) (2)

⁷⁰ Tex. Family Code § 55.52 (a) (1) - (2)

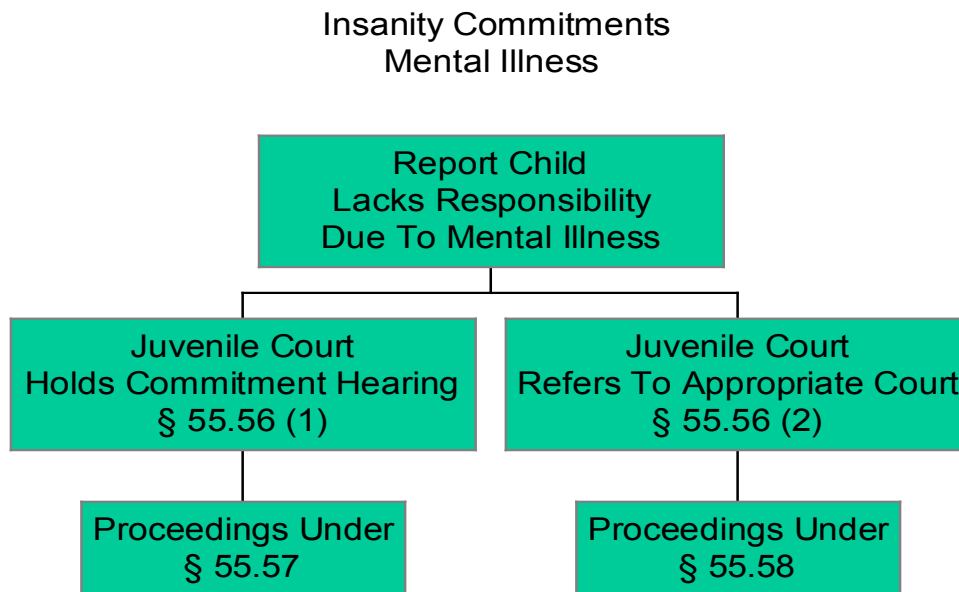
⁷¹ Tex. Family Code § 55.52(b)

⁷² Tex. Family Code § 55.53

⁷³ Tex. Family Code § 55.54 (a)

The facility's report is due to the court by the 75th day after the commitment order, and must describe the treatment provided, and the facility director's opinion of the child is mentally ill or mentally retarded.⁷⁴ The court then provides a copy of the report to prosecution and defense counsel.⁷⁵ If the child does not have a mental illness or mental retardation, the juvenile is released, unless the case involved a determinate sentencing charge and an objection is made by the State within two days of receiving the report.⁷⁶ Should the report indicate the child meets the commitment requirements of the Health and Safety Code, two certificates of medical examination for mental illness (if applicable), must also be forwarded.⁷⁷

If an objection is filed, the state has the burden to prove the juvenile meets the requirements for a civil commitment under Subtitle C or D of the Health and Safety Code Title 7 by clear and convincing evidence and also suffers from mental illness or mental retardation.⁷⁸



The commitment procedure is very similar to that for unfitness and mental illness. If the child is unfit to proceed because of mental illness, and meets the commitment requirements of Chapter 574 of the Health and Safety Code, the court may either hold a commitment hearing or refer the matter to an appropriate court.⁷⁹

For proceedings in juvenile court, the prosecutor may file an application for mental health services under the Health and Safety Code (Chapter 574.001). Based on the evidence presented, the court orders either temporary or extended mental health services.⁸⁰

⁷⁴ Tex. Family Code § 55.54 (b)

⁷⁵ Tex. Family Code § 55.54 (c)

⁷⁶ Tex. Family Code § 55.55 (a)

⁷⁷ Tex. Family Code § 55.56

⁷⁸ Tex. Family Code § 55.55 (a) – (d).

⁷⁹ Tex. Family Code § 55.56

⁸⁰ Tex. Family Code § 55.57

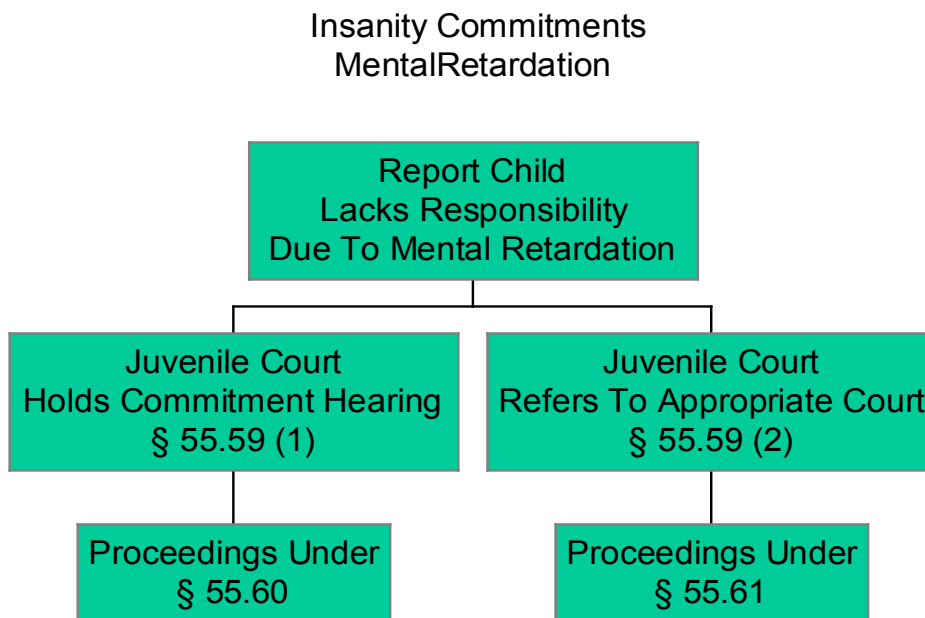
If the case is being referred, then the documentation is forwarded to the receiving court and prosecuting office. The child may be released to home detention, transferred to an appropriate placement, or kept in detention.⁸¹

If the child is unfit to proceed because of mental illness, and meets the commitment requirements of Chapter 574 of the Health and Safety Code, the court may either hold a commitment hearing or refer the matter to an appropriate court.⁸²

For proceedings in juvenile court, the prosecutor files the application for mental health services under the Health and Safety Code (Chapter 574.001). Based on the evidence presented, the court orders either temporary or extended mental health services.⁸³

If the case is being referred, then the documentation is forwarded to the receiving court and prosecuting office. The child may be released to home detention, transferred to an appropriate placement, or kept in detention.⁸⁴

The standard of care and treatment is defined by Subtitle C, Title 7 of the Health and Safety Code, with the exception of requiring notice by certified mail from the facility administrator to the committing court 10 days before the juvenile is released.⁸⁵



The procedures for mental retardation are very similar to mental illness, however they are controlled by a different chapter of the Health and Safety Code. If the child is unfit to proceed because of mental retardation, and meets the commitment requirements of Chapter 593 of the Health and Safety Code, the court may either hold a commitment hearing or refer the matter to an appropriate court.⁸⁶

⁸¹ Tex. Family Code § 55.58

⁸² Tex. Family Code § 55.37

⁸³ Tex. Family Code § 55.38

⁸⁴ Tex. Family Code § 55.39

⁸⁵ Tex. Family Code § 55.45 (a)

⁸⁶ Tex. Family Code § 55.60

For proceedings in juvenile court, the prosecutor files the application for placement under the Health and Safety Code (Chapter 593.041). Based on the evidence presented the court orders commitment to a residential care facility if 593.052 of the Health and Safety Code is met.⁸⁷ The Texas Department of Mental Health and Mental Retardation or other community center is required to accept the juvenile if placement is ordered.⁸⁸

If the case is being referred, then the documentation is forwarded to the receiving court and prosecuting office. The child may be released to home detention, transferred to an appropriate placement, or kept in detention.⁸⁹

CHAPTER 55 ISSUES CHECKLIST

First, is there a Chapter 55 Issue?

(AKA Can you talk to the client and does he/she understand what is going on?)

If there appears to be an issue consider the following questions:

Part I -- (Short screening test)

Can you have a coherent conversation with your client? Yes / No

Does the Client understand the charges? Yes / No

Does the Client understand the role of the prosecutor? Yes / No

Does the Client understand the role of the judge? Yes/ No

Does the Client understand your role (Defense Attorney)?

If the answer to any of the above is "No", you may need to go through the full screening questions in Part II.

Part II -- (Full screening)

Mental Health History:

Is there a history of mental health/mental retardation issues?

If so, is it a mental health history, mental retardation history or both.

What if any treatment(s) has the client received?

(i.e. who were the treating physicians, social workers, threapists, etc; what medications have been prescribed, has the client been hospitalized for treatment or sent to a residential treatment center (RTC))

⁸⁷ Tex. Family Code § 55.60 (b)

⁸⁸ Tex. Family Code § 55.60 (c)

⁸⁹ Tex. Family Code § 55.61

School History:

Has the client had an ARDs (Admission, Review, and Dismissal hearings)?

Is he/she in special education classes, if so which subjects?

Be sure to get all of the client's school records-- this will probably require 2 or 3 subpoenas, one for academic records including achievement tests, one for counseling records, and a third for disciplinary records.

Parental Questions:

How well does the client understand concepts/assignments?

NOTE: If the answer is that he/she gets it, you just have to tell him or her 3-4 times, this may indicate an issue of fitness to proceed.

Is there a history of inhalant abuse?

Is there anything of concern in client's developmental history, any accidents with head trauma, any illnesses with high fever, loss of conscientiousness, etc.?

Detailed Conversation With Client:

When talking to a client, be sure to test not only how client responds to individual questions and legal concepts, but also client's short term memory. For many clients, it will be clear as part of a regular interview, that the juvenile understands the charges against him or her and is able to discuss the charges with you and to prepare a defense. For others, it may be less clear and will require specific probing questions to be sure fitness to proceed is assessed, this is especially true with juveniles who have had prior contact with the mental health system. With an individual who has had prior mental health treatment, especially treatment including competency restoration, practitioners need to ask the child to explain the role of a judge, prosecutor, lawyer in their own words. Often those who have been through competency restoration treatments, will repeat the textbook definition of an attorney, judge, etc., however they may have no understanding of what the words in the memorized definition actually mean.

Practice Tip: The amount of time necessary to test a client's short term memory will vary with the client and the nature of his or her issues. In some cases, the damage, especially from inhalant abuse will be so profound that a period of 5 minutes is enough, for other clients short term memory deficits may only appear after the passage of 30 minutes or more. It is important to identify the amount of time at which short term memory deficits appear to provide the mental health professionals insight into those issues so that can be adequately addressed during the evaluation and in the professionals' reports to the court.

This checklist's purpose is to help Juvenile Law Practitioners to determine if there may be issues with a child's mental health or developmental level (mental retardation) which need to be evaluated by a mental health professional. It is not intended to replace an evaluation by a qualified mental health professional if there are any concerns regarding whether a child is fit to proceed.