

## **BILL ANALYSIS**

S.B. 465  
By: West, Royce  
Human Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Current law in Texas, in contravention of United States Supreme Court rulings, requires no hearing before a person who is found incompetent to stand trial or not guilty by reason of insanity can be medicated against his or her will while detained in a mental health facility. The Department of State Health Services has attempted to come into compliance with Supreme Court dictates and has amended its rules, but currently there is no statutory support for these regulatory changes.

Current Texas law may also violate the Equal Protection Clause of the United States Constitution. A pretrial detainee found incompetent to stand trial and, once restored to competency, awaiting trial in a jail can only be medicated against his or her will after a court holds a hearing and determines by clear and convincing evidence that certain factors have been met. Additionally, people civilly committed to a state mental health and mental retardation facility can only be medicated against their will after a court holds a hearing and determines by clear and convincing evidence that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the patient.

Unlike a pretrial detainee restored to competency and returned to jail or a person facing no criminal charges that has been committed to a psychiatric hospital, a person criminally committed to a state hospital can be medicated without any of the constitutionally required judicial findings.

As proposed, S.B. 465 ensures that Texas law is consistent with recent United States Constitutional law.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

The bill amends Section 574.102, Health and Safety Code, to make Subchapter G of Chapter 574, Health and Safety Code (ADMINISTRATION OF MEDICATION TO PATIENT UNDER ORDER FOR INPATIENT MENTAL HEALTH SERVICES), applicable to a person who is committed to a mental health facility under Chapter 574 or under other law.

The bill permits a physician on behalf of the State to file an application with the probate court or court with probate jurisdiction for an order to authorize involuntary administration of psychoactive medications to persons ordered to receive inpatient mental health services under Chapter 574, Health and Safety Code, or other law, provided that certain determinations are made by the physician and certain other criteria are satisfied.

The bill requires that an application for the administration of involuntary psychoactive medication must state whether a court order for inpatient mental health services has been issued and, if so, under what authority.

The bill requires that an application for court-ordered medications include the proposed method for administering the medications and an explanation justifying the departure from customary methods if the method of administration is not customary.

The bill authorizes a court to issue an order for the administration of a psychoactive medication to a patient who is under court order to receive inpatient mental health services or who is in

custody awaiting a criminal trial and was ordered to receive inpatient mental health services in the six months preceding the hearing; provided that the court makes certain findings by clear and convincing evidence after the hearing.

The bill provides that, if the patient was ordered to receive inpatient mental health services by a criminal court, the court must find that the patient presents a danger to the patient or others in the mental health facility as a result of a mental disorder or mental defect, and that treatment with psychoactive medication is in the best interest of the patient, before a court may order administration of psychoactive medications.

The bill adds additional criteria to be considered by the court when determining if the proposed medication is in the best interest of the patient, including whether there are alternative, less intrusive treatments that would likely produce the same results as the proposed medication, and whether there are less intrusive treatments that would secure the patient's agreement to take the medication.

The bill provides that Section 574.106, Health and Safety Code, does not apply to patient who receives services under an order of protective custody under Section 574.021, Health and Safety Code.

The bill sets forth criteria that must be considered by the court in determining whether a patient presents a danger to the patient or others in the inpatient mental health facility.

The bill provides that an order issued under Section 574.106, Health and Safety Code, for a patient awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, convicted, enters a guilty plea, or the charges are dismissed, and further provides that the issuing court must review every six months an order that is continued.

The bill authorizes the administration of psychoactive medications to a patient receiving voluntary or involuntary mental health services who refuses administration if the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

The bill strikes certain other provisions of law relating to orders authorizing the administration of medication.

The bill amends Article 46B.086, Code of Criminal Procedure, to apply to a defendant who is determined under that Chapter of the Code of Criminal Procedure to be incompetent to stand trial, who has a continuity of care plan requiring the administration of psychoactive medications, and who, after a hearing under Section 574.106, Health and Safety Code, has been found not to meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications.

The bill further amends Article 46B.086, Code of Criminal Procedure, to require that a motion to compel medication must be filed not later than the 15th day after the date the judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under 574.106, Health & Safety Code, and sets forth a requirement that a hearing must be held not later than the fifth day after the defendant is returned to the committing court.

The bill further amends Article 46B.086, Code of Criminal Procedure, to require additional findings before compelling the administration of psychoactive medications that the State has a clear and compelling interest in the defendant obtaining competency to stand trial, and no less invasive means of obtaining the defendant's competency exists.

### **EFFECTIVE DATE**

Upon passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005