

By: Naishtat

H.B. No. 3079

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration of psychoactive medication to
3 certain patients.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 574.102, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 574.102. APPLICATION OF SUBCHAPTER. This subchapter
8 applies [~~only~~] to the application of medication to a patient
9 subject to an order for inpatient mental health services under this
10 chapter or other law [~~Section 574.034 or 574.035~~].

11 SECTION 2. Sections 574.104(a) and (b), Health and Safety
12 Code, are amended to read as follows:

13 (a) A physician who is treating a patient may, on behalf of
14 the state, file an application in a probate court or a court with
15 probate jurisdiction for an order to authorize the administration
16 of a psychoactive medication regardless of the patient's refusal
17 if:

18 (1) the physician believes that the patient lacks the
19 capacity to make a decision regarding the administration of the
20 psychoactive medication;

21 (2) the physician determines that the medication is
22 the proper course of treatment for the patient;

23 (3) the patient is under an order for inpatient
24 [~~temporary or extended~~] mental health services under this chapter

1 or other law [~~Section 574.034 or 574.035~~] or an application for
2 court-ordered mental health services under Section 574.034 or
3 574.035 has been filed for the patient; and

4 (4) the patient, verbally or by other indication,
5 refuses to take the medication voluntarily.

6 (b) An application filed under this section must state:

7 (1) that the physician believes that the patient lacks
8 the capacity to make a decision regarding administration of the
9 psychoactive medication and the reasons for that belief;

10 (2) each medication the physician wants the court to
11 compel the patient to take;

12 (3) whether an application for court-ordered mental
13 health services under Section 574.034 or 574.035 has been filed;

14 (4) whether a court [~~or the current~~] order for
15 inpatient mental health services for the patient has been [~~was~~]
16 issued and, if so, under what authority it was issued [~~under Section~~
17 ~~574.034 or under Section 574.035~~]; [~~and~~]

18 (5) [~~(4)~~] the physician's diagnosis of the patient;
19 and

20 (6) the proposed method for administering the
21 medication and, if the method is not customary, an explanation
22 justifying the departure from the customary methods.

23 SECTION 3. The heading to Section 574.106, Health and
24 Safety Code, is amended to read as follows:

25 Sec. 574.106. HEARING [~~ON PATIENT'S CAPACITY~~] AND ORDER
26 AUTHORIZING PSYCHOACTIVE MEDICATION.

27 SECTION 4. Section 574.106, Health and Safety Code, is

1 amended by amending Subsections (a) and (b) and adding Subsections
2 (a-1) and (k) to read as follows:

3 (a) The court may issue an order authorizing the
4 administration of one or more classes of psychoactive medication to
5 a patient who:

6 (1) is under a court order to receive inpatient mental
7 health services; or

8 (2) is in custody awaiting trial in a criminal
9 proceeding and was ordered to receive inpatient mental health
10 services in the six months preceding a hearing under this section.

11 (a-1) The court may issue an order under this section only
12 if the court finds by clear and convincing evidence after the
13 hearing:

14 (1) that~~+~~

15 ~~[(1) the patient is under an order for temporary or~~
16 ~~extended mental health services under Section 574.034 or 574.035;~~

17 ~~[(2)]~~ the patient lacks the capacity to make a
18 decision regarding the administration of the proposed
19 medication~~+~~ and

20 ~~[(3)]~~ treatment with the proposed medication is in the
21 best interest of the patient; or

22 (2) if the patient was ordered to receive inpatient
23 mental health services by a criminal court with jurisdiction over
24 the patient that:

25 (A) the patient presents a danger to the patient
26 or others in the inpatient mental health facility in which the
27 patient is being treated as a result of a mental disorder or mental

1 defect as determined under Section 574.1065; and

2 (B) treatment with the proposed medication is in
3 the best interest of the patient.

4 (b) In making the finding that treatment with the proposed
5 medication is in the best interest of the patient [~~its findings~~],
6 the court shall consider:

7 (1) the patient's expressed preferences regarding
8 treatment with psychoactive medication;

9 (2) the patient's religious beliefs;

10 (3) the risks and benefits, from the perspective of
11 the patient, of taking psychoactive medication;

12 (4) the consequences to the patient if the
13 psychoactive medication is not administered;

14 (5) the prognosis for the patient if the patient is
15 treated with psychoactive medication; [~~and~~]

16 (6) alternative, less intrusive treatments that are
17 likely to produce the same results as [~~alternatives to~~] treatment
18 with psychoactive medication; and

19 (7) less intrusive treatments likely to secure the
20 patient's agreement to take the psychoactive medication.

21 (k) This section does not apply to a patient who receives
22 services under an order of protective custody under Section
23 574.021.

24 SECTION 5. Subchapter G, Chapter 574, Health and Safety
25 Code, is amended by adding Section 574.1065 to read as follows:

26 Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In
27 making a finding under Section 574.106(a)(2) that the patient

1 presents a danger to the patient or others in the inpatient mental
2 health facility in which the patient is being treated as a result of
3 a mental disorder or mental defect the court shall consider:

4 (1) an assessment of the patient's present mental
5 condition;

6 (2) whether the patient has inflicted, attempted to
7 inflict, or made a serious threat of inflicting substantial
8 physical harm to the patient's self or to another while in the
9 facility; and

10 (3) whether the patient, in the six months preceding
11 the date the patient was placed in the facility, has inflicted,
12 attempted to inflict, or made a serious threat of inflicting
13 substantial physical harm to another that resulted in the patient
14 being placed in the facility.

15 SECTION 6. Section 574.110, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 574.110. EXPIRATION OF ORDER. (a) Except as provided
18 by Subsection (b), an [An] order issued under Section 574.106
19 expires on the expiration or termination date of the order for
20 temporary or extended mental health services in effect when the
21 order for psychoactive medication is issued.

22 (b) An order issued under Section 574.106 for a patient
23 awaiting trial in a criminal proceeding expires on the date the
24 defendant is acquitted, is convicted, or enters a plea of guilty or
25 the date on which charges in the case are dismissed. An order
26 continued under this subsection shall be reviewed by the issuing
27 court every six months.

1 SECTION 7. Section 576.025(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) A person may not administer a psychoactive medication to
4 a patient receiving voluntary or involuntary mental health services
5 who refuses the administration unless:

6 (1) the patient is having a medication-related
7 emergency;

8 (2) the patient is younger than 16 years of age and the
9 patient's parent, managing conservator, or guardian consents to the
10 administration on behalf of the patient;

11 (3) the refusing patient's representative authorized
12 by law to consent on behalf of the patient has consented to the
13 administration;

14 (4) the administration of the medication regardless of
15 the patient's refusal is authorized by an order issued under
16 Section 574.106; or

17 (5) the administration of the medication regardless of
18 the patient's refusal is [~~patient is receiving court-ordered mental~~
19 ~~health services~~] authorized by an order issued under Article
20 46B.086 [+

21 [~~(A) Chapter 46B or Article 46.03~~], Code of
22 Criminal Procedure [~~, or~~

23 [~~(B) Chapter 55, Family Code~~].

24 SECTION 8. Articles 46B.086(a), (b), and (d), Code of
25 Criminal Procedure, are amended to read as follows:

26 (a) This article applies only to a defendant:

27 (1) who is [~~after having been~~] determined under this

1 chapter to be incompetent to stand trial [~~is subsequently~~
2 ~~determined to be competent to stand trial~~]; [~~and~~]

3 (2) for whom a continuity of care plan has been
4 prepared by a facility that requires the defendant to take
5 psychoactive medications; and

6 (3) who, after a hearing held under Section 574.106,
7 Health and Safety Code, has been found not to meet the criteria
8 prescribed by Sections 574.106(a) and (a-1), Health and Safety
9 Code, for court-ordered administration of psychoactive
10 medications.

11 (b) If a defendant described by Subsection (a) refuses to
12 take psychoactive medications as required by the defendant's
13 continuity of care plan, the director of the correctional facility
14 shall notify the court in which the criminal proceedings are
15 pending of that fact not later than the end of the next business day
16 following the refusal. The court shall promptly notify the
17 attorney representing the state and the attorney representing the
18 defendant of the defendant's refusal. The attorney representing
19 the state may file a written motion to compel medication. The
20 motion to compel medication must be filed not later than the 15th
21 day after the date a judge issues an order stating that the
22 defendant does not meet the criteria for court-ordered
23 administration of psychoactive medications under Section 574.106,
24 Health and Safety Code. The court, after notice and after a hearing
25 [~~that is~~] held not later than the fifth day after the defendant is
26 returned to the committing court [~~as soon as practicable~~], may
27 authorize the director of a correctional facility to have the

1 medication administered to the defendant, by reasonable force if
2 necessary.

3 (d) The court may issue an order under this article if the
4 court finds by clear and convincing evidence that:

5 (1) the prescribed medication is medically
6 appropriate, is in the best medical interest of the defendant, and
7 does not present side effects that cause harm to the defendant that
8 is greater than the medical benefit to the defendant;

9 (2) the state has a clear and compelling interest in
10 the defendant obtaining and maintaining competency to stand trial;

11 (3) no other less invasive means of obtaining and
12 maintaining the defendant's competency exists; and

13 (4) the prescribed medication will not unduly
14 prejudice the defendant's rights or use of defensive theories at
15 trial.

16 SECTION 9. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2005.