

1-1 By: West S.B. No. 465
1-2 (In the Senate - Filed February 11, 2005; February 22, 2005,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 31, 2005, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; March 31, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the administration of psychoactive medication to
1-9 certain patients.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 574.102, Health and Safety Code, is
1-12 amended to read as follows:

1-13 Sec. 574.102. APPLICATION OF SUBCHAPTER. This subchapter
1-14 applies ~~[only]~~ to the application of medication to a patient
1-15 subject to an order for inpatient mental health services under this
1-16 chapter or other law [~~Section 574.034 or 574.035~~].

1-17 SECTION 2. Subsections (a) and (b), Section 574.104,
1-18 Health and Safety Code, are amended to read as follows:

1-19 (a) A physician who is treating a patient may, on behalf of
1-20 the state, file an application in a probate court or a court with
1-21 probate jurisdiction for an order to authorize the administration
1-22 of a psychoactive medication regardless of the patient's refusal
1-23 if:

1-24 (1) the physician believes that the patient lacks the
1-25 capacity to make a decision regarding the administration of the
1-26 psychoactive medication;

1-27 (2) the physician determines that the medication is
1-28 the proper course of treatment for the patient;

1-29 (3) the patient is under an order for inpatient
1-30 [temporary or extended] mental health services under this chapter
1-31 or other law [~~Section 574.034 or 574.035~~] or an application for
1-32 court-ordered mental health services under Section 574.034 or
1-33 574.035 has been filed for the patient; and

1-34 (4) the patient, verbally or by other indication,
1-35 refuses to take the medication voluntarily.

1-36 (b) An application filed under this section must state:

1-37 (1) that the physician believes that the patient lacks
1-38 the capacity to make a decision regarding administration of the
1-39 psychoactive medication and the reasons for that belief;

1-40 (2) each medication the physician wants the court to
1-41 compel the patient to take;

1-42 (3) whether an application for court-ordered mental
1-43 health services under Section 574.034 or 574.035 has been filed;

1-44 (4) whether a court [~~or the current~~] order for
1-45 inpatient mental health services for the patient has been [~~was~~]
1-46 issued and, if so, under what authority it was issued [~~under Section~~
1-47 ~~574.034 or under Section 574.035~~]; [~~and~~]

1-48 (5) [~~(4)~~] the physician's diagnosis of the patient;
1-49 and

1-50 (6) the proposed method for administering the
1-51 medication and, if the method is not customary, an explanation
1-52 justifying the departure from the customary methods.

1-53 SECTION 3. The heading to Section 574.106, Health and
1-54 Safety Code, is amended to read as follows:

1-55 Sec. 574.106. HEARING [~~ON PATIENT'S CAPACITY~~] AND ORDER
1-56 AUTHORIZING PSYCHOACTIVE MEDICATION.

1-57 SECTION 4. Section 574.106, Health and Safety Code, is
1-58 amended by amending Subsections (a) and (b) and adding Subsections
1-59 (a-1) and (k) to read as follows:

1-60 (a) The court may issue an order authorizing the
1-61 administration of one or more classes of psychoactive medication to
1-62 a patient who:

1-63 (1) is under a court order to receive inpatient mental
1-64 health services; or

2-1 (2) is in custody awaiting trial in a criminal
 2-2 proceeding and was ordered to receive inpatient mental health
 2-3 services in the six months preceding a hearing under this section.

2-4 (a-1) The court may issue an order under this section only
 2-5 if the court finds by clear and convincing evidence after the
 2-6 hearing:

2-7 (1) that[+]
 2-8 [~~(1)~~ the patient is under an order for temporary or
 2-9 extended mental health services under Section 574.034 or 574.035;

2-10 [~~(2)~~] the patient lacks the capacity to make a
 2-11 decision regarding the administration of the proposed
 2-12 medication[+] and

2-13 [~~(3)~~] treatment with the proposed medication is in the
 2-14 best interest of the patient; or

2-15 (2) if the patient was ordered to receive inpatient
 2-16 mental health services by a criminal court with jurisdiction over
 2-17 the patient, that:

2-18 (A) the patient presents a danger to the patient
 2-19 or others in the inpatient mental health facility in which the
 2-20 patient is being treated as a result of a mental disorder or mental
 2-21 defect as determined under Section 574.1065; and

2-22 (B) treatment with the proposed medication is in
 2-23 the best interest of the patient.

2-24 (b) In making the finding that treatment with the proposed
 2-25 medication is in the best interest of the patient [~~its findings~~],
 2-26 the court shall consider:

2-27 (1) the patient's expressed preferences regarding
 2-28 treatment with psychoactive medication;

2-29 (2) the patient's religious beliefs;

2-30 (3) the risks and benefits, from the perspective of
 2-31 the patient, of taking psychoactive medication;

2-32 (4) the consequences to the patient if the
 2-33 psychoactive medication is not administered;

2-34 (5) the prognosis for the patient if the patient is
 2-35 treated with psychoactive medication; [and]

2-36 (6) alternative, less intrusive treatments that are
 2-37 likely to produce the same results as [~~alternatives to~~] treatment
 2-38 with psychoactive medication; and

2-39 (7) less intrusive treatments likely to secure the
 2-40 patient's agreement to take the psychoactive medication.

2-41 (k) This section does not apply to a patient who receives
 2-42 services under an order of protective custody under Section
 2-43 574.021.

2-44 SECTION 5. Subchapter G, Chapter 574, Health and Safety
 2-45 Code, is amended by adding Section 574.1065 to read as follows:

2-46 Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In
 2-47 making a finding under Section 574.106 (a-1)(2) that the patient
 2-48 presents a danger to the patient or others in the inpatient mental
 2-49 health facility in which the patient is being treated as a result of
 2-50 a mental disorder or mental defect the court shall consider:

2-51 (1) an assessment of the patient's present mental
 2-52 condition;

2-53 (2) whether the patient has inflicted, attempted to
 2-54 inflict, or made a serious threat of inflicting substantial
 2-55 physical harm to the patient's self or to another while in the
 2-56 facility; and

2-57 (3) whether the patient, in the six months preceding
 2-58 the date the patient was placed in the facility, has inflicted,
 2-59 attempted to inflict, or made a serious threat of inflicting
 2-60 substantial physical harm to another that resulted in the patient
 2-61 being placed in the facility.

2-62 SECTION 6. Section 574.110, Health and Safety Code, is
 2-63 amended to read as follows:

2-64 Sec. 574.110. EXPIRATION OF ORDER. (a) Except as provided
 2-65 by Subsection (b), an [~~An~~] order issued under Section 574.106
 2-66 expires on the expiration or termination date of the order for
 2-67 temporary or extended mental health services in effect when the
 2-68 order for psychoactive medication is issued.

2-69 (b) An order issued under Section 574.106 for a patient

3-1 awaiting trial in a criminal proceeding expires on the date the
 3-2 defendant is acquitted, is convicted, or enters a plea of guilty or
 3-3 the date on which charges in the case are dismissed. An order
 3-4 continued under this subsection shall be reviewed by the issuing
 3-5 court every six months.

3-6 SECTION 7. Subsection (a), Section 576.025, Health and
 3-7 Safety Code, is amended to read as follows:

3-8 (a) A person may not administer a psychoactive medication to
 3-9 a patient receiving voluntary or involuntary mental health services
 3-10 who refuses the administration unless:

3-11 (1) the patient is having a medication-related
 3-12 emergency;

3-13 (2) the patient is younger than 16 years of age and the
 3-14 patient's parent, managing conservator, or guardian consents to the
 3-15 administration on behalf of the patient;

3-16 (3) the refusing patient's representative authorized
 3-17 by law to consent on behalf of the patient has consented to the
 3-18 administration;

3-19 (4) the administration of the medication regardless of
 3-20 the patient's refusal is authorized by an order issued under
 3-21 Section 574.106; or

3-22 (5) the administration of the medication regardless of
 3-23 the patient's refusal is ~~[patient is receiving court-ordered mental~~
 3-24 ~~health services]~~ authorized by an order issued under Article
 3-25 46B.086 ~~[+~~

3-26 ~~[(A) Chapter 46B or Article 46.03]~~, Code of
 3-27 Criminal Procedure ~~[, or~~

3-28 ~~[(B) Chapter 55, Family Code].~~

3-29 SECTION 8. Subsections (a), (b), and (d), Article 46B.086,
 3-30 Code of Criminal Procedure, are amended to read as follows:

3-31 (a) This article applies only to a defendant:

3-32 (1) who is ~~[after having been]~~ determined under this
 3-33 chapter to be incompetent to stand trial ~~[is subsequently~~
 3-34 ~~determined to be competent to stand trial]; [and]~~

3-35 (2) for whom a continuity of care plan has been
 3-36 prepared by a facility that requires the defendant to take
 3-37 psychoactive medications; and

3-38 (3) who, after a hearing held under Section 574.106,
 3-39 Health and Safety Code, has been found not to meet the criteria
 3-40 prescribed by Sections 574.106(a) and (a-1), Health and Safety
 3-41 Code, for court-ordered administration of psychoactive
 3-42 medications.

3-43 (b) If a defendant described by Subsection (a) refuses to
 3-44 take psychoactive medications as required by the defendant's
 3-45 continuity of care plan, the director of the correctional facility
 3-46 shall notify the court in which the criminal proceedings are
 3-47 pending of that fact not later than the end of the next business day
 3-48 following the refusal. The court shall promptly notify the
 3-49 attorney representing the state and the attorney representing the
 3-50 defendant of the defendant's refusal. The attorney representing
 3-51 the state may file a written motion to compel medication. The
 3-52 motion to compel medication must be filed not later than the 15th
 3-53 day after the date a judge issues an order stating that the
 3-54 defendant does not meet the criteria for court-ordered
 3-55 administration of psychoactive medications under Section 574.106,
 3-56 Health and Safety Code. The court, after notice and after a hearing
 3-57 ~~[that is]~~ held not later than the fifth day after the defendant is
 3-58 returned to the committing court [as soon as practicable], may
 3-59 authorize the director of a correctional facility to have the
 3-60 medication administered to the defendant, by reasonable force if
 3-61 necessary.

3-62 (d) The court may issue an order under this article if the
 3-63 court finds by clear and convincing evidence that:

3-64 (1) the prescribed medication is medically
 3-65 appropriate, is in the best medical interest of the defendant, and
 3-66 does not present side effects that cause harm to the defendant that
 3-67 is greater than the medical benefit to the defendant;

3-68 (2) the state has a clear and compelling interest in
 3-69 the defendant obtaining and maintaining competency to stand trial;

4-1 (3) no other less invasive means of obtaining and
4-2 maintaining the defendant's competency exists; and

4-3 (4) the prescribed medication will not unduly
4-4 prejudice the defendant's rights or use of defensive theories at
4-5 trial.

4-6 SECTION 9. This Act takes effect immediately if it receives
4-7 a vote of two-thirds of all the members elected to each house, as
4-8 provided by Section 39, Article III, Texas Constitution. If this
4-9 Act does not receive the vote necessary for immediate effect, this
4-10 Act takes effect September 1, 2005.

4-11 * * * * *