

## **BILL ANALYSIS**

Senate Research Center  
81R26072 KEL-F

H.B. 1233  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under the Texas Code of Criminal Procedure, Article 46B.086, a criminal court may compel the administration of psychoactive medication where an individual has been found incompetent to stand trial and is refusing medication, as prescribed under a continuity of care plan. Due to the limited availability of inpatient competency restoration beds, many individuals who do not otherwise qualify for outpatient release remain housed in correctional facilities for weeks and months while awaiting transfer to an inpatient competency restoration facility or residential care facility. A vast majority of these individuals continue to suffer from the effects of their mental illness without benefit of psychoactive medication. The courts have no jurisdiction to intercede, as these inmates neither reside at an inpatient facility nor have had a continuity of care plan prepared on their behalf.

The current statutory scheme of Section 573.106 (a-1) (the prerequisite probate court hearing to a 46B.086 criminal court determination), Texas Health and Safety Code, provides that psychoactive medication may be compelled during an involuntary mental health civil commitment if among other requirements, the "patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed patient is in the best interest of the patient." However, if the patient was ordered to receive treatment from a criminal court, whose goal is to restore competency, the probate court must additionally find that "the patient is a danger to himself or others in the inpatient mental health facility in which the patient is being treated." Often the patient is not a danger to himself or others, as the word "danger" has been interpreted by the court, but the patient's actions do pose a threat to his or her own health, safety, and well-being.

H.B. 1233 allows a probate court in its initial hearing to use either the best interest standard or the harm standard to determine whether to order an individual to receive psychoactive medication due to the treating licensed psychiatrist's concern for that individual's health and safety. The bill also allows a correctional facility with licensed psychiatrists to create a continuity of care plan for those individuals awaiting transfer to residential care or an inpatient competency restoration facility. This change in the law restores the criminal court's jurisdiction during this delay in transfer such that inmates who are in crisis and suffering may receive the appropriate medical attention and psychiatric treatment that they need.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 574.106, Health and Safety Code, by amending Subsection (a-1) and adding Subsection (1), as follows:

(a-1) Authorizes the court to issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065 (Finding that Patient Presents a Danger); or

(B) the patient has remained confined in a correctional facility, as defined by Section 1.07 (Definitions), Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065. Deletes existing text regarding treatment with the proposed medication being in the best interest of the patient. Makes a nonsubstantive change.

(1) Provides that for a patient described by Subsection (a-1)(2)(B), an order issued under this section authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer and does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

SECTION 2. Amends Section 574.1065, Health and Safety Code, as follows:

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. Requires that the court, in making a finding under Section 574.106(a-1)(2) (relating to the patient being ordered to receive inpatient mental health services by a criminal court) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, rather than as a result of a mental disorder or mental defect, consider certain assessments.

SECTION 3. Amends Section 574.107(b), Health and Safety Code, to require that the county in which the applicable criminal charges are pending or were adjudicated pay as provided by Subsection (a) (relating to the payment of certain hearing costs) to evaluate the court-ordered administration of psychoactive medication to a patient ordered to receive mental health services, rather than inpatient mental health services, after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity. Makes a conforming change.

SECTION 4. Amends Article 46B.086, Code of Criminal Procedure, by amending Subsections (a), (b), and (c) and adding Subsection (g), as follows:

(a) Provides that this article only applies to a defendant:

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient treatment program;

(B) is committed to an inpatient mental health facility or a residential care facility for the purpose of competency restoration;

(C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration treatment; or

(D) is subject to Article 46B.072 (Release on Bail), if the court has made the determinations required by Subsection (a) of that article;

(3) for whom a correctional facility that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) who after a hearing held under Section 574.106, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications, rather than who is subject to Article 46B.072. Makes nonsubstantive changes.

(b) Requires the director of the correctional facility or outpatient treatment program provider, as applicable, to notify the court in which the criminal proceedings are pending of that fact not later than the end of the next business day following the refusal if a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan. Requires that the motion to compel medication be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106, Health and Safety Code, except that, for a defendant in an outpatient treatment program, the motion may be filed at any time. Deletes existing text authorizing the motion to compel medication for a defendant in an outpatient treatment program to be filed at any time.

(c) Makes a nonsubstantive change.

(g) Provides that for a defendant described by Subsection (a)(2)(A), an order issued under this article authorizes the initiation of any appropriate mental health treatment for the defendant awaiting transfer and does not constitute authorization to retain the defendant in a correctional facility for competency restoration treatment.

SECTION 5. Effective date: upon passage or September 1, 2009.