

## **BILL ANALYSIS**

Senate Research Center

H.B. 3907

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Criminal Justice

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Engrossed

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

H.B. 3907 relates to the court-ordered administration of psychoactive medication to certain criminal defendants and to the release of those defendants from certain facilities.

### **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 Article 16.22, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Provides that this article does not prevent, rather than nothing in this article prevents, the court from, pending an evaluation of the defendant as described by this article subject to Subsection (e), releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond.

(e) Provides that if a sheriff releases a defendant who is a person with mental illness or mental retardation from custody, except on final disposition of the criminal proceedings, the sheriff is required, before releasing the person, to notify the local mental health or mental retardation authority, as applicable, of the impending release, and if possible, arrange for the release of the person during normal business hours.

SECTION 2. Amends Article 46B.072(d), Code of Criminal Procedure, to authorize an order issued under this article to require the defendant to participate in:

(1) as appropriate, an outpatient treatment program administered by a community center or an outpatient treatment program administered by any other entity that provides outpatient competency restoration services; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including, if applicable, care or treatment administered in a correctional facility pending release to an outpatient treatment program described by Subdivision (1).

SECTION 3. Amends Article 46B.086, Code of Criminal Procedure, by amending Subdivisions (a), (b), and (c) and adding Subsection (g), as follows:

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

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07 (Definitions), 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) (relating to the conditions of bail of a defendant found incompetent to stand trial) 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) (relating to the court issuing an order authorizing the administration of one or more classes of psychoactive medication to a patient) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications. Makes nonsubstantive changes.
- (b) Requires the director of the correctional facility or outpatient treatment program provider, as applicable, if a defendant described by Subsection (a) refuses to take psychoactive medications as required by the defendant's continuity of care plan 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. 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, rather than the motion to compel medication, for a defendant in an outpatient treatment program, the motion is authorized to be filed at any time.
- (c) Authorizes the court, after notice and after a hearing held not later than the fifth day after the defendant is returned to the committing court, to authorize the director of the, rather than a, correctional facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary.
- (g) Provides that for a defendant described by Subsection (a)(2)(A), an order issued under this article:
- (1) authorizes the initiation of any appropriate mental health treatment for the defendant awaiting transfer; and
  - (2) does not constitute authorization to retain the defendant in a correctional facility for competency restoration treatment.

SECTION 4. Amends Subchapter D, Chapter 46B, Code of Criminal Procedure, by adding Article 46B.087, as follows:

Art. 46B.087. ORDER OF RELEASE: CONTINUATION OF TREATMENT. Requires the court ordering the defendant's release, if a defendant is released under Article 46B.0095 (Maximum Period of Facility Commitment or Outpatient Treatment Program Participation Determined by Maximum Term For Offense) or 46B.010 (Mandatory Dismissal of Misdemeanor Charges), to consider whether the defendant could benefit from continued treatment. Requires the court, if the court finds that the defendant could benefit from continued treatment, to include in the order of release a requirement that the sheriff, before releasing the defendant:

- (1) arrange for the release of the defendant during normal business hours, if possible; and

- (2) notify the local mental health or mental retardation authority, as applicable, of the impending release.

SECTION 5. Amends Section 574.104, Health and Safety Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Authorizes a physician who is treating a patient ordered to receive inpatient mental health services after having been determined to be incompetent to stand trial to:

- (1) proceed under Subsection (a) (relating to a physician, treating a patient, who is authorized to, on behalf of the state, file an application, in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication); or

- (2) file, in the court in which the criminal matter is pending, an application for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

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

- (B) the physician determines that the medication is the proper course of treatment for the patient; and

- (C) the patient, verbally or by other indication, refuses to take the medication.

(a-2) Provides that an application filed as described by Subsection (a-1)(2) is subject to the requirements and procedures provided by Article 46B.086, Code of Criminal Procedure. Provides that Subsections (b)(3) (relating to whether an application for court-ordered mental health services under certain sections has been filed), (c) (relating to an application filed under this section being separate from an application for court-ordered mental health services), (d) (relating to authorizing the hearing on the application to be held on the date of a hearing on an application for court-ordered mental health services and certain filing deadlines), and (e) (relating to requiring that the hearing, subject to certain sections, be held no later than 30 days after the filing of the application and certain court authorizations) do not apply to the application.

SECTION 6. 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:

- (1) Makes no changes to this subdivision.

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

- (B) the patient has remained confined in a correctional facility, as defined by Section 1.07, 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.

- (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 7. Amends Section 574.106(c), Health and Safety Code, to require a hearing under this subchapter, except as provided by Subsection (d) (relating to the authorization of a judge to refer a hearing to a magistrate or court-appointed master), be conducted on the record by the probate judge, a, rather than or, judge with probate jurisdiction, or, if applicable, the judge of a criminal court who ordered the patient to receive inpatient mental health services in accordance with Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure, rather than judge with probate jurisdiction, except as provided by Subsection (d).

SECTION 8. Amends Section 574.1065, Health and Safety Code, as follows:

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. Requires the court, in making a finding under Section 574.106(a-1)(2) 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 being treated as a result of a mental disorder or mental defect, to consider certain issues concerning the patient.

SECTION 9. Amends Section 574.107(b), Health and Safety Code, to require the county in which the applicable criminal charges are pending or were adjudicated to pay as provided by Subsection (a) (relating to the costs for a hearing under this subchapter) the costs of a hearing that is held under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) to evaluate the court-ordered administration of psychoactive medication to:

- (1) a patient ordered to receive mental health services, rather than inpatient mental health services, as described by Section 574.106(a)(1) (relating to authorizing the court to administer psychoactive medication to a patient under a court order to receive 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; or
- (2) a patient who is awaiting trial after having been determined to be competent to stand trial, and was ordered to receive mental health services, rather than receive inpatient mental health services, as described by Section 574.106(a)(2) (relating to authorizing the court to administer psychoactive medication to a patient in custody awaiting custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section).

SECTION 10. Effective date: upon passage or September 1, 2009.