

BILL ANALYSIS

Senate Research Center
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S.B. 1665
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Judges commit individuals to mental health facilities but have no option to distinguish those who are manifestly dangerous, which would help ensure that these individuals receive proper care and treatment and that proper safety measures are taken to protect the public.

As proposed, S.B. 1665 authorizes a judge, in an order committing a person to a mental health facility for extended inpatient mental health services, to include a finding that the person is manifestly dangerous only if the criterion specified by the jury or judge is that the proposed patient is likely to cause serious harm to others. S.B. 1665 prohibits a facility administrator from allowing the release of a patient until a continuing care plan has been approved by the review board and the court. This bill also requires the review board to recommend a treatment and supervision plan to the court if the patient is found to be manifestly dangerous.

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 574.036, Health and Safety Code, by adding Subsection (f), as follows:

(f) Authorizes the judge, in an order committing a person to a mental health facility for extended inpatient mental health services, to include a finding that the person is manifestly dangerous and to include the finding only if the criterion specified by the jury or judge under Section 574.035(c) (relating to the jury or judge's findings) is that the proposed patient is likely to cause serious harm to others.

SECTION 2. Amends Chapter 574, Health and Safety Code, by adding Subchapter F-1, as follows:

SUBCHAPTER F-1. PROCEEDINGS INVOLVING MANIFESTLY DANGEROUS PATIENTS

Sec. 574.091. **APPLICABILITY.** Provides that this subchapter applies only to a patient receiving court-ordered inpatient mental health services at an inpatient mental health facility who is found to be manifestly dangerous in an order committing the person to extended inpatient mental health services under Section 574.036(f); committed to a maximum security unit in accordance with Article 46B.104 (Civil Commitment Placement: Finding of Violence), Code of Criminal Procedure; or the subject of an affirmative determination under Article 46C.157 (Determination Regarding Dangerous Conduct of Acquitted Person), Code of Criminal Procedure.

Sec. 574.092. **RELEASE OF PATIENT.** (a) Prohibits a facility administrator, notwithstanding any other provision of this chapter or of Chapter 46B (Incompetency to Stand Trial) or 46C (Insanity Defense), Code of Criminal Procedure, from permitting a patient to leave the inpatient mental health facility to receive outpatient mental health services or under a pass or furlough unless the administrator submits to the review board established under Section 574.093 a continuing care plan prepared by the physician

responsible for the patient's treatment and receives a determination from the review board that a treatment and supervision plan is not necessary or a court order in accordance with Section 574.094, if the review board determines that a treatment and supervision plan is necessary.

(b) Requires a facility administrator, not later than the 90th day before the scheduled discharge date, to submit to the review board established under Section 574.093 a continuing care plan for a patient scheduled to be discharged.

Sec. 574.093. REVIEW BOARD. (a) Requires the executive commissioner of the Health and Human Services Commission (HHSC) to appoint a five-member review board to determine whether a patient who has had a continuing care plan forwarded to the review board would be manifestly dangerous if the patient did not follow the continuing care plan after leaving the inpatient mental health facility. Requires the review board to include at least one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or mental retardation.

(b) Requires the review board, in determining whether a patient would be manifestly dangerous if the patient did not follow the patient's continuing care plan, to consider certain information about the patient.

(c) Requires the review board, if the review board determines that a patient would be manifestly dangerous if the patient did not follow the continuing care plan after leaving the inpatient mental health facility, to recommend to the court that ordered the patient's inpatient mental health services a treatment and supervision plan that may include provisions requiring the patient to submit to tracking under a particular type of tracking service or any other appropriate supervision, access to and tracking of the patient's prescription records, or a continuous automated delivery system for necessary medications; provisions prohibiting the patient from changing the patient's residence without first obtaining authorization from the court and from leaving the state without first obtaining authorization from the court; provisions requiring the patient to notify the court immediately or within 24 hours of any change in the patient's status that affects proper treatment and supervision, including a change in the patient's physical health or job status and any incarceration of the patient; or any other provision that the review board finds necessary to ensure that the patient follows the continuing care plan.

(d) Requires the review board, if the review board determines that a patient would not be manifestly dangerous if the patient did not follow the continuing care plan after leaving the inpatient mental health facility, to inform the facility administrator and the court that ordered the patient's inpatient mental health services of the review board's determination that a treatment and supervision plan is not necessary.

Sec. 574.094. HEARING AND ORDER AUTHORIZING TREATMENT AND SUPERVISION PLAN. (a) Authorizes a court that receives a recommended treatment and supervision plan from the review board to enter an order modifying the order for inpatient mental health services to allow the patient to leave the inpatient mental health facility to receive outpatient mental health services or under a pass or furlough subject to the conditions provided by the treatment and supervision plan; enter an order requiring the patient to comply with the recommended treatment and supervision plan after the patient is discharged from the facility; or enter an order stating that the treatment and supervision plan is not necessary.

(b) Authorizes the court to enter an order under Subsection (a)(1) (relating to allowing the patient to leave the inpatient mental health facility) or (3) (relating to stating that the treatment and supervision plan is not necessary) without a hearing or with a hearing as prescribed by Section 574.061(d) (relating to the court holding a hearing on request). Authorizes the court, if a hearing is not requested, to enter the order based solely on the recommendation of the review board and any supporting information.

(c) Authorizes the court to enter an order under Subsection (a)(2) (relating to requiring the patient to comply with the recommended treatment and supervision plan) only if the court finds by clear and convincing evidence after a hearing that the patient would be manifestly dangerous if the patient did not follow the patient's continuing care plan after leaving the inpatient mental health facility and the treatment and supervision plan recommended by the review board is necessary to ensure that the patient follows the patient's continuing care plan.

(d) Requires the court, in making a finding under Subsection (c) that the patient would be manifestly dangerous if the patient did not follow the patient's continuing care plan, to consider certain information about the patient.

(e) Authorizes a court to modify any order under this section on receipt of a recommendation from the review board, after a biennial review under Section 574.095, or after a hearing on a petition for removal of all or part of the treatment and supervision conditions.

(f) Provides that a court that receives a determination from the review board that a treatment and supervision plan is not necessary is required to enter the review board's determination in the patient's court record and is authorized to conduct further proceedings as otherwise provided by this chapter.

(g) Entitles a patient to be present and to have the benefit of all constitutional protections provided to the patient at a hearing under this section.

Sec. 574.095. BIENNIAL REVIEW. (a) Requires the review board to conduct a biennial review of the status of a patient who is released subject to a recommended treatment and supervision plan ordered under Section 574.094 (a)(2).

(b) Authorizes the patient to be represented by counsel at the biennial review.

(c) Requires the physician, if the patient has a treating physician, to provide a report to the review board regarding whether a requirement imposed by the treatment and supervision plan should be modified or removed.

(d) Authorizes the review board to recommend that the court modify or remove a requirement imposed by the treatment and supervision plan if the review board finds that the requirement is no longer necessary to ensure that the patient does not become manifestly dangerous or recommend that the court extend and, if necessary, modify the order requiring a treatment and supervision plan if the review board finds that the plan and any modifications are necessary to ensure that the patient does not become manifestly dangerous.

Sec. 574.096. PETITION FOR REMOVAL OF TREATMENT AND SUPERVISION CONDITIONS. (a) Authorizes a patient subject to an order entered under Section 574.094(a)(1) or (2) requiring the patient to comply with a treatment and supervision plan to file with the court a petition for removal of all or part of the conditions imposed under that order.

(b) Requires the patient, if the patient files a petition for removal of all or part of the treatment and supervision conditions, to serve the petition on the court, the review board, and the county attorney or district attorney with jurisdiction in that court.

(c) Requires the court, on receipt of a petition for removal of all or part of the treatment and supervision conditions, to attempt as soon as practicable to review the petition.

(d) Authorizes the court to deny without a hearing a petition for removal of all or part of the treatment and supervision conditions if the court finds that the petition is frivolous.

(e) Requires the court, if the court does not deny a petition for removal of all or part of the treatment and supervision conditions filed by the patient, to conduct as soon as practicable a hearing on the petition.

(f) Entitles the patient and the attorney representing the state to an immediate examination of the patient by an expert.

(g) Requires the court, on request of the patient or the attorney representing the state, to conduct the hearing before a jury.

(h) Provides that the burden of proof at the hearing is on the state to prove by clear and convincing evidence that all or the relevant part of the treatment and supervision plan is necessary to ensure that the patient does not become manifestly dangerous.

(i) Entitles a patient to be present and to have the benefit of all constitutional protections provided to the patient at a hearing under this section.

SECTION 3. Provides that the change in law made by this Act applies only to persons:

(1) committed to temporary or extended inpatient mental health services under Chapter 574 (Court-Ordered Mental Health Services), Health and Safety Code, on or after the effective date of this Act;

(2) found manifestly dangerous in an order committing the person to extended inpatient mental health services under Section 574.036(f), Health and Safety Code, as added by this Act, on or after the effective date of this Act;

(3) committed to a maximum security unit in accordance with Article 46B.104, Code of Criminal Procedure, on or after the effective date of this Act; or

(4) subject to an affirmative determination made under Article 46C.157, Code of Criminal Procedure, on or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2009.