

By: Menendez

H.B. No. 1233

A BILL TO BE ENTITLED

AN ACT

relating to the court-ordered administration of psychoactive medication to certain criminal defendants.

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

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

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

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(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; or

(B) the patient:

(i) has remained confined in a correctional

1 facility, as defined by Section 1.07, Penal Code, for a period
2 exceeding 72 hours while awaiting transfer for competency
3 restoration treatment; and

4 (ii) presents a danger to the patient or
5 others in the correctional facility as a result of a mental disorder
6 or mental defect as determined under Section 574.1065 [~~and~~

7 [~~(B) treatment with the proposed medication is in~~
8 ~~the best interest of the patient]~~.

9 (1) For a patient described by Subsection (a-1)(2)(B), an
10 order issued under this section:

11 (1) authorizes the initiation of any appropriate
12 mental health treatment for the patient awaiting transfer; and

13 (2) does not constitute authorization to retain the
14 patient in a correctional facility for competency restoration
15 treatment.

16 SECTION 2. Section 574.1065, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In
19 making a finding under Section 574.106(a-1)(2) that, as a result of
20 a mental disorder or mental defect, the patient presents a danger to
21 the patient or others in the inpatient mental health facility in
22 which the patient is being treated or in the correctional facility,
23 as applicable, [~~as a result of a mental disorder or mental defect]~~
24 the court shall consider:

25 (1) an assessment of the patient's present mental
26 condition;

27 (2) whether the patient has inflicted, attempted to

1 inflict, or made a serious threat of inflicting substantial
2 physical harm to the patient's self or to another while in the
3 facility; and

4 (3) whether the patient, in the six months preceding
5 the date the patient was placed in the facility, has inflicted,
6 attempted to inflict, or made a serious threat of inflicting
7 substantial physical harm to another that resulted in the patient
8 being placed in the facility.

9 SECTION 3. Section 574.107(b), Health and Safety Code, is
10 amended to read as follows:

11 (b) The county in which the applicable criminal charges are
12 pending or were adjudicated shall pay as provided by Subsection (a)
13 the costs of a hearing that is held under Section 574.106 to
14 evaluate the court-ordered administration of psychoactive
15 medication to:

16 (1) a patient ordered to receive [~~inpatient~~] mental
17 health services as described by Section 574.106(a)(1) after having
18 been determined to be incompetent to stand trial or having been
19 acquitted of an offense by reason of insanity; or

20 (2) a patient who:

21 (A) is awaiting trial after having been
22 determined to be competent to stand trial; and

23 (B) was ordered to receive [~~inpatient~~] mental
24 health services as described by Section 574.106(a)(2).

25 SECTION 4. Article 46B.086, Code of Criminal Procedure, is
26 amended by amending Subsections (a), (b), and (c) and adding
27 Subsection (g) to read as follows:

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

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

4 (2) who either:

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

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

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

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

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

24 (4) [~~3~~] who, after a hearing held under Section
25 574.106, Health and Safety Code, if applicable, has been found to
26 not [~~to~~] meet the criteria prescribed by Sections 574.106(a) and
27 (a-1), Health and Safety Code, for court-ordered administration of

1 psychoactive medications [~~or~~

2 [~~(4) who is subject to Article 46B.072~~].

3 (b) If a defendant described by Subsection (a) refuses to
4 take psychoactive medications as required by the defendant's
5 continuity of care plan, the director of the correctional facility
6 or outpatient treatment program provider, as applicable, shall
7 notify the court in which the criminal proceedings are pending of
8 that fact not later than the end of the next business day following
9 the refusal. The court shall promptly notify the attorney
10 representing the state and the attorney representing the defendant
11 of the defendant's refusal. The attorney representing the state
12 may file a written motion to compel medication. The motion to
13 compel medication must be filed not later than the 15th day after
14 the date a judge issues an order stating that the defendant does not
15 meet the criteria for court-ordered administration of psychoactive
16 medications under Section 574.106, Health and Safety Code, except
17 that, [~~The motion to compel medication~~] for a defendant in an
18 outpatient treatment program, the motion may be filed at any time.

19 (c) The court, after notice and after a hearing held not
20 later than the fifth day after the defendant is returned to the
21 committing court, may authorize the director of the [~~a~~]
22 correctional facility or the program provider, as applicable, to
23 have the medication administered to the defendant, by reasonable
24 force if necessary.

25 (g) For a defendant described by Subsection (a)(2)(A), an
26 order issued under this article:

27 (1) authorizes the initiation of any appropriate

1 mental health treatment for the defendant awaiting transfer; and
2 (2) does not constitute authorization to retain the
3 defendant in a correctional facility for competency restoration
4 treatment.

5 SECTION 5. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2009.