

1-1 By: Menendez (Senate Sponsor - Van de Putte) H.B. No. 1233  
1-2 (In the Senate - Received from the House May 6, 2009;  
1-3 May 7, 2009, read first time and referred to Committee on Criminal  
1-4 Justice; May 20, 2009, reported favorably by the following vote:  
1-5 Yeas 7, Nays 0; May 20, 2009, sent to printer.)

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

1-8 relating to the court-ordered administration of psychoactive  
1-9 medication to certain criminal defendants.

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

1-11 SECTION 1. Section 574.106, Health and Safety Code, is  
1-12 amended by amending Subsection (a-1) and adding Subsection (1) to  
1-13 read as follows:

1-14 (a-1) The court may issue an order under this section only  
1-15 if the court finds by clear and convincing evidence after the  
1-16 hearing:

1-17 (1) that the patient lacks the capacity to make a  
1-18 decision regarding the administration of the proposed medication  
1-19 and treatment with the proposed medication is in the best interest  
1-20 of the patient; or

1-21 (2) if the patient was ordered to receive inpatient  
1-22 mental health services by a criminal court with jurisdiction over  
1-23 the patient, that treatment with the proposed medication is in the  
1-24 best interest of the patient and either:

1-25 (A) the patient presents a danger to the patient  
1-26 or others in the inpatient mental health facility in which the  
1-27 patient is being treated as a result of a mental disorder or mental  
1-28 defect as determined under Section 574.1065; or

1-29 (B) the patient:  
1-30 (i) has remained confined in a correctional  
1-31 facility, as defined by Section 1.07, Penal Code, for a period  
1-32 exceeding 72 hours while awaiting transfer for competency  
1-33 restoration treatment; and

1-34 (ii) presents a danger to the patient or  
1-35 others in the correctional facility as a result of a mental disorder  
1-36 or mental defect as determined under Section 574.1065 [and

1-37 ~~(B) treatment with the proposed medication is in~~  
1-38 ~~the best interest of the patient].~~

1-39 (1) For a patient described by Subsection (a-1)(2)(B), an  
1-40 order issued under this section:

1-41 (1) authorizes the initiation of any appropriate  
1-42 mental health treatment for the patient awaiting transfer; and

1-43 (2) does not constitute authorization to retain the  
1-44 patient in a correctional facility for competency restoration  
1-45 treatment.

1-46 SECTION 2. Section 574.1065, Health and Safety Code, is  
1-47 amended to read as follows:

1-48 Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In  
1-49 making a finding under Section 574.106(a-1)(2) that, as a result of  
1-50 a mental disorder or mental defect, the patient presents a danger to  
1-51 the patient or others in the inpatient mental health facility in  
1-52 which the patient is being treated or in the correctional facility,  
1-53 as applicable, [as a result of a mental disorder or mental defect]  
1-54 the court shall consider:

1-55 (1) an assessment of the patient's present mental  
1-56 condition;

1-57 (2) whether the patient has inflicted, attempted to  
1-58 inflict, or made a serious threat of inflicting substantial  
1-59 physical harm to the patient's self or to another while in the  
1-60 facility; and

1-61 (3) whether the patient, in the six months preceding  
1-62 the date the patient was placed in the facility, has inflicted,  
1-63 attempted to inflict, or made a serious threat of inflicting  
1-64 substantial physical harm to another that resulted in the patient

2-1 being placed in the facility.

2-2 SECTION 3. Section 574.107(b), Health and Safety Code, is  
2-3 amended to read as follows:

2-4 (b) The county in which the applicable criminal charges are  
2-5 pending or were adjudicated shall pay as provided by Subsection (a)  
2-6 the costs of a hearing that is held under Section 574.106 to  
2-7 evaluate the court-ordered administration of psychoactive  
2-8 medication to:

2-9 (1) a patient ordered to receive ~~[inpatient]~~ mental  
2-10 health services as described by Section 574.106(a)(1) after having  
2-11 been determined to be incompetent to stand trial or having been  
2-12 acquitted of an offense by reason of insanity; or

2-13 (2) a patient who:

2-14 (A) is awaiting trial after having been  
2-15 determined to be competent to stand trial; and

2-16 (B) was ordered to receive ~~[inpatient]~~ mental  
2-17 health services as described by Section 574.106(a)(2).

2-18 SECTION 4. Article 46B.086, Code of Criminal Procedure, is  
2-19 amended by amending Subsections (a), (b), and (c) and adding  
2-20 Subsection (g) to read as follows:

2-21 (a) This article applies only to a defendant:

2-22 (1) who is determined under this chapter to be  
2-23 incompetent to stand trial;

2-24 (2) who either:

2-25 (A) remains confined in a correctional facility,  
2-26 as defined by Section 1.07, Penal Code, for a period exceeding 72  
2-27 hours while awaiting transfer to an inpatient mental health  
2-28 facility, a residential care facility, or an outpatient treatment  
2-29 program;

2-30 (B) is committed to an inpatient mental health  
2-31 facility or a residential care facility for the purpose of  
2-32 competency restoration;

2-33 (C) is confined in a correctional facility while  
2-34 awaiting further criminal proceedings following competency  
2-35 restoration treatment; or

2-36 (D) is subject to Article 46B.072, if the court  
2-37 has made the determinations required by Subsection (a) of that  
2-38 article;

2-39 (3) for whom a correctional facility that employs or  
2-40 contracts with a licensed psychiatrist, an inpatient mental health  
2-41 facility, a residential care facility, or an outpatient treatment  
2-42 program provider has prepared a continuity of care plan that  
2-43 requires the defendant to take psychoactive medications; and

2-44 (4) ~~(3)~~ who, after a hearing held under Section  
2-45 574.106, Health and Safety Code, if applicable, has been found to  
2-46 not ~~to~~ meet the criteria prescribed by Sections 574.106(a) and  
2-47 (a-1), Health and Safety Code, for court-ordered administration of  
2-48 psychoactive medications~~, or~~

2-49 ~~(4) who is subject to Article 46B.072].~~

2-50 (b) If a defendant described by Subsection (a) refuses to  
2-51 take psychoactive medications as required by the defendant's  
2-52 continuity of care plan, the director of the correctional facility  
2-53 or outpatient treatment program provider, as applicable, shall  
2-54 notify the court in which the criminal proceedings are pending of  
2-55 that fact not later than the end of the next business day following  
2-56 the refusal. The court shall promptly notify the attorney  
2-57 representing the state and the attorney representing the defendant  
2-58 of the defendant's refusal. The attorney representing the state  
2-59 may file a written motion to compel medication. The motion to  
2-60 compel medication must be filed not later than the 15th day after  
2-61 the date a judge issues an order stating that the defendant does not  
2-62 meet the criteria for court-ordered administration of psychoactive  
2-63 medications under Section 574.106, Health and Safety Code, except  
2-64 that, ~~[The motion to compel medication]~~ for a defendant in an  
2-65 outpatient treatment program, the motion may be filed at any time.

2-66 (c) The court, after notice and after a hearing held not  
2-67 later than the fifth day after the defendant is returned to the  
2-68 committing court, may authorize the director of the ~~[a]~~  
2-69 correctional facility or the program provider, as applicable, to

3-1 have the medication administered to the defendant, by reasonable  
3-2 force if necessary.

3-3 (g) For a defendant described by Subsection (a)(2)(A), an  
3-4 order issued under this article:

3-5 (1) authorizes the initiation of any appropriate  
3-6 mental health treatment for the defendant awaiting transfer; and

3-7 (2) does not constitute authorization to retain the  
3-8 defendant in a correctional facility for competency restoration  
3-9 treatment.

3-10 SECTION 5. This Act takes effect immediately if it receives  
3-11 a vote of two-thirds of all the members elected to each house, as  
3-12 provided by Section 39, Article III, Texas Constitution. If this  
3-13 Act does not receive the vote necessary for immediate effect, this  
3-14 Act takes effect September 1, 2009.

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