

By: Madden

H.B. No. 3907

A BILL TO BE ENTITLED

AN ACT

relating to the court-ordered administration of psychoactive medication to certain criminal defendants and to the release of those defendants from certain facilities.

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

SECTION 1. Article 16.22, Code of Criminal Procedure, is amended by adding Subsections (c-1) through (c-6) and (e) and amending Subsection (d) to read as follows:

(c-1) Subsections (c-2) through (c-6) apply only to a defendant who:

(1) is found under this article to be a person who has a mental illness or a person with mental retardation;

(2) refuses to take psychoactive medications as required by any applicable continuing care plan or continuity of care plan; and

(3) after a hearing held under Section 574.106, Health and Safety Code, 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.

(c-2) If a defendant described by Subsection (c-1) refuses to take psychoactive medications as required by the defendant's continuing care plan or continuity of care plan, the director of the correctional facility or the outpatient treatment provider, as applicable, shall notify the magistrate of that fact not later than

1 the end of the business day immediately following the date of the
2 refusal. The magistrate promptly shall notify the attorney
3 representing the state and the attorney representing the defendant
4 of the defendant's refusal. The attorney representing the state
5 may file a written motion to compel medication.

6 (c-3) The magistrate, after notice and after a hearing held
7 not later than the fifth day after the filing of a written motion to
8 compel medication, may authorize the director of a correctional
9 facility or the program provider, as applicable, to have the
10 medication administered to the defendant, by reasonable force if
11 necessary.

12 (c-4) The magistrate may issue an order under Subsection
13 (c-3) only if the order is supported by the testimony of two
14 physicians, one of whom is the physician who is prescribing the
15 medication as a component of the defendant's continuing care plan
16 or continuity of care plan and another who is not otherwise involved
17 in proceedings against the defendant. The magistrate may require
18 either or both physicians to examine the defendant and report on the
19 examination to the magistrate.

20 (c-5) The magistrate may issue an order under Subsection
21 (c-3) only if the magistrate finds by clear and convincing evidence
22 that the prescribed medication:

23 (1) is medically appropriate, is in the best medical
24 interest of the defendant, and does not present side effects that
25 cause harm to the defendant that is greater than the medical benefit
26 to the defendant; and

27 (2) will not unduly prejudice the defendant's rights

1 or use of defensive theories at trial.

2 (c-6) A statement made by a defendant to a physician during
3 an examination under Subsection (c-4) may not be admitted against
4 the defendant in any criminal proceeding, other than at:

5 (1) a hearing on the defendant's incompetency under
6 Chapter 46B; or

7 (2) any proceeding at which the defendant first
8 introduces into evidence the contents of the statement.

9 (d) Nothing in this article prevents the court from, pending
10 an evaluation of the defendant as described by this article:

11 (1) subject to Subsection (e), releasing a mentally
12 ill or mentally retarded defendant from custody on personal or
13 surety bond; or

14 (2) ordering an examination regarding the defendant's
15 competency to stand trial.

16 (e) If a sheriff releases a defendant who is a person with
17 mental illness or mental retardation from custody, except on final
18 disposition of the criminal proceedings, the sheriff must, before
19 releasing the person:

20 (1) notify the local mental health or mental
21 retardation authority of the impending release; and

22 (2) if possible, arrange for the release of the person
23 during normal business hours.

24 SECTION 2. Article 46B.072(d), Code of Criminal Procedure,
25 is amended to read as follows:

26 (d) An order issued under this article may require the
27 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, including an outpatient treatment program operated in a correctional facility by a local mental health authority or local mental retardation authority; and

(2) an appropriate prescribed regimen of medical, psychiatric, or psychological care or treatment, including care or treatment involving the administration of psychoactive medication, including those required under Article 46B.086.

SECTION 3. Article 46B.086(a), Code of Criminal Procedure, is amended to read as follows:

(a) This article applies only to a defendant:

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

(2) who is confined in a correctional facility while awaiting transfer to an inpatient mental health facility or a residential care facility or who has been released on bail to an outpatient treatment program;

(3) for whom 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) [~~4~~] who, after a hearing held under Section 574.106, Health and Safety Code, by either a court having probate jurisdiction or the court in which the criminal matter is pending, has been found to not [~~to~~] meet the criteria prescribed by Sections

574.106(a) and (a-1), Health and Safety Code, for court-ordered
administration of psychoactive medications~~[, or~~
~~[(4) who is subject to Article 46B.072]~~.

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

Art. 46B.087. ORDER OF RELEASE: CONTINUATION OF TREATMENT.
If a defendant is released under Article 46B.0095 or 46B.010, the
court ordering the defendant's release shall consider whether the
defendant could benefit from continued treatment. If the court
finds that the defendant could benefit from continued treatment,
the court shall include in the order of release a requirement that
the sheriff release the defendant during normal business hours and
notify the local mental health authority or local mental
retardation authority, as applicable, before releasing the
defendant.

SECTION 5. Section 574.104, Health and Safety Code, is
amended by adding Subsection (a-1) to read as follows:

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

(1) proceed under Subsection (a); 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

1 psychoactive medication;

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

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

6 SECTION 6. Section 574.106(c), Health and Safety Code, is
7 amended to read as follows:

8 (c) A hearing under this subchapter shall be conducted on
9 the record by the probate judge, a ~~or~~ judge with probate
10 jurisdiction, or, if applicable, the judge of a criminal court with
11 jurisdiction over the patient, except as provided by Subsection
12 (d).

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