

1-1 By: Madden (Senate Sponsor - Whitmire) H.B. No. 3907
1-2 (In the Senate - Received from the House May 13, 2009;
1-3 May 14, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 22, 2009, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 22, 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 and to the release of
1-10 those defendants from certain facilities.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 16.22, Code of Criminal Procedure, is
1-13 amended by amending Subsection (d) and adding Subsection (e) to
1-14 read as follows:

1-15 (d) This article does not prevent ~~[Nothing in this article~~
1-16 ~~prevents]~~ the court from, pending an evaluation of the defendant as
1-17 described by this article:

1-18 (1) subject to Subsection (e), releasing a mentally
1-19 ill or mentally retarded defendant from custody on personal or
1-20 surety bond; or

1-21 (2) ordering an examination regarding the defendant's
1-22 competency to stand trial.

1-23 (e) If a sheriff releases a defendant who is a person with
1-24 mental illness or mental retardation from custody, except on final
1-25 disposition of the criminal proceedings, the sheriff must, before
1-26 releasing the person:

1-27 (1) notify the local mental health or mental
1-28 retardation authority, as applicable, of the impending release; and

1-29 (2) if possible, arrange for the release of the person
1-30 during normal business hours.

1-31 SECTION 2. Article 46B.072(d), Code of Criminal Procedure,
1-32 is amended to read as follows:

1-33 (d) An order issued under this article may require the
1-34 defendant to participate in:

1-35 (1) as appropriate, an outpatient treatment program
1-36 administered by a community center or an outpatient treatment
1-37 program administered by any other entity that provides outpatient
1-38 competency restoration services; and

1-39 (2) an appropriate prescribed regimen of medical,
1-40 psychiatric, or psychological care or treatment, including:

1-41 (A) care or treatment involving the
1-42 administration of psychoactive medication, including those
1-43 required under Article 46B.086; and

1-44 (B) if applicable, care or treatment
1-45 administered in a correctional facility pending release to an
1-46 outpatient treatment program described by Subdivision (1).

1-47 SECTION 3. Article 46B.086, Code of Criminal Procedure, is
1-48 amended by amending Subsections (a), (b), and (c) and adding
1-49 Subsection (g) to read as follows:

1-50 (a) This article applies only to a defendant:

1-51 (1) who is determined under this chapter to be
1-52 incompetent to stand trial;

1-53 (2) who either:

1-54 (A) remains confined in a correctional facility,
1-55 as defined by Section 1.07, Penal Code, for a period exceeding 72
1-56 hours while awaiting transfer to an inpatient mental health
1-57 facility, a residential care facility, or an outpatient treatment
1-58 program;

1-59 (B) is committed to an inpatient mental health
1-60 facility or a residential care facility for the purpose of
1-61 competency restoration;

1-62 (C) is confined in a correctional facility while
1-63 awaiting further criminal proceedings following competency
1-64 restoration treatment; or

2-1 (D) is subject to Article 46B.072, if the court
 2-2 has made the determinations required by Subsection (a) of that
 2-3 article;

2-4 (3) for whom a correctional facility that employs or
 2-5 contracts with a licensed psychiatrist, an inpatient mental health
 2-6 facility, a residential care facility, or an outpatient treatment
 2-7 program provider has prepared a continuity of care plan that
 2-8 requires the defendant to take psychoactive medications; and

2-9 (4) [~~(3)~~] who, after a hearing held under Section
 2-10 574.106, Health and Safety Code, if applicable, has been found to
 2-11 not [~~to~~] meet the criteria prescribed by Sections 574.106(a) and
 2-12 (a-1), Health and Safety Code, for court-ordered administration of
 2-13 psychoactive medications [~~, or~~

2-14 [~~(4) who is subject to Article 46B.072~~].

2-15 (b) If a defendant described by Subsection (a) refuses to
 2-16 take psychoactive medications as required by the defendant's
 2-17 continuity of care plan, the director of the correctional facility
 2-18 or outpatient treatment program provider, as applicable, shall
 2-19 notify the court in which the criminal proceedings are pending of
 2-20 that fact not later than the end of the next business day following
 2-21 the refusal. The court shall promptly notify the attorney
 2-22 representing the state and the attorney representing the defendant
 2-23 of the defendant's refusal. The attorney representing the state
 2-24 may file a written motion to compel medication. The motion to
 2-25 compel medication must be filed not later than the 15th day after
 2-26 the date a judge issues an order stating that the defendant does not
 2-27 meet the criteria for court-ordered administration of psychoactive
 2-28 medications under Section 574.106, Health and Safety Code, except
 2-29 that, [~~The motion to compel medication~~] for a defendant in an
 2-30 outpatient treatment program, the motion may be filed at any time.

2-31 (c) The court, after notice and after a hearing held not
 2-32 later than the fifth day after the defendant is returned to the
 2-33 committing court, may authorize the director of the [~~a~~]
 2-34 correctional facility or the program provider, as applicable, to
 2-35 have the medication administered to the defendant, by reasonable
 2-36 force if necessary.

2-37 (g) For a defendant described by Subsection (a)(2)(A), an
 2-38 order issued under this article:

2-39 (1) authorizes the initiation of any appropriate
 2-40 mental health treatment for the defendant awaiting transfer; and

2-41 (2) does not constitute authorization to retain the
 2-42 defendant in a correctional facility for competency restoration
 2-43 treatment.

2-44 SECTION 4. Subchapter D, Chapter 46B, Code of Criminal
 2-45 Procedure, is amended by adding Article 46B.087 to read as follows:

2-46 Art. 46B.087. ORDER OF RELEASE: CONTINUATION OF TREATMENT.

2-47 If a defendant is released under Article 46B.0095 or 46B.010, the
 2-48 court ordering the defendant's release shall consider whether the
 2-49 defendant could benefit from continued treatment. If the court
 2-50 finds that the defendant could benefit from continued treatment,
 2-51 the court shall include in the order of release a requirement that
 2-52 the sheriff, before releasing the defendant:

2-53 (1) arrange for the release of the defendant during
 2-54 normal business hours, if possible; and

2-55 (2) notify the local mental health or mental
 2-56 retardation authority, as applicable, of the impending release.

2-57 SECTION 5. Section 574.104, Health and Safety Code, is
 2-58 amended by adding Subsections (a-1) and (a-2) to read as follows:

2-59 (a-1) A physician who is treating a patient ordered to
 2-60 receive inpatient mental health services after having been
 2-61 determined to be incompetent to stand trial may:

2-62 (1) proceed under Subsection (a); or

2-63 (2) file, in the court in which the criminal matter is
 2-64 pending, an application for an order to authorize the
 2-65 administration of a psychoactive medication regardless of the
 2-66 patient's refusal if:

2-67 (A) the physician believes that the patient lacks
 2-68 the capacity to make a decision regarding the administration of the
 2-69 psychoactive medication;

3-1 (B) the physician determines that the medication
 3-2 is the proper course of treatment for the patient; and
 3-3 (C) the patient, verbally or by other indication,
 3-4 refuses to take the medication.

3-5 (a-2) An application filed as described by Subsection
 3-6 (a-1)(2) is subject to the requirements and procedures provided by
 3-7 Article 46B.086, Code of Criminal Procedure. Subsections (b)(3),
 3-8 (c), (d), and (e) do not apply to the application.

3-9 SECTION 6. Section 574.106, Health and Safety Code, is
 3-10 amended by amending Subsection (a-1) and adding Subsection (1) to
 3-11 read as follows:

3-12 (a-1) The court may issue an order under this section only
 3-13 if the court finds by clear and convincing evidence after the
 3-14 hearing:

3-15 (1) that the patient lacks the capacity to make a
 3-16 decision regarding the administration of the proposed medication
 3-17 and treatment with the proposed medication is in the best interest
 3-18 of the patient; or

3-19 (2) if the patient was ordered to receive inpatient
 3-20 mental health services by a criminal court with jurisdiction over
 3-21 the patient, that treatment with the proposed medication is in the
 3-22 best interest of the patient and either:

3-23 (A) the patient presents a danger to the patient
 3-24 or others in the inpatient mental health facility in which the
 3-25 patient is being treated as a result of a mental disorder or mental
 3-26 defect as determined under Section 574.1065; or

3-27 (B) the patient:
 3-28 (i) has remained confined in a correctional
 3-29 facility, as defined by Section 1.07, Penal Code, for a period
 3-30 exceeding 72 hours while awaiting transfer for competency
 3-31 restoration treatment; and

3-32 (ii) presents a danger to the patient or
 3-33 others in the correctional facility as a result of a mental disorder
 3-34 or mental defect as determined under Section 574.1065 [and
 3-35 ~~(B) treatment with the proposed medication is in~~
 3-36 ~~the best interest of the patient].~~

3-37 (1) For a patient described by Subsection (a-1)(2)(B), an
 3-38 order issued under this section:

3-39 (1) authorizes the initiation of any appropriate
 3-40 mental health treatment for the patient awaiting transfer; and

3-41 (2) does not constitute authorization to retain the
 3-42 patient in a correctional facility for competency restoration
 3-43 treatment.

3-44 SECTION 7. Section 574.106(c), Health and Safety Code, is
 3-45 amended to read as follows:

3-46 (c) Except as provided by Subsection (d), a [A] hearing
 3-47 under this subchapter shall be conducted on the record by the
 3-48 probate judge, a [or] judge with probate jurisdiction, or, if
 3-49 applicable, the judge of a criminal court who ordered the patient to
 3-50 receive inpatient mental health services in accordance with Chapter
 3-51 46B, Code of Criminal Procedure [except as provided by Subsection
 3-52 (a)].

3-53 SECTION 8. Section 574.1065, Health and Safety Code, is
 3-54 amended to read as follows:

3-55 Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In
 3-56 making a finding under Section 574.106(a-1)(2) that, as a result of
 3-57 a mental disorder or mental defect, the patient presents a danger to
 3-58 the patient or others in the inpatient mental health facility in
 3-59 which the patient is being treated or in the correctional facility,
 3-60 as applicable, [as a result of a mental disorder or mental defect]
 3-61 the court shall consider:

3-62 (1) an assessment of the patient's present mental
 3-63 condition;

3-64 (2) whether the patient has inflicted, attempted to
 3-65 inflict, or made a serious threat of inflicting substantial
 3-66 physical harm to the patient's self or to another while in the
 3-67 facility; and

3-68 (3) whether the patient, in the six months preceding
 3-69 the date the patient was placed in the facility, has inflicted,

4-1 attempted to inflict, or made a serious threat of inflicting
4-2 substantial physical harm to another that resulted in the patient
4-3 being placed in the facility.

4-4 SECTION 9. Section 574.107(b), Health and Safety Code, is
4-5 amended to read as follows:

4-6 (b) The county in which the applicable criminal charges are
4-7 pending or were adjudicated shall pay as provided by Subsection (a)
4-8 the costs of a hearing that is held under Section 574.106 to
4-9 evaluate the court-ordered administration of psychoactive
4-10 medication to:

4-11 (1) a patient ordered to receive [~~inpatient~~] mental
4-12 health services as described by Section 574.106(a)(1) after having
4-13 been determined to be incompetent to stand trial or having been
4-14 acquitted of an offense by reason of insanity; or

4-15 (2) a patient who:
4-16 (A) is awaiting trial after having been
4-17 determined to be competent to stand trial; and

4-18 (B) was ordered to receive [~~inpatient~~] mental
4-19 health services as described by Section 574.106(a)(2).

4-20 SECTION 10. This Act takes effect immediately if it
4-21 receives a vote of two-thirds of all the members elected to each
4-22 house, as provided by Section 39, Article III, Texas Constitution.
4-23 If this Act does not receive the vote necessary for immediate
4-24 effect, this Act takes effect September 1, 2009.

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