

By: Shapleigh

S.B. No. 1520

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals with mental retardation residing in certain residential care facilities.

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

SECTION 1. Section 592.038, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter E.

SECTION 2. Subsection (b), Section 592.054, Health and Safety Code, is amended to read as follows:

(b) Notwithstanding Subsection (a), consent is required for:

(1) all surgical procedures; and

(2) as provided by Section 592.082, the administration of psychoactive medications.

SECTION 3. Chapter 592, Health and Safety Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.081. DEFINITIONS. In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the

1 proposed treatment.

2 (2) "Medication-related emergency" means a situation
3 in which it is immediately necessary to administer medication to a
4 client to prevent:

5 (A) imminent probable death or substantial
6 bodily harm to the client because the client:

7 (i) overtly or continually is threatening
8 or attempting to commit suicide or serious bodily harm; or

9 (ii) is behaving in a manner that indicates
10 that the client is unable to satisfy the client's need for
11 nourishment, essential medical care, or self-protection; or

12 (B) imminent physical or emotional harm to
13 another because of threats, attempts, or other acts the client
14 overtly or continually makes or commits.

15 (3) "Psychoactive medication" means a medication
16 prescribed for the treatment of symptoms of psychosis or other
17 severe mental or emotional disorders and that is used to exercise an
18 effect on the central nervous system to influence and modify
19 behavior, cognition, or affective state when treating the symptoms
20 of mental illness. "Psychoactive medication" includes the
21 following categories when used as described in this subdivision:

22 (A) antipsychotics or neuroleptics;

23 (B) antidepressants;

24 (C) agents for control of mania or depression;

25 (D) antianxiety agents;

26 (E) sedatives, hypnotics, or other

27 sleep-promoting drugs; and

1 (F) psychomotor stimulants.

2 Sec. 592.082. ADMINISTRATION OF PSYCHOACTIVE MEDICATION.

3 (a) A person may not administer a psychoactive medication to a
4 client receiving voluntary or involuntary residential care
5 services who refuses the administration unless:

6 (1) the client is having a medication-related
7 emergency;

8 (2) the refusing client's representative authorized by
9 law to consent on behalf of the client has consented to the
10 administration;

11 (3) the administration of the medication regardless of
12 the client's refusal is authorized by an order issued under Section
13 592.086; or

14 (4) the administration of the medication regardless of
15 the client's refusal is authorized by an order issued under Article
16 46B.086, Code of Criminal Procedure.

17 (b) Consent to the administration of psychoactive
18 medication given by a client or by a person authorized by law to
19 consent on behalf of the client is valid only if:

20 (1) the consent is given voluntarily and without
21 coercive or undue influence;

22 (2) the treating physician or a person designated by
23 the physician provides the following information, in a standard
24 format approved by the department, to the client and, if
25 applicable, to the client's representative authorized by law to
26 consent on behalf of the client:

27 (A) the specific condition to be treated;

1 (B) the beneficial effects on that condition
2 expected from the medication;

3 (C) the probable health care consequences of not
4 consenting to the medication;

5 (D) the probable clinically significant side
6 effects and risks associated with the medication;

7 (E) the generally accepted alternatives to the
8 medication, if any, and why the physician recommends that they be
9 rejected; and

10 (F) the proposed course of the medication;

11 (3) the client and, if appropriate, the client's
12 representative authorized by law to consent on behalf of the client
13 are informed in writing that consent may be revoked; and

14 (4) the consent is evidenced in the client's clinical
15 record by a signed form prescribed by the facility or by a statement
16 of the treating physician or a person designated by the physician
17 that documents that consent was given by the appropriate person and
18 the circumstances under which the consent was obtained.

19 (c) If the treating physician designates another person to
20 provide the information under Subsection (b), then, not later than
21 two working days after that person provides the information,
22 excluding weekends and legal holidays, the physician shall meet
23 with the client, and, if appropriate, the client's representative
24 who provided the consent, to review the information and answer any
25 questions.

26 (d) A client's refusal or attempt to refuse to receive
27 psychoactive medication, whether given verbally or by other

1 indications or means, shall be documented in the client's clinical
2 record.

3 (e) In prescribing psychoactive medication, a treating
4 physician shall:

5 (1) prescribe, consistent with clinically appropriate
6 medical care, the medication that has the fewest side effects or the
7 least potential for adverse side effects, unless the class of
8 medication has been demonstrated or justified not to be effective
9 clinically; and

10 (2) administer the smallest therapeutically
11 acceptable dosages of medication for the client's condition.

12 (f) If a physician issues an order to administer
13 psychoactive medication to a client without the client's consent
14 because the client is having a medication-related emergency:

15 (1) the physician shall document in the client's
16 clinical record in specific medical or behavioral terms the
17 necessity of the order and that the physician has evaluated but
18 rejected other generally accepted, less intrusive forms of
19 treatment, if any; and

20 (2) treatment of the client with the psychoactive
21 medication shall be provided in the manner, consistent with
22 clinically appropriate medical care, least restrictive of the
23 client's personal liberty.

24 Sec. 592.083. ADMINISTRATION OF MEDICATION TO CLIENT
25 COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section,
26 "ward" has the meaning assigned by Section 601, Texas Probate Code.

27 (b) A person may not administer a psychoactive medication to

1 a client who refuses to take the medication voluntarily unless:

2 (1) the client is having a medication-related
3 emergency;

4 (2) the client is under an order issued under Section
5 592.086 authorizing the administration of the medication
6 regardless of the client's refusal; or

7 (3) the client is a ward who is 18 years of age or older
8 and the guardian of the person of the ward consents to the
9 administration of psychoactive medication regardless of the ward's
10 expressed preferences regarding treatment with psychoactive
11 medication.

12 Sec. 592.084. PHYSICIAN'S APPLICATION FOR ORDER TO
13 AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A
14 physician who is treating a client may file an application in a
15 probate court or a court with probate jurisdiction on behalf of the
16 state for an order to authorize the administration of a
17 psychoactive medication regardless of the client's refusal if:

18 (1) the physician believes that the client lacks the
19 capacity to make a decision regarding the administration of the
20 psychoactive medication;

21 (2) the physician determines that the medication is
22 the proper course of treatment for the client; and

23 (3) the client has been committed to a residential
24 care facility under Subchapter C, Chapter 593, or other law or an
25 application for commitment to a residential care facility under
26 Subchapter C, Chapter 593, has been filed for the client.

27 (b) An application filed under this section must state:

1 (1) that the physician believes that the client lacks
2 the capacity to make a decision regarding administration of the
3 psychoactive medication and the reasons for that belief;

4 (2) each medication the physician wants the court to
5 compel the client to take;

6 (3) whether an application for commitment to a
7 residential care facility under Subchapter C, Chapter 593, has been
8 filed;

9 (4) whether an order committing the client to a
10 residential care facility has been issued and, if so, under what
11 authority it was issued;

12 (5) the physician's diagnosis of the client; and

13 (6) the proposed method for administering the
14 medication and, if the method is not customary, an explanation
15 justifying the departure from the customary methods.

16 (c) An application filed under this section must be filed
17 separately from an application for commitment to a residential care
18 facility.

19 (d) The hearing on the application may be held on the same
20 date as a hearing on an application for commitment to a residential
21 care facility under Subchapter C, Chapter 593, but the hearing must
22 be held not later than 30 days after the filing of the application
23 for the order to authorize psychoactive medication. If the hearing
24 is not held on the same date as the application for commitment to a
25 residential care facility under Subchapter C, Chapter 593, and the
26 client is transferred to a residential care facility in another
27 county, the court may transfer the application for an order to

1 authorize psychoactive medication to the county where the client
2 has been transferred.

3 (e) Subject to the requirement in Subsection (d) that the
4 hearing shall be held not later than 30 days after the filing of the
5 application, the court may grant one continuance on a party's
6 motion and for good cause shown. The court may grant more than one
7 continuance only with the agreement of the parties.

8 Sec. 592.085. RIGHTS OF CLIENT. A client for whom an
9 application for an order to authorize the administration of a
10 psychoactive medication is filed is entitled:

11 (1) to be represented by a court-appointed attorney
12 who is knowledgeable about issues to be adjudicated at the hearing;

13 (2) to meet with that attorney as soon as is
14 practicable to prepare for the hearing and to discuss any of the
15 client's questions or concerns;

16 (3) to receive, immediately after the time of the
17 hearing is set, a copy of the application and written notice of the
18 time, place, and date of the hearing;

19 (4) to be informed, at the time personal notice of the
20 hearing is given, of the client's right to a hearing and right to
21 the assistance of an attorney to prepare for the hearing and to
22 answer any questions or concerns;

23 (5) to be present at the hearing;

24 (6) to request from the court an independent expert;

25 and

26 (7) to be notified orally, at the conclusion of the
27 hearing, of the court's determinations of the client's capacity and

1 best interest.

2 Sec. 592.086. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE
3 MEDICATION. (a) The court may issue an order authorizing the
4 administration of one or more classes of psychoactive medication to
5 a client who:

6 (1) has been committed to a residential care facility;

7 or

8 (2) is in custody awaiting trial in a criminal
9 proceeding and was committed to a residential care facility in the
10 six months preceding a hearing under this section.

11 (b) The court may issue an order under this section only if
12 the court finds by clear and convincing evidence after the hearing:

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

17 (2) if the client was committed to a residential care
18 facility by a criminal court with jurisdiction over the client,
19 that:

20 (A) the client presents a danger to the client or
21 others in the residential care facility in which the client is being
22 treated as a result of a mental disorder or mental defect as
23 determined under Section 592.087; and

24 (B) treatment with the proposed medication is in
25 the best interest of the client.

26 (c) In making the finding that treatment with the proposed
27 medication is in the best interest of the client, the court shall

1 consider:

2 (1) the client's expressed preferences regarding
3 treatment with psychoactive medication;

4 (2) the client's religious beliefs;

5 (3) the risks and benefits, from the perspective of
6 the client, of taking psychoactive medication;

7 (4) the consequences to the client if the psychoactive
8 medication is not administered;

9 (5) the prognosis for the client if the client is
10 treated with psychoactive medication;

11 (6) alternative, less intrusive treatments that are
12 likely to produce the same results as treatment with psychoactive
13 medication; and

14 (7) less intrusive treatments likely to secure the
15 client's consent to take the psychoactive medication.

16 (d) A hearing under this subchapter shall be conducted on
17 the record by the probate judge or judge with probate jurisdiction,
18 except as provided by Subsection (e).

19 (e) A judge may refer a hearing to a magistrate or
20 court-appointed master who has training regarding psychoactive
21 medications. The magistrate or master may effectuate the notice,
22 set hearing dates, and appoint attorneys as required by this
23 subchapter. A record is not required if the hearing is held by a
24 magistrate or court-appointed master.

25 (f) A party is entitled to a hearing de novo by the judge if
26 an appeal of the magistrate's or master's report is filed with the
27 court before the fourth day after the date the report is issued.

1 The hearing de novo shall be held not later than the 30th day after
2 the date the application for an order to authorize psychoactive
3 medication was filed.

4 (g) If a hearing or an appeal of a master's or magistrate's
5 report is to be held in a county court in which the judge is not a
6 licensed attorney, the proposed client or the proposed client's
7 attorney may request that the proceeding be transferred to a court
8 with a judge who is licensed to practice law in this state. The
9 county judge shall transfer the case after receiving the request,
10 and the receiving court shall hear the case as if it had been
11 originally filed in that court.

12 (h) As soon as practicable after the conclusion of the
13 hearing, the client is entitled to have provided to the client and
14 the client's attorney written notification of the court's
15 determinations under this section. The notification shall include
16 a statement of the evidence on which the court relied and the
17 reasons for the court's determinations.

18 (i) An order entered under this section shall authorize the
19 administration to a client, regardless of the client's refusal, of
20 one or more classes of psychoactive medications specified in the
21 application and consistent with the client's diagnosis. The order
22 shall permit an increase or decrease in a medication's dosage,
23 restitution of medication authorized but discontinued during the
24 period the order is valid, or the substitution of a medication
25 within the same class.

26 (j) The classes of psychoactive medications in the order
27 must conform to classes determined by the department.

1 (k) An order issued under this section may be reauthorized
2 or modified on the petition of a party. The order remains in effect
3 pending action on a petition for reauthorization or modification.
4 For the purpose of this subsection, "modification" means a change
5 of a class of medication authorized in the order.

6 Sec. 592.087. FINDING THAT CLIENT PRESENTS A DANGER. In
7 making a finding under Section 592.086(b)(2) that the client
8 presents a danger to the client or others in the residential care
9 facility in which the client is being treated as a result of a
10 mental disorder or mental defect, the court shall consider:

11 (1) an assessment of the client's present mental
12 condition; and

13 (2) whether the client has inflicted, attempted to
14 inflict, or made a serious threat of inflicting substantial
15 physical harm to the client's self or to another while in the
16 facility.

17 Sec. 592.088. APPEAL. (a) A client may appeal an order
18 under this subchapter in the manner provided by Section 593.056 for
19 an appeal of an order committing the client to a residential care
20 facility.

21 (b) An order authorizing the administration of medication
22 regardless of the refusal of the client is effective pending an
23 appeal of the order.

24 Sec. 592.089. EFFECT OF ORDER. (a) A person's consent to
25 take a psychoactive medication is not valid and may not be relied on
26 if the person is subject to an order issued under Section 592.086.

27 (b) The issuance of an order under Section 592.086 is not a

1 determination or adjudication of mental incompetency and does not
2 limit in any other respect that person's rights as a citizen or the
3 person's property rights or legal capacity.

4 Sec. 592.090. EXPIRATION OF ORDER. (a) Except as provided
5 by Subsection (b), an order issued under Section 592.086 expires on
6 the anniversary of the date the order was issued.

7 (b) An order issued under Section 592.086 for a client
8 awaiting trial in a criminal proceeding expires on the date the
9 defendant is acquitted, is convicted, or enters a plea of guilty or
10 the date on which charges in the case are dismissed. An order
11 continued under this subsection shall be reviewed by the issuing
12 court every six months.

13 SUBCHAPTER F. USE OF RESTRAINTS IN STATE SCHOOLS

14 Sec. 592.151. DEFINITION. In this subchapter, "executive
15 commissioner" means the executive commissioner of the Health and
16 Human Services Commission.

17 Sec. 592.152. USE OF RESTRAINTS. The executive
18 commissioner shall adopt rules to ensure that:

19 (1) a mechanical or physical restraint is not
20 administered to a resident of a state school unless the restraint
21 is:

22 (A) necessary to prevent imminent physical
23 injury to the resident or another; and

24 (B) the least restrictive restraint effective to
25 prevent imminent physical injury;

26 (2) the administration of a mechanical or physical
27 restraint to a resident of a state school ends immediately once the

1 imminent risk of physical injury abates;

2 (3) a mechanical or physical restraint is not
3 administered to a resident of a state school as punishment; and

4 (4) a mechanical or physical restraint is not
5 administered as part of a behavior plan to change behavior but only
6 to provide immediate protection from imminent harm.

7 Sec. 592.153. RESTRAINTS PROHIBITED. (a) A person may
8 not use a straitjacket to restrain a resident of a state school.

9 (b) A papoose board or restraint board may not be used to
10 restrain a resident of a state school unless:

11 (1) the device is used as a medical restraint as part
12 of a health-related protection that is prescribed by a physician;

13 (2) use of the restraint is necessary for protection
14 during the time a medical or dental condition exists for the purpose
15 of preventing an individual from inhibiting or undoing medical or
16 dental treatment; and

17 (3) medication is not a viable alternative for the
18 individual.

19 Sec. 592.154. CONFLICT WITH OTHER LAW. To the extent of a
20 conflict between this subchapter and Chapter 322, this subchapter
21 controls.

22 SECTION 4. Subsections (a) and (b), Article 46B.086, Code
23 of Criminal Procedure, are amended to read as follows:

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

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

27 (2) for whom an inpatient mental health facility,

1 residential care facility, or outpatient treatment program
2 provider has prepared a continuity of care plan that requires the
3 defendant to take psychoactive medications; and

4 (3) who, after a hearing held under Section 574.106 or
5 592.086, Health and Safety Code, has been found not to meet the
6 criteria prescribed by Sections 574.106(a) and (a-1), or Sections
7 592.086(a) and (b), Health and Safety Code, for court-ordered
8 administration of psychoactive medications; or

9 (4) who is subject to Article 46B.072.

10 (b) If a defendant described by Subsection (a) refuses to
11 take psychoactive medications as required by the defendant's
12 continuity of care plan, the director of the correctional facility
13 or outpatient treatment provider shall notify the court in which
14 the criminal proceedings are pending of that fact not later than the
15 end of the next business day following the refusal. The court shall
16 promptly notify the attorney representing the state and the
17 attorney representing the defendant of the defendant's refusal.
18 The attorney representing the state may file a written motion to
19 compel medication. The motion to compel medication must be filed
20 not later than the 15th day after the date a judge issues an order
21 stating that the defendant does not meet the criteria for
22 court-ordered administration of psychoactive medications under
23 Section 574.106 or 592.086, Health and Safety Code. The motion to
24 compel medication for a defendant in an outpatient treatment
25 program may be filed at any time.

26 SECTION 5. Not later than January 1, 2010, the executive
27 commissioner of the Health and Human Services Commission shall

1 adopt rules required under Section 592.152, Health and Safety Code,
2 as added by this Act.

3 SECTION 6. If before implementing any provision of this Act
4 a state agency determines that a waiver or authorization from a
5 federal agency is necessary for implementation of that provision,
6 the agency affected by the provision shall request the waiver or
7 authorization and may delay implementing that provision until the
8 waiver or authorization is granted.

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