

1-1 By: Shapleigh S.B. No. 1520  
1-2 (In the Senate - Filed March 9, 2009; March 17, 2009, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 April 14, 2009, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 14, 2009, sent to printer.)

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

1-8 relating to the protection and care of individuals with mental  
1-9 retardation residing in certain residential care facilities.

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

1-11 SECTION 1. Section 592.038, Health and Safety Code, is  
1-12 amended by adding Subsection (d) to read as follows:

1-13 (d) Each client has the right to refuse psychoactive  
1-14 medication, as provided by Subchapter E.

1-15 SECTION 2. Subsection (b), Section 592.054, Health and  
1-16 Safety Code, is amended to read as follows:

1-17 (b) Notwithstanding Subsection (a), consent is required  
1-18 for:

1-19 (1) all surgical procedures; and

1-20 (2) as provided by Section 592.082, the administration  
1-21 of psychoactive medications.

1-22 SECTION 3. Chapter 592, Health and Safety Code, is amended  
1-23 by adding Subchapters E and F to read as follows:

1-24 SUBCHAPTER E. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

1-25 Sec. 592.081. DEFINITIONS. In this subchapter:

1-26 (1) "Capacity" means a client's ability to:

1-27 (A) understand the nature and consequences of a  
1-28 proposed treatment, including the benefits, risks, and  
1-29 alternatives to the proposed treatment; and

1-30 (B) make a decision whether to undergo the  
1-31 proposed treatment.

1-32 (2) "Medication-related emergency" means a situation  
1-33 in which it is immediately necessary to administer medication to a  
1-34 client to prevent:

1-35 (A) imminent probable death or substantial  
1-36 bodily harm to the client because the client:

1-37 (i) overtly or continually is threatening  
1-38 or attempting to commit suicide or serious bodily harm; or

1-39 (ii) is behaving in a manner that indicates  
1-40 that the client is unable to satisfy the client's need for  
1-41 nourishment, essential medical care, or self-protection; or

1-42 (B) imminent physical or emotional harm to  
1-43 another because of threats, attempts, or other acts the client  
1-44 overtly or continually makes or commits.

1-45 (3) "Psychoactive medication" means a medication  
1-46 prescribed for the treatment of symptoms of psychosis or other  
1-47 severe mental or emotional disorders and that is used to exercise an  
1-48 effect on the central nervous system to influence and modify  
1-49 behavior, cognition, or affective state when treating the symptoms  
1-50 of mental illness. "Psychoactive medication" includes the  
1-51 following categories when used as described in this subdivision:

1-52 (A) antipsychotics or neuroleptics;

1-53 (B) antidepressants;

1-54 (C) agents for control of mania or depression;

1-55 (D) antianxiety agents;

1-56 (E) sedatives, hypnotics, or other  
1-57 sleep-promoting drugs; and

1-58 (F) psychomotor stimulants.

1-59 Sec. 592.082. ADMINISTRATION OF PSYCHOACTIVE MEDICATION.

1-60 (a) A person may not administer a psychoactive medication to a  
1-61 client receiving voluntary or involuntary residential care  
1-62 services who refuses the administration unless:

1-63 (1) the client is having a medication-related  
1-64 emergency;

1-65 (2) the refusing client's representative authorized by  
1-66 law to consent on behalf of the client has consented to the

administration;

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

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

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

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

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

(A) the specific condition to be treated;

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

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

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

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

(F) the proposed course of the medication;

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

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

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

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

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

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

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

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

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

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

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

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) to receive, immediately after the time of the

hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

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

(5) to be present at the hearing;

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

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

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

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

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

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

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

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

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

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

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

(2) the client's religious beliefs;

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

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

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

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

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

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

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

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or master's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of a master's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's

attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

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

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

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

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

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

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

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

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

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

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

(b) The issuance of an order under Section 592.086 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

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

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

#### SUBCHAPTER F. USE OF RESTRAINTS IN STATE SCHOOLS

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

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

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

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

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

(2) the administration of a mechanical or physical restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state school as punishment or as part of a behavior plan.

Sec. 592.153. RESTRAINTS PROHIBITED. A person may not use a straitjacket or a papoose board to restrain a resident of a state school.

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

SECTION 4. Subsections (a) and (b), Article 46B.086, Code of Criminal Procedure, are 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) for whom an inpatient mental health facility, residential care facility, or outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

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

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

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

SECTION 5. Not later than January 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules required under Section 592.152, Health and Safety Code, as added by this Act.

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

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

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