

By: Wentworth

S.B. No. 1665

A BILL TO BE ENTITLED

AN ACT

relating to post-commitment treatment and supervision of persons with mental illness who are manifestly dangerous.

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

SECTION 1. Section 574.036, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) In an order committing a person to a mental health facility for extended inpatient mental health services, the judge may include a finding that the person is manifestly dangerous. The judge may include the finding only if the criterion specified by the jury or judge under Section 574.035(c) is that the proposed patient is likely to cause serious harm to others.

SECTION 2. Chapter 574, Health and Safety Code, is amended by adding Subchapter F-1 to read as follows:

SUBCHAPTER F-1. PROCEEDINGS INVOLVING MANIFESTLY DANGEROUS

PATIENTS

Sec. 574.091. APPLICABILITY. This subchapter applies only to a patient receiving court-ordered inpatient mental health services at an inpatient mental health facility who is:

(1) found to be manifestly dangerous in an order committing the person to extended inpatient mental health services under Section 574.036(f);

(2) committed to a maximum security unit in accordance with Article 46B.104, Code of Criminal Procedure; or

1 (3) the subject of an affirmative determination under
2 Article 46C.157, Code of Criminal Procedure.

3 Sec. 574.092. RELEASE OF PATIENT. (a) Notwithstanding any
4 other provision of this chapter or of Chapter 46B or 46C, Code of
5 Criminal Procedure, a facility administrator may not permit a
6 patient to leave the inpatient mental health facility to receive
7 outpatient mental health services or under a pass or furlough
8 unless the administrator:

9 (1) submits to the review board established under
10 Section 574.093 a continuing care plan prepared by the physician
11 responsible for the patient's treatment; and

12 (2) receives:

13 (A) a determination from the review board that a
14 treatment and supervision plan is not necessary; or

15 (B) a court order in accordance with Section
16 574.094, if the review board determines that a treatment and
17 supervision plan is necessary.

18 (b) A facility administrator shall, not later than the 90th
19 day before the scheduled discharge date, submit to the review board
20 established under Section 574.093 a continuing care plan for a
21 patient scheduled to be discharged.

22 Sec. 574.093. REVIEW BOARD. (a) The executive
23 commissioner of the Health and Human Services Commission shall
24 appoint a five-member review board to determine whether a patient
25 who has had a continuing care plan forwarded to the review board
26 would be manifestly dangerous if the patient did not follow the
27 continuing care plan after leaving the inpatient mental health

1 facility. A review board must include at least one psychiatrist
2 licensed to practice medicine in this state and two persons who work
3 directly with persons with mental illness or mental retardation.

4 (b) In determining whether a patient would be manifestly
5 dangerous if the patient did not follow the patient's continuing
6 care plan, the review board shall consider:

7 (1) an assessment of the patient's present mental
8 condition;

9 (2) whether the patient has inflicted, attempted to
10 inflict, or made a serious threat of inflicting substantial
11 physical harm to another while in the facility;

12 (3) whether the patient, in the six months preceding
13 the date the patient was placed in the facility, has inflicted,
14 attempted to inflict, or made a serious threat of inflicting
15 substantial physical harm to another;

16 (4) whether the patient during a period of release
17 from an inpatient mental health facility under the current order or
18 a prior order for inpatient mental health services has inflicted,
19 attempted to inflict, or made a serious threat of inflicting
20 substantial physical harm to another; and

21 (5) whether the patient is likely to follow the
22 continuing care plan on release from the facility without a
23 treatment and supervision plan.

24 (c) If the review board determines that a patient would be
25 manifestly dangerous if the patient did not follow the continuing
26 care plan after leaving the inpatient mental health facility, the
27 review board shall recommend to the court that ordered the

1 patient's inpatient mental health services a treatment and
2 supervision plan that may include:

3 (1) provisions requiring the patient to submit to:

4 (A) tracking under a particular type of tracking
5 service or any other appropriate supervision;

6 (B) access to and tracking of the patient's
7 prescription records; or

8 (C) a continuous automated delivery system for
9 necessary medications;

10 (2) provisions prohibiting the patient from changing
11 the patient's residence without first obtaining authorization from
12 the court and from leaving the state without first obtaining
13 authorization from the court;

14 (3) provisions requiring the patient to notify the
15 court immediately or within 24 hours of any change in the patient's
16 status that affects proper treatment and supervision, including:

17 (A) a change in the patient's physical health or
18 job status; and

19 (B) any incarceration of the patient; or

20 (4) any other provision that the review board finds
21 necessary to ensure that the patient follows the continuing care
22 plan.

23 (d) If the review board determines that a patient would not
24 be manifestly dangerous if the patient did not follow the
25 continuing care plan after leaving the inpatient mental health
26 facility, the review board shall inform the facility administrator
27 and the court that ordered the patient's inpatient mental health

1 services of the review board's determination that a treatment and
2 supervision plan is not necessary.

3 Sec. 574.094. HEARING AND ORDER AUTHORIZING TREATMENT AND
4 SUPERVISION PLAN. (a) A court that receives a recommended
5 treatment and supervision plan from the review board may:

6 (1) enter an order modifying the order for inpatient
7 mental health services to allow the patient to leave the inpatient
8 mental health facility to receive outpatient mental health services
9 or under a pass or furlough subject to the conditions provided by
10 the treatment and supervision plan;

11 (2) enter an order requiring the patient to comply
12 with the recommended treatment and supervision plan after the
13 patient is discharged from the facility; or

14 (3) enter an order stating that the treatment and
15 supervision plan is not necessary.

16 (b) The court may enter an order under Subsection (a)(1) or
17 (3) without a hearing or with a hearing as prescribed by Section
18 574.061(d). If a hearing is not requested, the court may enter the
19 order based solely on the recommendation of the review board and any
20 supporting information.

21 (c) The court may enter an order under Subsection (a)(2)
22 only if the court finds by clear and convincing evidence after a
23 hearing that:

24 (1) the patient would be manifestly dangerous if the
25 patient did not follow the patient's continuing care plan after
26 leaving the inpatient mental health facility; and

27 (2) the treatment and supervision plan recommended by

1 the review board is necessary to ensure that the patient follows the
2 patient's continuing care plan.

3 (d) In making a finding under Subsection (c) that the
4 patient would be manifestly dangerous if the patient did not follow
5 the patient's continuing care plan, the court shall consider:

6 (1) an assessment of the patient's present mental
7 condition;

8 (2) whether the patient has inflicted, attempted to
9 inflict, or made a serious threat of inflicting substantial
10 physical harm to another while in the facility;

11 (3) whether the patient, in the six months preceding
12 the date the patient was placed in the facility, has inflicted,
13 attempted to inflict, or made a serious threat of inflicting
14 substantial physical harm to another;

15 (4) whether the patient during a period of release
16 from an inpatient mental health facility under the current order or
17 a prior order for inpatient mental health services has inflicted,
18 attempted to inflict, or made a serious threat of inflicting
19 substantial physical harm to another;

20 (5) whether the patient is likely to follow the
21 continuing care plan on release from the facility without a
22 treatment and supervision plan;

23 (6) the testimony of the patient and any expert
24 testifying on behalf of the patient; and

25 (7) the availability of an alternative, less intrusive
26 treatment and supervision plan likely to result in the patient's
27 compliance with the patient's continuing care plan.

1 (e) A court may modify any order under this section on
2 receipt of a recommendation from the review board, after a biennial
3 review under Section 574.095, or after a hearing on a petition for
4 removal of all or part of the treatment and supervision conditions.

5 (f) A court that receives a determination from the review
6 board that a treatment and supervision plan is not necessary:

7 (1) shall enter the review board's determination in
8 the patient's court record; and

9 (2) may conduct further proceedings as otherwise
10 provided by this chapter.

11 (g) A patient is entitled to be present and to have the
12 benefit of all constitutional protections provided to the patient
13 at a hearing under this section.

14 Sec. 574.095. BIENNIAL REVIEW. (a) The review board shall
15 conduct a biennial review of the status of a patient who is released
16 subject to a recommended treatment and supervision plan ordered
17 under Section 574.094(a)(2).

18 (b) The patient may be represented by counsel at the
19 biennial review.

20 (c) If the patient has a treating physician, the physician
21 shall provide a report to the review board regarding whether a
22 requirement imposed by the treatment and supervision plan should be
23 modified or removed.

24 (d) The review board may:

25 (1) recommend that the court modify or remove a
26 requirement imposed by the treatment and supervision plan if the
27 review board finds that the requirement is no longer necessary to

1 ensure that the patient does not become manifestly dangerous; or
2 (2) recommend that the court extend and, if necessary,
3 modify the order requiring a treatment and supervision plan if the
4 review board finds that the plan and any modifications are
5 necessary to ensure that the patient does not become manifestly
6 dangerous.

7 Sec. 574.096. PETITION FOR REMOVAL OF TREATMENT AND
8 SUPERVISION CONDITIONS. (a) A patient subject to an order entered
9 under Section 574.094(a)(1) or (2) requiring the patient to comply
10 with a treatment and supervision plan may file with the court a
11 petition for removal of all or part of the conditions imposed under
12 that order.

13 (b) If the patient files a petition for removal of all or
14 part of the treatment and supervision conditions, the patient shall
15 serve the petition on the court, the review board, and the county
16 attorney or district attorney with jurisdiction in that court.

17 (c) On receipt of a petition for removal of all or part of
18 the treatment and supervision conditions, the court shall attempt
19 as soon as practicable to review the petition.

20 (d) The court may deny without a hearing a petition for
21 removal of all or part of the treatment and supervision conditions
22 if the court finds that the petition is frivolous.

23 (e) If the court does not deny a petition for removal of all
24 or part of the treatment and supervision conditions filed by the
25 patient, the court shall conduct as soon as practicable a hearing on
26 the petition.

27 (f) The patient and the attorney representing the state are

1 entitled to an immediate examination of the patient by an expert.

2 (g) On request of the patient or the attorney representing
3 the state, the court shall conduct the hearing before a jury.

4 (h) The burden of proof at the hearing is on the state to
5 prove by clear and convincing evidence that all or the relevant part
6 of the treatment and supervision plan is necessary to ensure that
7 the patient does not become manifestly dangerous.

8 (i) A patient is entitled to be present and to have the
9 benefit of all constitutional protections provided to the patient
10 at a hearing under this section.

11 SECTION 3. The change in law made by this Act applies only
12 to persons:

13 (1) committed to temporary or extended inpatient
14 mental health services under Chapter 574, Health and Safety Code,
15 on or after the effective date of this Act;

16 (2) found manifestly dangerous in an order committing
17 the person to extended inpatient mental health services under
18 Section 574.036(f), Health and Safety Code, as added by this Act, on
19 or after the effective date of this Act;

20 (3) committed to a maximum security unit in accordance
21 with Article 46B.104, Code of Criminal Procedure, on or after the
22 effective date of this Act; or

23 (4) subject to an affirmative determination made under
24 Article 46C.157, Code of Criminal Procedure, on or after the
25 effective date of this Act.

26 SECTION 4. This Act takes effect September 1, 2009.