

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3907** by Madden (Relating to the court-ordered administration of psychoactive medication to certain criminal defendants and to the release of those defendants from certain facilities. ), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Article 16.22, Code of Criminal Procedure, to establish procedures a sheriff must follow when releasing a defendant who is a person with mental illness or mental retardation from custody, except on final disposition of the criminal proceedings.

The bill would amend Article 46B.086, Code of Criminal Procedure, to authorize actions for obtaining a court-order to require a person to take psychoactive medications if: 1) the person has been determined incompetent to stand trial; 2) if the person is either: a) confined to a correctional facility while awaiting transfer to an inpatient mental health or a residential care facility; b) committed to an inpatient or residential care facility for the purpose of competency restoration; c) confined to a correctional facility following competency restoration treatment; or d) been released on bail; and 3) a continuity of care plan for that person requires they take psychoactive medications.

The bill would amend Section 574.106 of the Health and Safety Code to authorize a court to issue an order authorizing the administration of one or more classes of psychoactive medications to a patient who has been confined in a correctional facility for more than 72 hours while awaiting transfer for competency restoration treatment and who presents a danger to themselves or others in the facility due to a mental disorder.

The bill would amend Section 574.107 of the Health and Safety Code to include in required costs to be paid by the county in which applicable criminal charges are pending or were adjudicated, the costs of a competency hearing held to evaluate the court-ordered administration of psychoactive medication to a patient ordered to receive mental health services, whether inpatient or not. Under current statute, the requirement applies only to inpatient mental health services.

Although the Department of State Health Services (DSHS) assumes these provisions of the bill could decrease the number of "incompetent to stand trial" patients who are returned to DSHS mental health facilities, the agency does not anticipate a direct fiscal impact.

The bill would amend Chapter 592 of the Health and Safety Code, the Persons with Mental Retardation Act. The bill would add the right to refuse psychoactive medication and would require consent for the administration of psychoactive medications to persons receiving services in a residential care facility, including state schools and the center operated by the Department of Aging and Disability Services (DADS) and the Intermediate Care Facility for persons with Mental Retardation (ICF-MR) component of the Rio Grande State Center operated by the Department of State Health Services (DSHS).

The bill would add Subchapter E, Administration of Psychoactive Medications, to Chapter 592. The bill would prohibit administration of psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless certain requirements are

satisfied. The bill would establish requirements for the provision of consent and require documentation of a client's refusal of consent in the client's clinical record. The bill would require a treating physician to prescribe the medication with the fewest side effects or potential for adverse side effects in the smallest therapeutically acceptable dosage for the client's condition. The bill would require the physician issuing an order to administer the medication without the client's consent to provide documentation in the client's clinical record and require treatment that is least restrictive of the client's personal liberty.

The bill would enable a physician to 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 under certain circumstances. The bill would provide a client with rights pertaining to the hearing including the right to be represented by a court-appointed attorney and the right to be present at the hearing. The bill would permit the court to issue an order authorizing the administration of one or more psychoactive medications to a client who has been committed to a residential care facility or is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing, pending certain criteria. The bill would provide for a client appeal.

The bill would amend the Code of Criminal Procedure so that Articles 46B0.86(a) and (b) would apply to a defendant who after a hearing under the new subchapter, has been found not to meet the criteria for court-ordered administration of psychoactive medications DADS and DSHS indicate they can absorb costs associated with the implementation of the bill within current resources.

The Office of Court Administration indicates that while the hearings and other procedures will increase the work of the court system, the increase should not be so material as to result in the need for new judge and/or court personnel, and no significant fiscal implication to the State is anticipated.

To the extent that the bill results in a reduction in the administration of psychoactive medications, there could be additional cost savings to the Medicaid program, but these savings cannot be estimated and are not included in this analysis.

### **Local Government Impact**

Procedures would affect courts, sheriffs, and local mental health or mental retardation authorities.

No significant fiscal implications to units of local government are anticipated unless a local government entity would be responsible for costs of the required court-ordered outpatient mental health services.

OCA indicates that while the hearings and other procedures will increase the work of the court system, the increase should not be so material as to result in the need for new judge and/or court personnel and no significant fiscal implication to local government is anticipated.

**Source Agencies:** 537 State Health Services, Department of

**LBB Staff:** JOB, ESi, DB, CL, JB, JF