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

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

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

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

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

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

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

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

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

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

(2) an appropriate prescribed regimen of medical,

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psychiatric, or psychological care or treatment, including:

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

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

SECTION 3. Article 46B.086, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (c) and adding Subsection (g) 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) who either:

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

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

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

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

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article;

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

(4) ~~[(3)]~~ who, after a hearing held under Section 574.106, Health and Safety Code, if applicable, has been found to not ~~[to]~~ meet the criteria prescribed by Sections 574.106(a) and (a-1), 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 program provider, as applicable, 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, Health and Safety Code, except that, ~~[The motion to compel~~

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~~medication]~~ for a defendant in an outpatient treatment program, the motion may be filed at any time.

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

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

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

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

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

Art. 46B.087. ORDER OF RELEASE: CONTINUATION OF TREATMENT. If a defendant is released under Article 46B.0095 or 46B.010, the court ordering the defendant's release shall consider whether the defendant could benefit from continued treatment. If the court finds that the defendant could benefit from continued treatment, the court shall include in the order of release a requirement that the sheriff, before releasing the defendant:

(1) arrange for the release of the defendant during

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normal business hours, if possible; and
(2) notify the local mental health or mental retardation
authority, as applicable, of the impending release.

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

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

(1) proceed under Subsection (a); or

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

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

(B) the physician determines that the medication is the proper course of treatment for the patient; and

(C) the patient, verbally or by other indication, refuses to take the medication.

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

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

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

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

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

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065

~~[and~~

~~[(B) treatment with the proposed medication is in the best interest of the patient].~~

(l) For a patient described by Subsection (a-1)(2)(B), an

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order issued under this section:

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

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

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

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

Same as House version.

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

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

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- (1) an assessment of the patient's present mental condition;
- (2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and
- (3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

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

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

- (1) a patient ordered to receive [~~inpatient~~] mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or
- (2) a patient who:
 - (A) is awaiting trial after having been determined to be competent to stand trial; and
 - (B) was ordered to receive [~~inpatient~~] mental health services as described by Section 574.106(a)(2).

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SECTION 10. 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.

Same as House version.

The following rows were presented as identical to the House Committee Report version of Senate Bill 750, relating to the administration of psychoactive medications to persons receiving services in a residential care facility.

No equivalent provision.

SECTION __. (a) 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.

(b) 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 592.083, the administration of psychoactive medications.

(c) Chapter 592, Health and Safety Code, is amended by adding Subchapter E to read as follows:

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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 proposed treatment.

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

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

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

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

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

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

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subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs;

and

(F) psychomotor stimulants.

Sec. 592.082. ADMINISTRATION OF

PSYCHOACTIVE MEDICATION. (a) A person may

not administer a psychoactive medication to a client

receiving voluntary or involuntary residential care

services who refuses the administration unless:

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

(2) the refusing client's representative authorized by 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

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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 residential care 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

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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

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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

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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

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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;

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(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

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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

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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

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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

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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.

(d) 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

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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.

(e) Notwithstanding any other provision of this Act, this section takes effect September 1, 2009.