

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1503
By: Huffman
Criminal Justice
5/6/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1503 allows criminal courts to more effectively and efficiently handle issues of competency, to facilitate the successful return to society of individuals released from mental health facilities, and to protect the public from violent individuals with mental health problems.

C.S.S.B. 1503 amends current law relating to procedures regarding certain criminal defendants who are or may be persons with mental illness or mental retardation.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TXMHMR), the following amendments affect the Department of Assistive and Rehabilitative Services, as the successor agency to TXMHMR.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Department of Assistive and Rehabilitative Services [Texas Department of Mental Health and Mental Retardation] is modified in SECTION 2 (Section 551.042, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 46C.261(a), Code of Criminal Procedure, to require a criminal court that orders an acquitted person committed to inpatient treatment or orders outpatient or community-based treatment and supervision annually to determine whether to renew the order and has continuing jurisdiction over all renewals for the purposes of this chapter.

SECTION 2. Amends Section 551.042, Health and Safety Code, as follows:

Sec. 551.042. New heading: OUTPATIENT CLINICS AND TRANSITIONAL FACILITIES. (a) Requires the Texas Department of Mental Health and Mental Retardation (TXMHMR), if funds are available, to establish in locations TXMHMR considers necessary outpatient clinics and transitional facilities to treat persons with mental illness.

(b) Authorizes TXMHMR, as necessary to establish and operate the clinics and transitional facilities, to acquire facilities, hire personnel, adopt rules, and contract with persons, corporations, and local, state, and federal agencies.

SECTION 3. Amends Sections 572.004(c) and (d), Health and Safety Code, as follows:

(c) Requires the notified physician to evaluate the patient to determine whether there is reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention. Requires the notified physician to discharge the patient on completion of the evaluation, rather than before the end of the four-hour period, unless the physician finds, rather than has, reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) Requires a physician who finds, rather than has, reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention to examine the patient as soon as possible within 24 hours after the time the request for discharge is filed.

SECTION 4. Amends Section 574.086, Health and Safety Code, by adding Subsections (d) and (e), as follows:

(d) Provides that, notwithstanding Subsection (a) (relating to discharging a patient before the court order expires), a discharge under this section is subject to judicial review and disapproval under Section 574.090 if:

(1) one of the criteria that formed the basis for the decision to commit the patient was a finding that the patient was likely to cause serious harm to others;

(2) regardless of the criteria that formed the basis for the decision to commit, a treating physician now believes that the patient poses a substantial risk of causing harm to others; or

(3) the patient has a violent criminal history.

(e) Provides that for purposes of this subsection, a patient has a violent criminal history if the patient:

(1) has a prior conviction or has received community supervision for an offense listed in Article 17.032(a) (defining "violent offense"), Code of Criminal Procedure;

(2) is currently charged with an offense listed in Article 17.032(a), Code of Criminal Procedure;

(3) has been charged with an offense listed in Article 17.032(a), Code of Criminal Procedure, in the five years preceding the date of the patient's current commitment; or

(4) has ever been found not guilty by reason of insanity of an offense listed in Article 17.032(a), Code of Criminal Procedure.

SECTION 5. Amends Subchapter F, Chapter 574, Health and Safety Code, by adding Section 574.090, as follows:

Sec. 574.090. JUDICIAL REVIEW OF DISCHARGE. (a) Requires a facility administrator who determines that a patient described by Section 574.086(d) does not meet the criteria for court-ordered inpatient mental health services to prepare a discharge certificate as required by Section 574.087 (Certificate of Discharge) and file it with the court that entered the order committing the patient to court-ordered inpatient mental health services.

(b) Requires the court, on the filing of a discharge certificate under Subsection (a), to notify the attorney representing the state and the patient's last attorney of record and provide each attorney a copy of the discharge certificate.

(c) Requires the court, on the request of the attorney representing the state, to conduct a hearing to determine whether the patient no longer meets the criteria for court-ordered inpatient mental health services and should be discharged. Authorizes the court to hold the hearing on its own motion.

(d) Authorizes the court to order further psychiatric or psychological testing the court considers necessary for determining whether the patient no longer meets the

criteria for court-ordered inpatient mental health services and should be discharged.

(e) Requires the court, at the hearing conducted under this section, to determine whether the person meets any criteria for court-ordered inpatient mental health services listed in Section 574.035(a). Requires the court, if the court finds by clear and convincing evidence that the patient meets one of the criteria for court-ordered inpatient mental health services, to disapprove the patient's release and enter a new order committing the patient for court-ordered extended inpatient mental health services. Requires the court, if the court does not find by clear and convincing evidence that the patient meets one of the criteria for court-ordered inpatient mental health services, to approve the patient's discharge.

SECTION 6. Provides that the changes in law made by this Act in amending Article 46C.261(a), Code of Criminal Procedure, apply only to a defendant with respect to whom any proceeding under Chapter 46C, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

SECTION 7. Effective date: September 1, 2011.