

1-1 By: Huffman S.B. No. 1503
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 12, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 12, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1503 By: Huffman

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to procedures regarding certain criminal defendants who
1-11 are or may be persons with mental illness or mental retardation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Article 46C.261, Code of
1-14 Criminal Procedure, is amended to read as follows:

1-15 (a) A criminal court that orders an acquitted person
1-16 committed to inpatient treatment or orders outpatient or
1-17 community-based treatment and supervision annually shall determine
1-18 whether to renew the order and has continuing jurisdiction over all
1-19 renewals for the purposes of this chapter.

1-20 SECTION 2. Section 551.042, Health and Safety Code, is
1-21 amended to read as follows:

1-22 Sec. 551.042. OUTPATIENT CLINICS AND TRANSITIONAL
1-23 FACILITIES. (a) If funds are available, the department may
1-24 establish in locations the department considers necessary
1-25 outpatient clinics and transitional facilities to treat persons
1-26 with mental illness.

1-27 (b) As necessary to establish and operate the clinics and
1-28 transitional facilities, the department may:

1-29 (1) acquire facilities;
1-30 (2) hire personnel;
1-31 (3) adopt rules; and
1-32 (4) contract with persons, corporations, and local,
1-33 state, and federal agencies.

1-34 SECTION 3. Subsections (c) and (d), Section 572.004, Health
1-35 and Safety Code, are amended to read as follows:

1-36 (c) The notified physician shall evaluate the patient to
1-37 determine whether there is reasonable cause to believe that the
1-38 patient might meet the criteria for court-ordered mental health
1-39 services or emergency detention. The notified physician shall
1-40 discharge the patient on completion of the evaluation [~~before the~~
1-41 ~~end of the four-hour period~~] unless the physician finds [~~has~~]
1-42 reasonable cause to believe that the patient might meet the
1-43 criteria for court-ordered mental health services or emergency
1-44 detention.

1-45 (d) A physician who finds [~~has~~] reasonable cause to believe
1-46 that a patient might meet the criteria for court-ordered mental
1-47 health services or emergency detention shall examine the patient as
1-48 soon as possible within 24 hours after the time the request for
1-49 discharge is filed. The physician shall discharge the patient on
1-50 completion of the examination unless the physician determines that
1-51 the person meets the criteria for court-ordered mental health
1-52 services or emergency detention. If the physician makes a
1-53 determination that the patient meets the criteria for court-ordered
1-54 mental health services or emergency detention, the physician shall,
1-55 not later than 4 p.m. on the next succeeding business day after the
1-56 date on which the examination occurs, either discharge the patient
1-57 or file an application for court-ordered mental health services or
1-58 emergency detention and obtain a written order for further
1-59 detention. The physician shall notify the patient if the physician
1-60 intends to detain the patient under this subsection or intends to
1-61 file an application for court-ordered mental health services or
1-62 emergency detention. A decision to detain a patient under this
1-63 subsection and the reasons for the decision shall be made a part of

2-1 the patient's clinical record.

2-2 SECTION 4. Section 574.086, Health and Safety Code, is
2-3 amended by adding Subsections (d) and (e) to read as follows:

2-4 (d) Notwithstanding Subsection (a), a discharge under this
2-5 section is subject to judicial review and disapproval under Section
2-6 574.090 if:

2-7 (1) one of the criteria that formed the basis for the
2-8 decision to commit the patient was a finding that the patient was
2-9 likely to cause serious harm to others;

2-10 (2) regardless of the criteria that formed the basis
2-11 for the decision to commit, a treating physician now believes that
2-12 the patient poses a substantial risk of causing harm to others; or

2-13 (3) the patient has a violent criminal history.

2-14 (e) For purposes of this section, a patient has a violent
2-15 criminal history if the patient:

2-16 (1) has a prior conviction or has received community
2-17 supervision for an offense listed in Article 17.032(a), Code of
2-18 Criminal Procedure;

2-19 (2) is currently charged with an offense listed in
2-20 Article 17.032(a), Code of Criminal Procedure;

2-21 (3) has been charged with an offense listed in Article
2-22 17.032(a), Code of Criminal Procedure, in the five years preceding
2-23 the date of the patient's current commitment; or

2-24 (4) has ever been found not guilty by reason of
2-25 insanity of an offense listed in Article 17.032(a), Code of
2-26 Criminal Procedure.

2-27 SECTION 5. Subchapter F, Chapter 574, Health and Safety
2-28 Code, is amended by adding Section 574.090 to read as follows:

2-29 Sec. 574.090. JUDICIAL REVIEW OF DISCHARGE. (a) A
2-30 facility administrator who determines that a patient described by
2-31 Section 574.086(d) does not meet the criteria for court-ordered
2-32 inpatient mental health services shall prepare a discharge
2-33 certificate as required by Section 574.087 and file it with the
2-34 court that entered the order committing the patient to
2-35 court-ordered inpatient mental health services.

2-36 (b) On the filing of a discharge certificate under
2-37 Subsection (a), the court shall notify the attorney representing
2-38 the state and the patient's last attorney of record and provide each
2-39 attorney a copy of the discharge certificate.

2-40 (c) On the request of the attorney representing the state,
2-41 the court must conduct a hearing to determine whether the patient no
2-42 longer meets the criteria for court-ordered inpatient mental health
2-43 services and should be discharged. The court may hold the hearing
2-44 on its own motion.

2-45 (d) The court may order further psychiatric or
2-46 psychological testing the court considers necessary for
2-47 determining whether the patient no longer meets the criteria for
2-48 court-ordered inpatient mental health services and should be
2-49 discharged.

2-50 (e) At the hearing conducted under this section, the court
2-51 shall determine whether the person meets any criteria for
2-52 court-ordered inpatient mental health services listed in Section
2-53 574.035(a). If the court finds by clear and convincing evidence
2-54 that the patient meets one of the criteria for court-ordered
2-55 inpatient mental health services, the court shall disapprove the
2-56 patient's release and enter a new order committing the patient for
2-57 court-ordered extended inpatient mental health services. If the
2-58 court does not find by clear and convincing evidence that the
2-59 patient meets one of the criteria for court-ordered inpatient
2-60 mental health services, the court shall approve the patient's
2-61 discharge.

2-62 SECTION 6. The change in law made by this Act in amending
2-63 Subsection (a), Article 46C.261, Code of Criminal Procedure,
2-64 applies only to a defendant with respect to whom any proceeding
2-65 under Chapter 46C, Code of Criminal Procedure, is conducted on or
2-66 after the effective date of this Act.

2-67 SECTION 7. This Act takes effect September 1, 2011.

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