

1-1 By: Zaffirini S.B. No. 34
 1-2 (In the Senate - Filed November 12, 2012; January 28, 2013,
 1-3 read first time and referred to Committee on Health and Human
 1-4 Services; April 11, 2013, reported favorably by the following
 1-5 vote: Yeas 7, Nays 0; April 11, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Nelson	X			
1-8 Deuell	X			
1-9 Huffman	X			
1-10 Nichols	X			
1-11 Schwertner			X	
1-12 Taylor			X	
1-13 Uresti	X			
1-14 West	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the administration of psychoactive medications to
 1-20 persons receiving services in certain facilities.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 592.038, Health and Safety Code, is
 1-23 amended by adding Subsection (d) to read as follows:

1-24 (d) Each client has the right to refuse psychoactive
 1-25 medication, as provided by Subchapter F.

1-26 SECTION 2. Subsection (b), Section 592.054, Health and
 1-27 Safety Code, is amended to read as follows:

1-28 (b) Notwithstanding Subsection (a), consent is required
 1-29 for:

- 1-30 (1) all surgical procedures; and
- 1-31 (2) as provided by Section 592.153, the administration
 1-32 of psychoactive medications.

1-33 SECTION 3. Chapter 592, Health and Safety Code, is amended
 1-34 by adding Subchapter F to read as follows:

1-35 SUBCHAPTER F. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

1-36 Sec. 592.151. DEFINITIONS. In this subchapter:

1-37 (1) "Capacity" means a client's ability to:

- 1-38 (A) understand the nature and consequences of a
 1-39 proposed treatment, including the benefits, risks, and
 1-40 alternatives to the proposed treatment; and
- 1-41 (B) make a decision whether to undergo the
 1-42 proposed treatment.

1-43 (2) "Medication-related emergency" means a situation
 1-44 in which it is immediately necessary to administer medication to a
 1-45 client to prevent:

1-46 (A) imminent probable death or substantial
 1-47 bodily harm to the client because the client:

- 1-48 (i) overtly or continually is threatening
 1-49 or attempting to commit suicide or serious bodily harm; or

1-50 (ii) is behaving in a manner that indicates
 1-51 that the client is unable to satisfy the client's need for
 1-52 nourishment, essential medical care, or self-protection; or

1-53 (B) imminent physical or emotional harm to
 1-54 another because of threats, attempts, or other acts the client
 1-55 overtly or continually makes or commits.

1-56 (3) "Psychoactive medication" means a medication
 1-57 prescribed for the treatment of symptoms of psychosis or other
 1-58 severe mental or emotional disorders and that is used to exercise an
 1-59 effect on the central nervous system to influence and modify
 1-60 behavior, cognition, or affective state when treating the symptoms
 1-61 of mental illness. "Psychoactive medication" includes the

2-1 following categories when used as described in this subdivision:
2-2 (A) antipsychotics or neuroleptics;
2-3 (B) antidepressants;
2-4 (C) agents for control of mania or depression;
2-5 (D) antianxiety agents;
2-6 (E) sedatives, hypnotics, or other
2-7 sleep-promoting drugs; and
2-8 (F) psychomotor stimulants.
2-9 Sec. 592.152. ADMINISTRATION OF PSYCHOACTIVE MEDICATION.
2-10 (a) A person may not administer a psychoactive medication to a
2-11 client receiving voluntary or involuntary residential care
2-12 services who refuses the administration unless:
2-13 (1) the client is having a medication-related
2-14 emergency;
2-15 (2) the refusing client's representative authorized by
2-16 law to consent on behalf of the client has consented to the
2-17 administration;
2-18 (3) the administration of the medication regardless of
2-19 the client's refusal is authorized by an order issued under Section
2-20 592.156; or
2-21 (4) the administration of the medication regardless of
2-22 the client's refusal is authorized by an order issued under Article
2-23 46B.086, Code of Criminal Procedure.
2-24 (b) Consent to the administration of psychoactive
2-25 medication given by a client or by a person authorized by law to
2-26 consent on behalf of the client is valid only if:
2-27 (1) the consent is given voluntarily and without
2-28 coercive or undue influence;
2-29 (2) the treating physician or a person designated by
2-30 the physician provides the following information, in a standard
2-31 format approved by the department, to the client and, if
2-32 applicable, to the client's representative authorized by law to
2-33 consent on behalf of the client:
2-34 (A) the specific condition to be treated;
2-35 (B) the beneficial effects on that condition
2-36 expected from the medication;
2-37 (C) the probable health care consequences of not
2-38 consenting to the medication;
2-39 (D) the probable clinically significant side
2-40 effects and risks associated with the medication;
2-41 (E) the generally accepted alternatives to the
2-42 medication, if any, and why the physician recommends that they be
2-43 rejected; and
2-44 (F) the proposed course of the medication;
2-45 (3) the client and, if appropriate, the client's
2-46 representative authorized by law to consent on behalf of the client
2-47 are informed in writing that consent may be revoked; and
2-48 (4) the consent is evidenced in the client's clinical
2-49 record by a signed form prescribed by the residential care facility
2-50 or by a statement of the treating physician or a person designated
2-51 by the physician that documents that consent was given by the
2-52 appropriate person and the circumstances under which the consent
2-53 was obtained.
2-54 (c) If the treating physician designates another person to
2-55 provide the information under Subsection (b), then, not later than
2-56 two working days after that person provides the information,
2-57 excluding weekends and legal holidays, the physician shall meet
2-58 with the client and, if appropriate, the client's representative
2-59 who provided the consent, to review the information and answer any
2-60 questions.
2-61 (d) A client's refusal or attempt to refuse to receive
2-62 psychoactive medication, whether given verbally or by other
2-63 indications or means, shall be documented in the client's clinical
2-64 record.
2-65 (e) In prescribing psychoactive medication, a treating
2-66 physician shall:
2-67 (1) prescribe, consistent with clinically appropriate
2-68 medical care, the medication that has the fewest side effects or the
2-69 least potential for adverse side effects, unless the class of

3-1 medication has been demonstrated or justified not to be effective
3-2 clinically; and

3-3 (2) administer the smallest therapeutically
3-4 acceptable dosages of medication for the client's condition.

3-5 (f) If a physician issues an order to administer
3-6 psychoactive medication to a client without the client's consent
3-7 because the client is having a medication-related emergency:

3-8 (1) the physician shall document in the client's
3-9 clinical record in specific medical or behavioral terms the
3-10 necessity of the order and that the physician has evaluated but
3-11 rejected other generally accepted, less intrusive forms of
3-12 treatment, if any; and

3-13 (2) treatment of the client with the psychoactive
3-14 medication shall be provided in the manner, consistent with
3-15 clinically appropriate medical care, least restrictive of the
3-16 client's personal liberty.

3-17 Sec. 592.153. ADMINISTRATION OF MEDICATION TO CLIENT
3-18 COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section,
3-19 "ward" has the meaning assigned by Section 601, Texas Probate Code.

3-20 (b) A person may not administer a psychoactive medication to
3-21 a client who refuses to take the medication voluntarily unless:

3-22 (1) the client is having a medication-related
3-23 emergency;

3-24 (2) the client is under an order issued under Section
3-25 592.156 authorizing the administration of the medication
3-26 regardless of the client's refusal; or

3-27 (3) the client is a ward who is 18 years of age or older
3-28 and the guardian of the person of the ward consents to the
3-29 administration of psychoactive medication regardless of the ward's
3-30 expressed preferences regarding treatment with psychoactive
3-31 medication.

3-32 Sec. 592.154. PHYSICIAN'S APPLICATION FOR ORDER TO
3-33 AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A
3-34 physician who is treating a client may file an application in a
3-35 probate court or a court with probate jurisdiction on behalf of the
3-36 state for an order to authorize the administration of a
3-37 psychoactive medication regardless of the client's refusal if:

3-38 (1) the physician believes that the client lacks the
3-39 capacity to make a decision regarding the administration of the
3-40 psychoactive medication;

3-41 (2) the physician determines that the medication is
3-42 the proper course of treatment for the client; and

3-43 (3) the client has been committed to a residential
3-44 care facility under Subchapter C, Chapter 593, or other law or an
3-45 application for commitment to a residential care facility under
3-46 Subchapter C, Chapter 593, has been filed for the client.

3-47 (b) An application filed under this section must state:

3-48 (1) that the physician believes that the client lacks
3-49 the capacity to make a decision regarding administration of the
3-50 psychoactive medication and the reasons for that belief;

3-51 (2) each medication the physician wants the court to
3-52 compel the client to take;

3-53 (3) whether an application for commitment to a
3-54 residential care facility under Subchapter C, Chapter 593, has been
3-55 filed;

3-56 (4) whether an order committing the client to a
3-57 residential care facility has been issued and, if so, under what
3-58 authority it was issued;

3-59 (5) the physician's diagnosis of the client; and

3-60 (6) the proposed method for administering the
3-61 medication and, if the method is not customary, an explanation
3-62 justifying the departure from the customary methods.

3-63 (c) An application filed under this section must be filed
3-64 separately from an application for commitment to a residential care
3-65 facility.

3-66 (d) The hearing on the application may be held on the same
3-67 date as a hearing on an application for commitment to a residential
3-68 care facility under Subchapter C, Chapter 593, but the hearing must
3-69 be held not later than 30 days after the filing of the application

4-1 for the order to authorize psychoactive medication. If the hearing
4-2 is not held on the same date as the application for commitment to a
4-3 residential care facility under Subchapter C, Chapter 593, and the
4-4 client is transferred to a residential care facility in another
4-5 county, the court may transfer the application for an order to
4-6 authorize psychoactive medication to the county where the client
4-7 has been transferred.

4-8 (e) Subject to the requirement in Subsection (d) that the
4-9 hearing shall be held not later than 30 days after the filing of the
4-10 application, the court may grant one continuance on a party's
4-11 motion and for good cause shown. The court may grant more than one
4-12 continuance only with the agreement of the parties.

4-13 Sec. 592.155. RIGHTS OF CLIENT. A client for whom an
4-14 application for an order to authorize the administration of a
4-15 psychoactive medication is filed is entitled:

4-16 (1) to be represented by a court-appointed attorney
4-17 who is knowledgeable about issues to be adjudicated at the hearing;

4-18 (2) to meet with that attorney as soon as is
4-19 practicable to prepare for the hearing and to discuss any of the
4-20 client's questions or concerns;

4-21 (3) to receive, immediately after the time of the
4-22 hearing is set, a copy of the application and written notice of the
4-23 time, place, and date of the hearing;

4-24 (4) to be informed, at the time personal notice of the
4-25 hearing is given, of the client's right to a hearing and right to
4-26 the assistance of an attorney to prepare for the hearing and to
4-27 answer any questions or concerns;

4-28 (5) to be present at the hearing;

4-29 (6) to request from the court an independent expert;

4-30 and

4-31 (7) to be notified orally, at the conclusion of the
4-32 hearing, of the court's determinations of the client's capacity and
4-33 best interest.

4-34 Sec. 592.156. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE
4-35 MEDICATION. (a) The court may issue an order authorizing the
4-36 administration of one or more classes of psychoactive medication to
4-37 a client who:

4-38 (1) has been committed to a residential care facility;

4-39 or

4-40 (2) is in custody awaiting trial in a criminal
4-41 proceeding and was committed to a residential care facility in the
4-42 six months preceding a hearing under this section.

4-43 (b) The court may issue an order under this section only if
4-44 the court finds by clear and convincing evidence after the hearing:

4-45 (1) that the client lacks the capacity to make a
4-46 decision regarding the administration of the proposed medication
4-47 and that treatment with the proposed medication is in the best
4-48 interest of the client; or

4-49 (2) if the client was committed to a residential care
4-50 facility by a criminal court with jurisdiction over the client,
4-51 that treatment with the proposed medication is in the best interest
4-52 of the client, and either:

4-53 (A) the client presents a danger to the client or
4-54 others in the residential care facility in which the client is being
4-55 treated as a result of a mental disorder or mental defect as
4-56 determined under Section 592.157; or

4-57 (B) the client:

4-58 (i) has remained confined in a correctional
4-59 facility, as defined by Section 1.07, Penal Code, for a period
4-60 exceeding 72 hours while awaiting transfer for competency
4-61 restoration treatment; and

4-62 (ii) presents a danger to the client or
4-63 others in the correctional facility as a result of a mental disorder
4-64 or mental defect as determined under Section 592.157.

4-65 (c) In making the finding that treatment with the proposed
4-66 medication is in the best interest of the client, the court shall
4-67 consider:

4-68 (1) the client's expressed preferences regarding
4-69 treatment with psychoactive medication;

5-1 (2) the client's religious beliefs;
 5-2 (3) the risks and benefits, from the perspective of
 5-3 the client, of taking psychoactive medication;
 5-4 (4) the consequences to the client if the psychoactive
 5-5 medication is not administered;
 5-6 (5) the prognosis for the client if the client is
 5-7 treated with psychoactive medication;
 5-8 (6) alternative, less intrusive treatments that are
 5-9 likely to produce the same results as treatment with psychoactive
 5-10 medication; and
 5-11 (7) less intrusive treatments likely to secure the
 5-12 client's consent to take the psychoactive medication.

5-13 (d) A hearing under this subchapter shall be conducted on
 5-14 the record by the probate judge or judge with probate jurisdiction,
 5-15 except as provided by Subsection (e).

5-16 (e) A judge may refer a hearing to a magistrate or
 5-17 court-appointed associate judge who has training regarding
 5-18 psychoactive medications. The magistrate or associate judge may
 5-19 effectuate the notice, set hearing dates, and appoint attorneys as
 5-20 required by this subchapter. A record is not required if the
 5-21 hearing is held by a magistrate or court-appointed associate judge.

5-22 (f) A party is entitled to a hearing de novo by the judge if
 5-23 an appeal of the magistrate's or associate judge's report is filed
 5-24 with the court before the fourth day after the date the report is
 5-25 issued. The hearing de novo shall be held not later than the 30th
 5-26 day after the date the application for an order to authorize
 5-27 psychoactive medication was filed.

5-28 (g) If a hearing or an appeal of an associate judge's or
 5-29 magistrate's report is to be held in a county court in which the
 5-30 judge is not a licensed attorney, the proposed client or the
 5-31 proposed client's attorney may request that the proceeding be
 5-32 transferred to a court with a judge who is licensed to practice law
 5-33 in this state. The county judge shall transfer the case after
 5-34 receiving the request, and the receiving court shall hear the case
 5-35 as if it had been originally filed in that court.

5-36 (h) As soon as practicable after the conclusion of the
 5-37 hearing, the client is entitled to have provided to the client and
 5-38 the client's attorney written notification of the court's
 5-39 determinations under this section. The notification shall include
 5-40 a statement of the evidence on which the court relied and the
 5-41 reasons for the court's determinations.

5-42 (i) An order entered under this section shall authorize the
 5-43 administration to a client, regardless of the client's refusal, of
 5-44 one or more classes of psychoactive medications specified in the
 5-45 application and consistent with the client's diagnosis. The order
 5-46 shall permit an increase or decrease in a medication's dosage,
 5-47 restitution of medication authorized but discontinued during the
 5-48 period the order is valid, or the substitution of a medication
 5-49 within the same class.

5-50 (j) The classes of psychoactive medications in the order
 5-51 must conform to classes determined by the department.

5-52 (k) An order issued under this section may be reauthorized
 5-53 or modified on the petition of a party. The order remains in effect
 5-54 pending action on a petition for reauthorization or modification.
 5-55 For the purpose of this subsection, "modification" means a change
 5-56 of a class of medication authorized in the order.

5-57 (1) For a client described by Subsection (b)(2)(B), an order
 5-58 issued under this section:

5-59 (1) authorizes the initiation of any appropriate
 5-60 mental health treatment for the patient awaiting transfer; and

5-61 (2) does not constitute authorization to retain the
 5-62 client in a correctional facility for competency restoration
 5-63 treatment.

5-64 Sec. 592.157. FINDING THAT CLIENT PRESENTS A DANGER. In
 5-65 making a finding under Section 592.156(b)(2) that, as a result of a
 5-66 mental disorder or mental defect, the client presents a danger to
 5-67 the client or others in the residential care facility in which the
 5-68 client is being treated or in the correctional facility, as
 5-69 applicable, the court shall consider:

6-1 (1) an assessment of the client's present mental
6-2 condition; and

6-3 (2) whether the client has inflicted, attempted to
6-4 inflict, or made a serious threat of inflicting substantial
6-5 physical harm to the client's self or to another while in the
6-6 facility.

6-7 Sec. 592.158. APPEAL. (a) A client may appeal an order
6-8 under this subchapter in the manner provided by Section 593.056 for
6-9 an appeal of an order committing the client to a residential care
6-10 facility.

6-11 (b) An order authorizing the administration of medication
6-12 regardless of the refusal of the client is effective pending an
6-13 appeal of the order.

6-14 Sec. 592.159. EFFECT OF ORDER. (a) A person's consent to
6-15 take a psychoactive medication is not valid and may not be relied on
6-16 if the person is subject to an order issued under Section 592.156.

6-17 (b) The issuance of an order under Section 592.156 is not a
6-18 determination or adjudication of mental incompetency and does not
6-19 limit in any other respect that person's rights as a citizen or the
6-20 person's property rights or legal capacity.

6-21 Sec. 592.160. EXPIRATION OF ORDER. (a) Except as provided
6-22 by Subsection (b), an order issued under Section 592.156 expires on
6-23 the anniversary of the date the order was issued.

6-24 (b) An order issued under Section 592.156 for a client
6-25 awaiting trial in a criminal proceeding expires on the date the
6-26 defendant is acquitted, is convicted, or enters a plea of guilty or
6-27 the date on which charges in the case are dismissed. An order
6-28 continued under this subsection shall be reviewed by the issuing
6-29 court every six months.

6-30 SECTION 4. Subsections (a) and (b), Article 46B.086, Code
6-31 of Criminal Procedure, are amended to read as follows:

6-32 (a) This article applies only to a defendant:

6-33 (1) who is determined under this chapter to be
6-34 incompetent to stand trial;

6-35 (2) who either:

6-36 (A) remains confined in a correctional facility,
6-37 as defined by Section 1.07, Penal Code, for a period exceeding 72
6-38 hours while awaiting transfer to an inpatient mental health
6-39 facility, a residential care facility, or an outpatient treatment
6-40 program;

6-41 (B) is committed to an inpatient mental health
6-42 facility or a residential care facility for the purpose of
6-43 competency restoration;

6-44 (C) is confined in a correctional facility while
6-45 awaiting further criminal proceedings following competency
6-46 restoration treatment; or

6-47 (D) is subject to Article 46B.072, if the court
6-48 has made the determinations required by Subsection (a-1) of that
6-49 article;

6-50 (3) for whom a correctional facility that employs or
6-51 contracts with a licensed psychiatrist, an inpatient mental health
6-52 facility, a residential care facility, or an outpatient treatment
6-53 program provider has prepared a continuity of care plan that
6-54 requires the defendant to take psychoactive medications; and

6-55 (4) who, after a hearing held under Section 574.106 or
6-56 592.156, Health and Safety Code, if applicable, has been found to
6-57 not meet the criteria prescribed by Sections 574.106(a) and (a-1)
6-58 or 592.156(a) and (b), Health and Safety Code, for court-ordered
6-59 administration of psychoactive medications.

6-60 (b) If a defendant described by Subsection (a) refuses to
6-61 take psychoactive medications as required by the defendant's
6-62 continuity of care plan, the director of the correctional facility
6-63 or outpatient treatment program provider, as applicable, shall
6-64 notify the court in which the criminal proceedings are pending of
6-65 that fact not later than the end of the next business day following
6-66 the refusal. The court shall promptly notify the attorney
6-67 representing the state and the attorney representing the defendant
6-68 of the defendant's refusal. The attorney representing the state
6-69 may file a written motion to compel medication. The motion to

7-1 compel medication must be filed not later than the 15th day after
7-2 the date a judge issues an order stating that the defendant does not
7-3 meet the criteria for court-ordered administration of psychoactive
7-4 medications under Section 574.106 or 592.156, Health and Safety
7-5 Code, except that, for a defendant in an outpatient treatment
7-6 program, the motion may be filed at any time.

7-7 SECTION 5. This Act takes effect September 1, 2013.

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