By:  Huffman, Hinojosa S.B. No. 362

(In the Senate - Filed January 16, 2019; February 7, 2019, read first time and referred to Committee on State Affairs; April 8, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR S.B. No. 362 By:  Huffman

A BILL TO BE ENTITLED

AN ACT

relating to court-ordered mental health services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 137.008(a), Civil Practice and Remedies Code, is amended to read as follows:

(a)  A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1)  if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2)  in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

SECTION 2.  Article 16.22, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c)  After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1)  resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2)  resume or initiate competency proceedings, if required, as provided by Chapter 46B [~~or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code~~];

(3)  consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision; [~~or~~]

(4)  refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; or

(5)  if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574, Health and Safety Code.

(c-1)  If an order is entered under Subsection (c)(5), an attorney representing the state shall file the application for court-ordered outpatient services under Chapter 574, Health and Safety Code.

(c-2)  On the motion of an attorney representing the state, if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, the court may dismiss the charges pending against the defendant and discharge the defendant.

(c-3)  On the motion of an attorney representing the state, if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment, the court shall proceed under this chapter or with the trial of the offense.

SECTION 3.  Section 55.13(d), Family Code, is amended to read as follows:

(d)  After conducting a hearing on an application under this section, the juvenile court shall:

(1)  if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services for the child; or

(2)  if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services for the child.

SECTION 4.  Section 55.38(b), Family Code, is amended to read as follows:

(b)  After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1)  if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or

(2)  if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

SECTION 5.  Section 55.57(b), Family Code, is amended to read as follows:

(b)  After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1)  if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or

(2)  if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

SECTION 6.  Subchapter B, Chapter 22, Government Code, is amended by adding Section 22.1106 to read as follows:

Sec. 22.1106.  JUDICIAL INSTRUCTION RELATED TO COURT-ORDERED MENTAL HEALTH SERVICES. The court of criminal appeals shall ensure that judicial training related to the problems of court-ordered mental health services is provided at least once every year. The instruction may be provided at the annual Judicial Education Conference.

SECTION 7.  Section 501.057(b), Government Code, is amended to read as follows:

(b)  Not later than the 30th day before the initial parole eligibility date of an inmate identified as mentally ill, an institutional division psychiatrist shall examine the inmate. The psychiatrist shall file a sworn application for court-ordered temporary mental health services under Chapter 574, Health and Safety Code, if the psychiatrist determines that the inmate is mentally ill and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

SECTION 8.  Section 574.002(c), Health and Safety Code, is amended to read as follows:

(c)  Any application must contain the following information according to the applicant's information and belief:

(1)  the proposed patient's name and address;

(2)  the proposed patient's county of residence in this state;

(3)  a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 for court-ordered mental health services; and

(4)  whether the proposed patient is charged with a criminal offense.

SECTION 9.  Section 574.031, Health and Safety Code, is amended by adding Subsections (d-1) and (d-2) to read as follows:

(d-1)  In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient and the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient and the proposed patient's attorney do not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2)  In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

SECTION 10.  The heading to Section 574.034, Health and Safety Code, is amended to read as follows:

Sec. 574.034.  ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH SERVICES.

SECTION 11.  Sections 574.034(g) and (h), Health and Safety Code, are amended to read as follows:

(g)  An order for temporary inpatient [~~or outpatient~~] mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h)  A judge may not issue an order for temporary inpatient [~~or outpatient~~] mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 12.  Subchapter C, Chapter 574, Health and Safety Code, is amended by adding Section 574.0345 to read as follows:

Sec. 574.0345.  ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES. (a)  The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1)  the judge finds that appropriate mental health services are available to the proposed patient; and

(2)  the judge or jury finds, from clear and convincing evidence, that:

(A)  the proposed patient is a person with severe and persistent mental illness;

(B)  as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C)  outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(D)  the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i)  any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii)  specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(b)  To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)  the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2)  the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3)  the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c)  An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d)  A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 13.  The heading to Section 574.035, Health and Safety Code, is amended to read as follows:

Sec. 574.035.  ORDER FOR EXTENDED INPATIENT MENTAL HEALTH SERVICES.

SECTION 14.  Sections 574.035(d), (h), and (i), Health and Safety Code, are amended to read as follows:

(d)  The jury or judge is not required to make the finding under Subsection (a)(4) [~~or (b)(2)(F)~~] if the proposed patient has already been subject to an order for extended mental health services.

(h)  An order for extended inpatient [~~or outpatient~~] mental health services shall state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(i)  A judge may not issue an order for extended inpatient [~~or outpatient~~] mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 15.  Subchapter C, Chapter 574, Health and Safety Code, is amended by adding Section 574.0355 to read as follows:

Sec. 574.0355.  ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a)  The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1)  the judge finds that appropriate mental health services are available to the proposed patient; and

(2)  the judge or jury finds, from clear and convincing evidence, that:

(A)  the proposed patient is a person with severe and persistent mental illness;

(B)  as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C)  outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;

(D)  the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i)  any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii)  specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E)  the proposed patient's condition is expected to continue for more than 90 days; and

(F)  the proposed patient has received:

(i)  court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii)  court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b)  The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c)  To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1)  the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2)  the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3)  the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d)  An order for extended outpatient mental health services must state that treatment is authorized for not longer than 12 months. The order may not specify a shorter period.

(e)  A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 16.  Section 574.036(e), Health and Safety Code, is amended to read as follows:

(e)  The judge may enter an order:

(1)  committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2)  committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.0345(a) [~~574.034(b)~~] or 574.0355(a) [~~574.035(b)~~].

SECTION 17.  Sections 574.037(b-2) and (c-2), Health and Safety Code, are amended to read as follows:

(b-2)  The person responsible for the services shall submit the program to the court before the hearing under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 or before the court modifies an order under Section 574.061, as appropriate.

(c-2)  A court may[~~, on its own motion,~~] set a status conference in accordance with Section 574.0665 [~~with the person responsible for the services, the patient, and the patient's attorney~~].

SECTION 18.  Sections 574.061(a), (b), (c), (d), (e), and (h), Health and Safety Code, are amended to read as follows:

(a)  The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that [~~may request~~] the court that entered the commitment order [~~to~~] modify the order to require the patient to participate in outpatient mental health services.

(b)  A [~~The~~] facility administrator's recommendation under Subsection (a) [~~request~~] must explain in detail the reason for the recommendation [~~request~~]. The recommendation [~~request~~] must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation [~~request~~].

(c)  The patient shall be given notice of a facility administrator's recommendation under Subsection (a) [~~the request~~].

(d)  On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's recommendation that the court modify the commitment order [~~the request~~]. The court shall appoint an attorney to represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e)  If a hearing is not requested, the court may make a [~~the~~] decision regarding a facility administrator's recommendation based on:

(1)  [~~solely from~~] the recommendation;

(2)  [~~request and~~] the supporting certificate; and

(3)  consultation with the local mental health authority concerning available resources to treat the patient.

(h)  A modified order may [~~not~~] extend beyond the term of the original order, but may not exceed the term of the original order by 60 days.

SECTION 19.  Subchapter E, Chapter 574, Health and Safety Code, is amended by adding Section 574.0665 to read as follows:

Sec. 574.0665.  STATUS CONFERENCE. A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

SECTION 20.  Section 574.069(e), Health and Safety Code, is amended to read as follows:

(e)  The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

SECTION 21.  Section 574.081, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsections (a-1), (a-2), and (c-1) to read as follows:

(a-1)  In this section, "state hospital" means a mental health facility that:

(1)  can provide 24-hour residential and psychiatric services; and

(2)  is a facility operated by the department.

(a-2)  Subject to available resources, Subsection (a) applies to a patient scheduled to be furloughed or discharged from a state hospital or a private mental health facility if the patient's treatment at the state hospital or private mental health facility occurs under a contract and private psychiatric bed statement of work between the state hospital or private mental health facility and the commission.

(b)  The physician shall prepare the plan as prescribed by commission [~~department~~] rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient [~~is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility~~].

(c)  The plan must address the patient's mental health and physical needs, including, if appropriate:

(1)  the need for outpatient mental health services following furlough or discharge; and

(2)  the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician[~~; and~~

[~~(2)  the person or entity that is responsible for providing and paying for the medication~~].

(c-1)  Except as otherwise specified in the plan and subject to available funding provided to the commission and paid to a private mental health facility for this purpose, a private mental health facility that is contracting with a local mental health authority is responsible for providing or paying for psychoactive medication and any other medication prescribed to the patient to counteract adverse side effects of psychoactive medication on furlough or discharge sufficient to last until the patient can see a physician. The commission shall adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. The executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

SECTION 22.  Sections 574.104(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a)  A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1)  the physician believes that the patient 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 patient;

(3)  the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 has been filed for the patient; and

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

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

(1)  that the physician believes that the patient 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 patient to take;

(3)  whether an application for court-ordered mental health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 has been filed;

(4)  whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5)  the physician's diagnosis of the patient; 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.

(d)  The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 but shall 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 day as the application for court-ordered mental health services under those sections [~~Section 574.034 or 574.035~~] and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

SECTION 23.  Section 574.151, Health and Safety Code, is amended to read as follows:

Sec. 574.151.  APPLICABILITY. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 and who requests voluntary admission to an inpatient mental health facility:

(1)  while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2)  before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

SECTION 24.  Section 152.00164(b), Human Resources Code, is amended to read as follows:

(b)  Before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), the juvenile board or local juvenile probation department shall arrange for a psychiatrist to examine the child. The juvenile board or local juvenile probation department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the juvenile board or local juvenile probation department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1)  the child is not receiving court-ordered mental health services; and

(2)  the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.035, Health and Safety Code.

SECTION 25.  Section 244.012(b), Human Resources Code, is amended to read as follows:

(b)  Before a child who is identified as mentally ill is discharged from the department's custody under Section 244.011(b), a department psychiatrist shall examine the child. The department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1)  the child is not receiving court-ordered mental health services; and

(2)  the psychiatrist who examined the child determines that the child is mentally ill and the child meets at least one of the criteria listed in Section 574.034 or 574.035, Health and Safety Code.

SECTION 26.  The Supreme Court shall:

(1)  adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code; and

(2)  adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.

SECTION 27.  The following sections of the Health and Safety Code are repealed:

(1)  Sections 574.034(b), (e), and (f); and

(2)  Sections 574.035(b), (f), and (g).

SECTION 28.  The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Health and Human Services Commission may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 29.  The changes in law made by this Act to Chapter 574, Health and Safety Code, apply to a commitment proceeding under that chapter that occurs on or after the effective date of this Act, regardless of whether conduct of a proposed patient being evaluated for that purpose occurred before, on, or after the effective date of this Act.

SECTION 30.  The changes in law made by this Act to Article 16.22, Code of Criminal Procedure, and Chapter 574, Health and Safety Code, apply to a proceeding for court-ordered mental health services that occurs on or after the effective date of this Act, regardless of when an offense with which the defendant is charged was committed.

SECTION 31.  This Act takes effect September 1, 2019.

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