

By: Huffman

S.B. No. 362

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. Chapter 46B, Code of Criminal Procedure, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. CIVIL COMMITMENT FOR OUTPATIENT MENTAL HEALTH

SERVICES: CHARGES PENDING

Art. 46B.041. OUTPATIENT MENTAL HEALTH SERVICES BEFORE INCOMPETENCY TRIAL FOR CLASS B MISDEMEANOR. (a) This article applies only to a defendant who is charged with an offense punishable as a Class B misdemeanor and who the court determines is not a danger to others and may be safely released on bail and treated on an outpatient basis while charges remain pending.

(b) On the motion of the attorney representing the state, if it appears based on the court's examination of the defendant under Subchapter B that the defendant is a person with mental illness or a person with an intellectual or developmental disability, and subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, the court may release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for proceedings to commit the defendant to a course of outpatient mental health services to occur before the court proceeds under this chapter or with the trial of the offense.

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

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

9        SECTION 2. Section 574.001, Health and Safety Code, is  
10 amended by adding Subsection (g) to read as follows:

11        (g) An order transferring a criminal defendant against whom  
12 charges have not been dismissed to the appropriate court for a  
13 hearing on court-ordered mental health services in accordance with  
14 Subchapter B-1, Chapter 46B, Code of Criminal Procedure, serves as  
15 an application under this section.

16        SECTION 3. Sections 574.034(b) and (e), Health and Safety  
17 Code, are amended to read as follows:

18        (b) The judge may order a proposed patient to receive  
19 court-ordered temporary outpatient mental health services only if:

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

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

24                        (A) the proposed patient is a person with mental  
25 illness;

26                        (B) as a result of mental illness, the proposed  
27 patient is unlikely to voluntarily participate in treatment that

1 the court determines is necessary to prevent a relapse or harmful  
2 deterioration of the proposed patient's condition [~~the nature of~~  
3 ~~the mental illness is severe and persistent~~]; and

4 (C) the proposed patient has demonstrated  
5 noncompliance with mental health treatment, as shown by one or more  
6 of the following events having occurred during the 48 months  
7 immediately preceding the current proceeding [~~as a result of the~~  
8 ~~mental illness, the proposed patient will, if not treated, continue~~  
9 ~~to~~]:

10 (i) the proposed patient was committed by a  
11 court to receive inpatient mental health services two or more times  
12 [~~suffer severe and abnormal mental, emotional, or physical~~  
13 ~~distress~~]; [~~and~~]

14 (ii) the proposed patient was incarcerated  
15 two or more times [~~experience deterioration of the ability to~~  
16 ~~function independently to the extent that the proposed patient will~~  
17 ~~be unable to live safely in the community without court-ordered~~  
18 ~~outpatient mental health services~~]; or [~~and~~]

19 (iii) the proposed patient has committed  
20 one or more acts, attempts, or threats of serious violence

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

24 [~~(i) any of the proposed patient's actions~~  
25 ~~occurring within the two-year period which immediately precedes the~~  
26 ~~hearing, or~~

27 [~~(ii) specific characteristics of the~~

1 ~~proposed patient's clinical condition that make impossible a~~  
2 ~~rational and informed decision whether to submit to voluntary~~  
3 ~~outpatient treatment].~~

4 (e) To be clear and convincing under Subsection  
5 ~~[Subdivision]~~ (b)(2), the evidence must include expert testimony  
6 ~~[and, unless waived, evidence of a recent overt act or a continuing~~  
7 ~~pattern of behavior that tends to confirm:~~

8 ~~[(1) the proposed patient's distress,~~

9 ~~[(2) the deterioration of ability to function~~  
10 ~~independently to the extent that the proposed patient will be~~  
11 ~~unable to live safely in the community; and~~

12 ~~[(3) the proposed patient's inability to participate in~~  
13 ~~outpatient treatment services effectively and voluntarily].~~

14 SECTION 4. Section 574.037(c-2), Health and Safety Code, is  
15 amended to read as follows:

16 (c-2) A court may~~[, on its own motion,]~~ set a status  
17 conference on a patient's failure to comply with court-ordered  
18 outpatient services in accordance with Section 574.0665 ~~[with the~~  
19 ~~person responsible for the services, the patient, and the patient's~~  
20 ~~attorney].~~

21 SECTION 5. Sections 574.061(a), (b), (c), (d), (e), and  
22 (h), Health and Safety Code, are amended to read as follows:

23 (a) The facility administrator of a facility to which a  
24 patient is committed for inpatient mental health services, not  
25 later than the 30th day after the date the patient is committed to  
26 the facility, shall provide notice to ~~[may request]~~ the court that  
27 entered the commitment order stating the administrator's

1 recommendation regarding the appropriateness for the patient of  
2 modifying [~~to modify~~] the order to require the patient to  
3 participate in outpatient mental health services. At any time  
4 during a patient's commitment to an inpatient mental health  
5 facility after the facility administrator provides the notice  
6 required under this subsection, the facility administrator may  
7 recommend that the court that entered the commitment order modify  
8 the order to require the patient to participate in outpatient  
9 mental health services.

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

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

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

27 (e) If a hearing is not requested, the court may make a [~~the~~]

1 decision regarding a facility administrator's recommendation  
2 solely from the recommendation [~~request~~] and the supporting  
3 certificate.

4 (h) A modified order may [~~not~~] extend beyond the term of the  
5 original order.

6 SECTION 6. Subchapter E, Chapter 574, Health and Safety  
7 Code, is amended by adding Section 574.0665 to read as follows:

8 Sec. 574.0665. STATUS CONFERENCE ON PATIENT'S FAILURE TO  
9 COMPLY WITH COURT-ORDERED OUTPATIENT SERVICES. A court on its own  
10 motion may set a status conference with the patient, the patient's  
11 attorney, and the person designated to be responsible for the  
12 patient's court-ordered outpatient services under Section 574.037.

13 SECTION 7. Section 574.081, Health and Safety Code, is  
14 amended by amending Subsections (b) and (c) and adding Subsections  
15 (a-1) and (c-1) to read as follows:

16 (a-1) Subsection (a) applies to a patient scheduled to be  
17 furloughed or discharged from an inpatient mental health facility  
18 or a private mental health facility if the patient's treatment at  
19 the private mental health facility is paid in whole or in part with  
20 state money or money received by the state from the federal  
21 government.

22 (b) The physician shall prepare the plan as prescribed by  
23 commission [~~department~~] rules and shall consult the patient and the  
24 local mental health authority in the area in which the patient will  
25 reside before preparing the plan. [~~The local mental health~~  
26 ~~authority is not required to participate in preparing a plan for a~~  
27 ~~patient furloughed or discharged from a private mental health~~

1 ~~facility.]~~

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

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

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

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

10 (c-1) Except as otherwise specified in the plan, the mental  
11 health facility is responsible for paying for medication on  
12 furlough or discharge sufficient to last until the patient can see a  
13 physician.

14 SECTION 8. Subchapter B, Chapter 22, Government Code, is  
15 amended by adding Section 22.1106 to read as follows:

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

22 SECTION 9. Sections 574.065(e) and 574.081(h), Health and  
23 Safety Code, are repealed.

24 SECTION 10. The changes in law made by this Act to Chapter  
25 574, Health and Safety Code, apply to a commitment proceeding under  
26 that chapter that occurs on or after the effective date of this Act,  
27 regardless of whether conduct of a proposed patient being evaluated

1 for that purpose occurred before, on, or after the effective date of  
2 this Act.

3           SECTION 11. The changes in law made by this Act to Chapter  
4 46B, Code of Criminal Procedure, and Chapter 574, Health and Safety  
5 Code, apply to a proceeding for court-ordered mental health  
6 services that occurs on or after the effective date of this Act,  
7 regardless of when an offense with which the defendant is charged  
8 was committed.

9           SECTION 12. This Act takes effect September 1, 2019.