

## **BILL ANALYSIS**

S.B. 1179  
By: Perry  
Corrections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Civil Commitment Office (TCCO) provides treatment and supervision to its clients who have been civilly committed as sexually violent predators. TCCO has continued to encounter several administrative challenges that regularly hinder the effectiveness of TCCO's treatment and supervision programs. S.B. 1179 seeks to address these challenges by revising TCCO duties and administrative procedures. The bill also provides for criminal offenses for sexually violent predators.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 10 of this bill.

### **ANALYSIS**

#### **Criminal Offenses Relating to a Civilly Committed Individual**

S.B. 1179 amends the Penal Code to create a third degree felony offense of unlawful restraint for a person who, while committed to a civil commitment facility, intentionally or knowingly restrains a person. The bill creates a third degree felony offense of public lewdness for a person who is civilly committed as a sexually violent predator and knowingly engages in any of the following acts in a public place or, if not in a public place, is reckless about whether another is present and will be offended or alarmed by the person's:

- act of sexual intercourse;
- act of deviate sexual intercourse; or
- act of sexual contact.

The bill creates a third degree felony offense of indecent exposure for a person civilly committed as a sexually violent predator who exposes the person's anus or any part of the person's genitals with intent to arouse or gratify the sexual desire of any person and is reckless about whether another is present who will be offended or alarmed by the act.

S.B. 1179 revises the conduct that constitutes the third degree felony offense of assault involving intentionally, knowingly, or recklessly causing bodily injury by an actor while committed to a civil commitment facility against an officer or employee of the Texas Civil Commitment Office (TCCO) or a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person as follows:

- by expanding the conduct to include assault involving:

- intentionally or knowingly threatening another with imminent bodily injury, including to the actor's spouse; or
- intentionally or knowingly causing physical contact with another when the actor knows or should reasonably believe that the other will regard the contact as offensive or provocative;
- by replacing the condition that the conduct is committed by an actor while committed with a condition that the conduct is committed by an actor who is so committed;
- by conditioning the actor's conduct against an officer or employee of TCCO on the actor's knowledge of the person as such an officer or employee;
- with respect to the condition that the officer or employee is lawfully discharging an official duty at a civil commitment facility, by removing the specification that the duty is discharged at a civil commitment facility; and
- by conditioning the actor's conduct against a person who contracts with the state or an employee of that person in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract on the actor's knowledge of the person as such a contractor or employee.

S.B. 1179 creates a third degree felony offense for a person who, while residing in a civil commitment facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices unless the device or component is authorized by TCCO. The bill expands the conduct that constitutes the third degree felony offense of possessing a prohibited substance while in a correctional facility or a civil commitment facility or on property owned, used, or controlled by a correctional facility or by a civil commitment facility to include possessing an alcoholic beverage on those premises. The bill expands the persons for whom acquiring a cellular telephone or other wireless communications device or a component of one of those devices for delivery, providing such a device or component to another person for delivery, or making a payment to a communication common carrier or to any communication service that provides the ability to send or receive wire or electronic communications constitutes a third degree felony offense to include a person residing in a civil commitment facility.

S.B. 1179 creates a third degree felony offense of improper sexual activity with a committed person for an officer or employee of TCCO, a person who contracts with the state to perform a service in a civil commitment facility or an employee of that person, or a volunteer at a civil commitment facility who intentionally engages in deviate sexual intercourse, sexual contact, or sexual intercourse with a person committed to a civil commitment facility. The bill establishes as an affirmative defense to prosecution that at the time of the offense the actor was the spouse of the person committed to the civil commitment facility. If conduct constituting the offense also constitutes another offense under any law, the actor may be prosecuted for either offense or both offenses.

These provisions apply only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

### **Sex Offender Registration Program**

S.B. 1179 amends the Code of Criminal Procedure to require the Department of Public Safety (DPS), for supervision and treatment purposes, to release all relevant information contained in the computerized central database maintained by DPS required for registration under the sex offender registration program, including certain identifying or contact information that is not public information, to an employee of TCCO on the employee's request.

S.B. 1179 includes TCCO among the entities to which DPS must provide a form for registering persons under the sex offender registration program. The bill requires TCCO to register with the applicable local law enforcement authority on behalf of a person who is civilly committed as a sexually violent predator and required to reside in a civil commitment center. The bill establishes

that a person for whom registration is completed is not required to verify the registration until the person is authorized to reside outside of the civil commitment center. The bill requires the person to verify the registration not later than the seventh day after the date on which the person is authorized to reside outside of the civil commitment center.

### **Civil Commitment**

S.B. 1179 expands the authorization for the prosecution of the offense of violating a supervision and treatment requirement, under statutory provisions relating to the civil commitment of sexually violent predators, in the county in which any element of the offense occurs or in the court that retains jurisdiction over the civil commitment proceeding to include a felony offense committed by a person civilly committed under any of those provisions.

S.B. 1179 amends the Government Code to grant the sex offender compliance unit primary jurisdiction to investigate a felony offense committed by a civilly committed sexually violent predator.

S.B. 1179 authorizes TCCO to designate an employee to serve as a family liaison officer, who may, as TCCO determines appropriate, do the following:

- facilitate the continuation and maintenance of ties between a civilly committed sex offender and the offender's family members who are supportive of the offender's participation in the treatment and supervision program;
- notify an offender regarding emergencies concerning the offender's family and provide the offender with other necessary information related to the offender's family; and
- assist in resolving problems that may affect permitted contact with an offender.

The bill authorizes a family liaison officer, before each required quarterly meeting of the governing board of TCCO, to provide an update to the governing board regarding the officer's activities. The bill expressly does not:

- require TCCO to designate a family liaison officer; or
- guarantee to a civilly committed sex offender or family member of an offender any additional right or privilege that is not already required by state or federal law.

S.B. 1179 authorizes TCCO to adopt and implement policies that encourage family unity during a civilly committed sex offender's commitment. The bill authorizes TCCO, in adopting the policies, to consider the impact of a telephone, mail, and in-person visitation policy on a family member's ability to provide support to the offender through ongoing, appropriate contact with the offender while the offender participates in the treatment and supervision program. The bill expressly does not guarantee to a civilly committed sex offender or family member of an offender any additional right or privilege that is not already required by state or federal law.

S.B. 1179 authorizes TCCO, in implementing provisions relating to the family liaison officer or family unity policies, to adopt any policy or impose any limitation TCCO considers necessary.

S.B. 1179 excepts from the public availability requirement of state public information law information obtained or maintained by TCCO about a person who is civilly committed as a sexually violent predator. This exception does not apply to statistical or other aggregated information relating to persons civilly committed to one or more facilities operated by or under a contract with TCCO. The bill also exempts from the Administrative Procedure Act a rule or internal procedure of TCCO that applies to a person who is civilly committed as a sexually violent predator or to an action taken under that rule or procedure. The bill extends the statutory authority for a health and human services agency to procure its goods and services to agencies administratively attached to the Health and Human Services Commission (HHSC).

S.B. 1179 amends the Occupations Code to require a person who is licensed or certified in Texas to provide health or medical services, a criminal justice agency, and a local law enforcement

authority, each on request or in the normal course of official business, to release information concerning the treatment of a sex offender to TCCO.

S.B. 1179 amends the Health and Safety Code to expand the definition for "attorney representing the state" for purposes of statutory provisions relating to the civil commitment of sexually violent predators to include an applicable attorney who represents the state in any proceeding under those provisions. The bill expands the proceedings to which the special prosecution unit is required to provide legal, financial, and technical assistance to a requesting attorney representing the state to include any proceeding conducted under statutory provisions relating to the civil commitment of sexually violent predators. The bill also changes the conduct involving a burglary offense that constitutes a "sexually violent offense" for purposes of those statutory provisions from the person committing the offense with the intent to commit certain sexual offenses to the person entering the habitation with the intent to commit those sexual offenses or the person committing or attempting to commit those offenses.

With respect to provisions relating to the transfer of a committed person between programming settings, S.B. 1179 specifies that the duty of TCCO to transfer a committed person applies with respect to a committed person required to reside in a total confinement facility. With respect to the authorization for a committed person to file a petition with the court for transfer to a less restrictive programming tier, the bill limits the petition to transfer to the next less restrictive tier. The bill requires the court to deny the transfer if the petition is filed before the 180th day after the date the following occurs:

- an order was entered in a trial to determine whether the person is a sexually violent predator, as part of biennial commitment review, or as part of a petition for release from commitment; or
- a previous order was entered with respect to a petition for transfer to a less restrictive programming tier.

S.B. 1179 revises the conditions under which a court is required to grant the transfer as follows:

- by specifying that the conditions that can be imposed that adequately protect the community are conditions that TCCO can impose; and
- by conditioning the court's determination that the transfer is in the best interest of the person, and that TCCO can impose the conditions, on a determination by clear and convincing evidence.

The bill requires a committed person who files a petition for transfer without TCCO approval to serve a copy of the petition to the attorney representing the state. The bill replaces the requirement for TCCO to return a committed person who has been transferred to less restrictive housing and supervision to a more restrictive setting if TCCO considers the transfer necessary to further treatment and to protect the community with a requirement for TCCO to transfer a committed person who is not required to reside in a total confinement facility back to a more restrictive setting in a total confinement facility if TCCO so considers the transfer necessary.

S.B. 1179 revises the conditions under which an employee of TCCO, or a person who contracts with TCCO or an employee of that person, may use mechanical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center by replacing the condition that the restraint is used as a last resort, is necessary to stop or prevent certain behaviors, and the least restrictive restraint necessary used for the minimum duration necessary to prevent those behaviors with the condition that the restraint is considered necessary to maintain the safety and security of the center or staff, considered necessary to maintain the safety of the public, and the least restrictive restraint necessary for the minimum duration necessary. The bill retains the conditions for that authorization that the employee or person complete a training program approved by TCCO on the use of restraints.

S.B. 1179 changes the determination necessary for a judge to set a hearing on a committed person under biennial review from the judge determining at the review that a civil commitment requirement imposed on the person should be modified or probable cause exists to believe that

the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence to the judge determining by a preponderance of the evidence at the review that the requirement be so modified and the person's behavioral abnormality has so changed.

With respect to a petition for release filed by a committed person without TCCO authorization, S.B. 1179 includes TCCO among the entities to whom the person must serve the petition. The bill also revises the conditions under which the court is required to deny such a petition as follows:

- by removing that the petition is frivolous as a condition; and
- by replacing the condition that the person previously filed a petition for release without TCCO authorization and the judge determined that the previous petition was frivolous or the person's behavioral abnormality had not changed to the extent that the person was no longer likely to engage in a predatory act of sexual violence with a condition that either:
  - the judge determines by a preponderance of the evidence that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence; or
  - the person has filed the petition for release before the 180th day after the date the following occurs:
    - an order was entered in a trial to determine whether the person is a sexually violent predator or as part of biennial commitment review; or
    - a previous order was entered with respect to a petition without TCCO authorization.

The bill revises the exception under which the judge is not required to deny a petition without TCCO authorization by changing the evidentiary standard from probable cause to a preponderance of the evidence that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence and by limiting the exception to a petition that is filed before the 180th day after the date the applicable order was entered.

### **Litigation by Civilly Committed Individual**

S.B. 1179 amends the Civil Practice and Remedies Code to set out provisions governing litigation by a civilly committed individual, applicable to an action, including an appeal or original proceeding, brought by a civilly committed individual in a district, county, or justice court or an appellate court, including the Texas Supreme Court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the civilly committed individual. The provisions do not apply to an action brought under the Family Code.

S.B. 1179 authorizes a court to dismiss a claim, either before or after service of process, if the court finds any of the following:

- the allegation of poverty in the affidavit or unsworn declaration is false;
- the claim is frivolous or malicious; or
- the civilly committed individual filed an affidavit or unsworn declaration required by the bill that the individual knew was false.

The bill authorizes the court, in determining whether a claim is frivolous or malicious, to hold a hearing, which may be held before or after service of process and on motion of the court, a party, or the court clerk. The court may consider whether:

- the claim's realistic chance of ultimate success is slight;
- the claim has no arguable basis in law or in fact;
- it is clear that the civilly committed individual cannot prove the facts in support of the claim; or
- the claim is substantially similar to a previous claim filed by the civilly committed individual because the claim arises from the same operative facts.

The bill requires the court, on the filing of a motion for a hearing, to suspend discovery relating to the claim pending the hearing. The bill authorizes a court that dismisses a claim brought by a civilly committed individual housed in a facility operated by or under contract with TCCO to notify TCCO of the dismissal and, on the court's own motion or the motion of any party or the court clerk, to advise TCCO that a mental health evaluation of the individual may be appropriate.

S.B. 1179 requires a civilly committed individual who files an affidavit or unsworn declaration of inability to pay costs to file a separate affidavit or declaration:

- identifying the court that ordered the individual's civil commitment as a sexually violent predator;
- indicating whether any cause of action or allegation contained in the petition has previously been filed in any other court, and if so, stating the cause of action or allegation previously filed and complying with the requirement to describe each action that was previously brought and state the date of the final order affirming the dismissal of the action if dismissed as frivolous or malicious;
- identifying each action, other than an action under the Family Code, previously brought by the individual in which the individual was not represented by an attorney, without regard to whether the individual was civilly committed at the time the action was brought;
- certifying that all grievance processes applicable to the matter that is the basis of the claim, if any, have been exhausted;
- certifying that no court has found the individual to be a vexatious litigant; and
- describing each action that was previously brought by:
  - stating the operative facts for which relief was sought;
  - listing the case name, the cause number, and the court in which the action was brought;
  - identifying each party named in the action; and
  - stating the result of the action, including whether the action or a claim that was a basis for the action was dismissed as frivolous or malicious.

If the affidavit or unsworn declaration states that a previous action or claim was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal. The bill also requires the affidavit or unsworn declaration to be accompanied by the certified copy of the trust account statement required by the bill.

S.B. 1179 requires a civilly committed individual who files a claim that is subject to a grievance system established by TCCO or a facility under contract with TCCO to file with the court:

- an affidavit or unsworn declaration stating the date that the grievance was filed and the date the written decision was received by the individual; and
- a copy of the written decision from the grievance system.

The bill requires a court to dismiss a claim if the civilly committed individual fails to file the claim before the 31st day after the date the individual receives the written decision from the grievance system. If a claim is filed before the grievance system procedure is complete, the court is required to stay the proceeding with respect to the claim for a period not to exceed 180 days to permit completion of the grievance system procedure.

S.B. 1179 authorizes a court to order a civilly committed individual who has filed a claim to pay court fees, court costs, and other costs as provided by the bill. The bill requires the court clerk to mail a copy of the court's order and a certified bill of costs to TCCO or the facility under contract with TCCO, as appropriate. The bill requires the civilly committed individual, on the court's order, to pay an amount equal to the lesser of:

- 20 percent of the preceding six months' deposits to the individual's trust account; or
- the total amount of court fees, court costs, and other costs.

In each month following the month in which such payment is made, the civilly committed individual is required to pay an amount equal to the lesser of:

- 10 percent of that month's deposits to the trust account; or

- the total amount of court fees, court costs, and other costs that remains unpaid.

The bill requires the payments to continue until the total amount of court fees, court costs, and other costs are paid or until the civilly committed individual is released from confinement.

S.B. 1179 requires the court's order to include other costs if the court finds that:

- the civilly committed individual has previously filed an action to which the bill or statutory provisions relating to inmate litigation applies; and
- a final order has been issued that affirms that the action was dismissed as frivolous or malicious.

These other costs are expenses incurred by the court or by TCCO or the facility under contract with TCCO, in connection with the claim and not otherwise charged to the civilly committed individual, and include expenses of service of process, postage, and transportation, housing, or medical care incurred in connection with the appearance of the individual in the court for any proceeding.

S.B. 1179 requires TCCO or the facility under contract with TCCO, on receipt of a copy of the court's order, to withdraw money from the trust account in accordance with the bill's provisions. TCCO or the facility must hold the money in a separate account and forward the money to the court clerk on the earlier of the following dates:

- the date the total amount to be forwarded equals the total amount of court fees, court costs, and other costs that remains unpaid; or
- the date the civilly committed individual is released.

S.B. 1179 requires the civilly committed individual to file a certified copy of the individual's trust account statement with the court. The statement must reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed. The bill authorizes the court to request TCCO to provide the required information. The bill authorizes a civilly committed individual to authorize payment in addition to that required by the bill. The bill authorizes the court to dismiss a claim if the civilly committed individual fails to pay fees and costs assessed by the court. The bill prohibits a civilly committed individual from avoiding the fees and costs assessed by nonsuiting a party or by voluntarily dismissing the action.

S.B. 1179 authorizes the court to hold a hearing at a facility operated by or under contract with TCCO or to conduct the hearing with video communications technology that permits the court to see and hear the civilly committed individual and that permits the individual to see and hear the court and any other witness. The bill requires a hearing by video communications technology to be recorded on videotape or by other electronic means and establishes that the recording is sufficient to serve as a permanent record of the hearing. The bill authorizes the court to request a person with an admissible document or admissible testimony relevant to the subject matter of the hearing to submit a copy of the document or written statement stating the substance of the testimony. A written statement must be made under oath or made as an unsworn declaration under the Civil Practice and Remedies Code. The bill requires a copy of such a document to be accompanied by a certification executed under oath by an appropriate custodian of the record stating that the copy is correct and any other matter relating to the admissibility of the document that the court requires. The bill establishes that a person submitting a written statement or document is not required to appear at the hearing. The bill requires the court to require that the civilly committed individual be provided with a copy of each written statement or document not later than the 14th day before the date on which the hearing is to begin.

S.B. 1179 authorizes the court to enter an order dismissing the entire claim or a portion of the claim under the bill's provisions. If a portion of the claim is dismissed, the court must designate the issues and defendants on which the claim may proceed, subject to the court fees and other costs provided by the bill. The bill excepts an order of dismissal from interlocutory appeal by the civilly committed individual.

S.B. 1179 prohibits a court clerk, on receipt of an order assessing court fees and other costs that indicates the court made the finding relating to a previously filed action that was dismissed as frivolous or malicious, from accepting for filing another claim by the civilly committed individual until the court fees and other costs are paid. The bill authorizes a court to allow a civilly committed individual who has not paid the fees and costs to file a claim for injunctive relief seeking to enjoin an act or failure to act that creates a substantial threat of irreparable injury or serious physical harm to the individual.

S.B. 1179 authorizes a court, for purposes of implementing the bill's provisions, to develop a questionnaire to be filed by the civilly committed individual for use in that court.

S.B. 1179 prohibits the bill's provisions relating to litigation by a civilly committed individual from being modified or repealed by a rule adopted by the Texas Supreme Court. The bill requires the supreme court to adopt by rule a system under which a court may refer a suit governed by the bill's provisions to a magistrate for review and recommendation and establishes that for purposes of the prohibition, the adoption of a system by rule does not constitute a modification or repeal of the bill's provisions. The bill authorizes the system to be funded from money appropriated to the supreme court or from money received by the supreme court through interagency contract or contracts.

S.B. 1179 defines the following terms:

- "civilly committed individual" as a repeat sexually violent offender who suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence and has been committed to a facility operated by or under contract with TCCO;
- "trust account" as a civilly committed individual's trust account administered by TCCO or by a facility under contract with TCCO; and
- "unsworn declaration" as a document executed in accordance with statutory provisions relating to unsworn declarations.

These provisions apply only to an action filed on or after the bill's effective date.

### **Limited Liability for First Responder Wellness Check at a Civil Commitment Facility**

S.B. 1179 authorizes a first responder to refer a person requesting a wellness check to TCCO, which may provide the person with information regarding the current condition of the civilly committed sexually violent predator if authorized under federal and state law. However, the bill establishes that a first responder is not required to perform a wellness check and exempts a first responder from liability for damages incurred from the first responder's refusal to perform a wellness check. The bill requires a court to immediately dismiss any action asserting a claim for damages incurred from the first responder's refusal to perform a wellness check. The bill prohibits these provisions from being construed to prohibit a first responder from performing a wellness check.

S.B. 1179 defines "first responder" as a law enforcement, fire protection, or emergency medical services employee, volunteer, or agency, including the following:

- a peace officer, as defined by the Code of Criminal Procedure;
- fire protection personnel, as defined by statutory provisions relating to the Texas Commission on Fire Protection;
- a volunteer firefighter who is:
  - certified by the Texas Commission on Fire Protection or by the State Firefighters' and Fire Marshals' Association of Texas; or
  - a member of an organized volunteer firefighting unit that provides firefighting services without compensation and conducts a minimum of two drills each month, each two hours long;



- an individual certified as emergency medical services personnel by the Department of State Health Services; and
- a state agency or political subdivision of the state authorized by law to employ or supervise such a peace officer, fire protection personnel, a volunteer firefighter, or certified medical services personnel.

The bill defines "wellness check" as a request by any person for a first responder to visit a civil commitment facility and determine the current condition of a sexually violent predator who is civilly committed.

These provisions apply only to a cause of action that accrues on or after the bill's effective date.

### **Administration of Medication to a Civilly Committed Individual**

S.B. 1179 amends the Health and Safety Code to prohibit a person from administering a psychoactive medication to a committed person who refuses to take the medication voluntarily unless either of the following conditions are met:

- the committed person is having a medication-related emergency; or
- the committed person is under a court order authorizing the administration of medication regardless of the committed person's refusal, as provided by the bill.

S.B. 1179 authorizes a physician who is treating a committed person, on behalf of the state, to 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 committed person's refusal under the following conditions:

- the physician believes that the committed person lacks the capacity to make a decision regarding the administration of the psychoactive medication;
- the physician determines that the medication is the proper course of treatment for the committed person;
- the committed person is receiving mental health services under applicable law; and
- the committed person, verbally or by other indication, refuses to take the medication voluntarily.

An application, which is separate from an application for court-ordered mental health services, must state the following:

- that the physician believes that the committed person lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;
- each medication the physician wants the court to compel the committed person to take;
- whether the committed person is receiving mental health services under applicable law;
- the physician's diagnosis of the committed person; and
- the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

S.B. 1179 requires a hearing on the application to be held not later than the 30th day after the date the application was filed. If the committed person is transferred to a mental health facility in another county, the court may transfer the application to the county where the committed person has been transferred. The bill authorizes the court, subject to the requirement that the hearing on the application be held by the prescribed deadline, to grant one continuance on a party's motion and for good cause shown but establishes that the court may grant more than one continuance only with the agreement of the parties.

S.B. 1179 entitles a committed person for whom such an application is filed to the following:

- representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;
- to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the committed person's questions or concerns;

- to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;
- to be told, at the time personal notice of the hearing is given, of the committed person's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;
- to be present at the hearing;
- to request from the court an independent expert; and
- to be notified orally, at the conclusion of the hearing, of the court's determinations of the committed person's capacity and best interests.

S.B. 1179 authorizes a court to issue an order authorizing the administration of one or more classes of psychoactive medication to a committed person who is receiving mental health services under applicable law only if the court finds by clear and convincing evidence after a hearing that the committed person:

- lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the committed person; or
- presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated, as provided by the bill.

With respect to making a finding that the committed person presents such a danger, the court is required to consider the following:

- an assessment of the committed person's present mental condition;
- whether the committed person has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to the committed person's self or to another while in the center; and
- whether the committed person, in the 180-day period preceding the date the committed person was placed in the center, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to another person.

S.B. 1179 requires the court, in making the finding that treatment with the proposed medication is in the best interest of the committed person, to consider the following:

- the committed person's expressed preferences regarding treatment with psychoactive medication;
- the committed person's religious beliefs;
- the risks and benefits, from the perspective of the committed person, of taking psychoactive medication;
- the consequences to the committed person if the psychoactive medication is not administered;
- the prognosis for the committed person if the committed person is treated with psychoactive medication;
- alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and
- less intrusive treatments likely to secure the committed person's agreement to take the psychoactive medication.

The bill requires the hearing to be conducted on the record by the probate judge or judge with probate jurisdiction but authorizes the judge to refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The bill authorizes the magistrate or associate judge to provide the notice, set hearing dates, and appoint attorneys as required by the bill, and establishes that a record is not required if the hearing is held by a magistrate or court-appointed associate judge.

S.B. 1179 entitles a party to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court not later than the third day after the date the report is issued. The hearing de novo must be held not later than the 30th day after the date the application for the administration of the psychoactive medications was filed. If a hearing or an

appeal of a magistrate's or associate judge's report is to be held in a county court in which the judge is not a licensed attorney, the committed person or the committed person's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in Texas. The bill requires the county judge to transfer the case after receiving the request and the receiving court to hear the case as if it had been originally filed in that court.

S.B. 1179 entitles the committed person to have provided to the committed person and the committed person's attorney written notification of the court's determinations as soon as practicable after the conclusion of the hearing. The notification must include a statement of the evidence on which the court relied and the reasons for the court's determinations.

S.B. 1179 requires an order issued by the court to do the following:

- authorize the administration to a committed person, regardless of the committed person's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the committed person's diagnosis; and
- permit an increase or decrease in a medication's dosage, continuation of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

The classes of psychoactive medications in the order must conform to classes determined by HHSC. The bill authorizes the order to be reauthorized or modified on the petition of a party and establishes that an order remains in effect pending action on a petition for reauthorization or modification. The bill sets the expiration of the order on the first anniversary of the date the order was issued. For the purpose of these provisions, "modification" means a change of a class of medication authorized in the order.

S.B. 1179 requires the court to also order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed for purposes of an application filed for the administration of psychoactive medications and the requisite hearing. The bill establishes that the compensation paid is required to be assessed as court costs. The bill requires the applicable agency responsible for psychiatric services, disability services, and housing for a person who is civilly committed with special needs that prevent the person from effectively participating in the sex offender treatment program to pay the costs of the hearing.

S.B. 1179 requires an appeal from the court's order for the administration of psychoactive medications or from a renewal or modification of an order to be filed in the court of appeals for the county in which the order is issued. The bill requires notice of appeal to be filed not later than the 10th day after the date on which the order is issued. The bill requires the court clerk, when an appeal is filed, to immediately send a certified transcript of the proceedings to the court of appeals. The bill establishes that the court's order for the administration of psychoactive medications is effective pending an appeal of the order. The bill requires a court of appeals and the Texas Supreme Court to give such an appeal preference over all other cases and to advance the appeal on the docket. The bill authorizes a court of appeals and the supreme court to suspend all rules relating to the time for filing briefs and docketing cases.

S.B. 1179 provides for the following definitions:

- "capacity" as a committed person's ability to:
  - understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and
  - make a decision whether to undergo the proposed treatment;
- "medication-related emergency" means a situation in which it is immediately necessary to administer medication to a committed person to prevent:
  - imminent probable death or substantial bodily harm to the committed person because the committed person overtly or continually is threatening or attempting to commit suicide or serious bodily harm or is behaving in a manner that indicates

- that the committed person is unable to satisfy the committed person's need for nourishment, essential medical care, or self-protection; or
- imminent physical or emotional harm to another because of threats, attempted acts, or acts the committed person overtly or continually makes or commits; and
- "psychoactive medication" by reference to its definition under statutory provisions relating to the administration of medication to a patient under court-ordered mental health services.

These provisions apply to a hearing ordering the administration of psychoactive medication to a committed person that occurs on or after the bill's effective date, regardless of whether the applicable conduct of the committed person being evaluated for that purpose occurred before, on, or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.