

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 465  
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Health & Human Services  
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As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Current law in Texas, in contravention of United States Supreme Court rulings, requires no hearing before a person who is found incompetent to stand trial or not guilty by reason of insanity can be medicated against his or her will while detained in a mental health facility. The Department of State Health Services has attempted to come into compliance with Supreme Court dictates and has amended its rules, but there is no statutory support for these regulatory changes.

Current Texas law may also violate the Equal Protection Clause of the United States Constitution. A pretrial detainee found incompetent to stand trial and, once restored to competency, awaiting trial in a jail can only be medicated against his or her will after a court holds a hearing and determines by clear and convincing evidence that certain factors have been met. Additionally, people civilly committed to a state mental health and mental retardation facility can only be medicated against their will after a probate court holds a hearing and determines by clear and convincing evidence that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the patient.

Unlike a pretrial detainee restored to competency and returned to jail or a person facing no criminal charges that has been committed to a psychiatric hospital, a person criminally committed to a state hospital can be medicated without any of the constitutionally required judicial findings.

As proposed, S.B. 465 ensures that Texas law is consistent with recent Constitutional law.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 574.102, Health and Safety Code, to provide that this subchapter applies to the application of medication to a patient subject to an order for inpatient mental health services under this chapter or other law, rather than to only Section 574.034 or 574.035.

SECTION 2. Amends Sections 574.104(a) and (b), Health and Safety Code, as follows:

(a) Authorizes a physician who is treating a patient to, on behalf of the state, file an application in a probate court or court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if the patient is under an order for inpatient, rather than temporary or extended mental services under this chapter or other law, rather than Section 574.034 (Order for Temporary Mental Health Services) or 574.035 (Order for Extended Mental Health Services).

(b) Requires an application filed under this section to state whether a court order for inpatient mental health services for the patient has been, rather than was, issued and, if so, under what authority it was issued, rather than Section 574.034 or 574.035. Includes stating the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from customary methods in the application requirements. Deletes text pertaining to a current order.

SECTION 3. Amends the heading to Section 574.106, Health and Safety Code, to read as follows:

Sec. 574.106 HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION.

SECTION 4. Amends Section 574.106, Health and Safety Code, by amends Subsections (a) and (b) and adding Subsections (a-1) and (k), as follows:

(a) Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication to a patient meeting certain requirements.

(a-1) Authorizes the court to issue an order after the hearing under this section only if the court by clear and convincing evidence makes certain findings. Deletes text pertaining to an order for temporary or extended mental health services. Makes nonsubstantive changes.

(k) Provides that this section does not apply to a patient who receives services under an order of protective custody under Section 574.021 (Motion for Order of Protective Custody).

SECTION 5. Amends Subchapter G, Chapter 574, Health and Safety Code, by adding Section 574.1065, as follows:

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. Requires the court to consider certain factors in making a finding under Section 574.106(a) (2), pertaining to a patient ordered to receive inpatient mental health services by a criminal court, that the patient presents a danger to themselves or others in the inpatient mental health facility in which the patient is being treated as a result of mental disorder or defect.

SECTION 6. Amends Section 574.110, Health and Safety Code, as follows:

Sec. 574.110. EXPIRATION OF ORDER. (a) Provides for an exception under Subsection (b) regarding the expiration of an order issued under Section 574.106. Creates this subsection from existing text.

(b) Provides that an order issued under Section 574.106 for a patient awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty, or the date on which charges in the case are dismissed. Requires an order continued under this subsection to be reviewed by the issuing court every six months.

SECTION 7. Amends Section 576.025(a), Health and Safety Code, to include the administration of the medication regardless of the patient's refusal, rather than unless the patient is receiving court-ordered mental health services, authorized by an order issued under Article 46B.086, Code of Criminal Procedure, amongst exceptions to a person being prohibited from administering a psychoactive medication to a patient receiving voluntary or involuntary mental health services. Deletes texts pertaining to Chapter 46B (Incompetency to Stand Trial) or Article 46.03 (Court-ordered Medications), Code of Criminal Procedure, and Chapter 55 (Procedures Concerning Children with Mental Illness or Mental Retardation), Family Code.

SECTION 8. Amends Articles 46B.086(a), (b), and (d), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to a defendant who is, rather than after having been, determined under this chapter to be incompetent to stand trial and who, after a hearing held under Section 574.106, Health and Safety Code, has been found not to meet the criteria prescribed by Sections 574.106 (a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) Includes that the motion to compel medication must be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106, Health and Safety Code. Authorizes the court, after notice and after a hearing held not later than the fifth day after the defendant is returned to the committing court, rather than that is held as soon as practicable, to authorize the director of a correctional facility to have medication administered to the defendant, by reasonable force if necessary.

(d) Includes that the court may issue an order under this article if the court finds by clear and convincing evidence that the state has a clear and compelling interest in the defendant obtaining and maintaining competency to stand trial and that no other less invasive means of obtaining and maintaining the defendant's competency exists.

SECTION 9. Effective date: upon passage or September 1, 2005.