

BILL ANALYSIS

Senate Research Center

C.S.S.B. 646
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Health & Human Services
4/3/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Assisted outpatient treatment (AOT) is court-ordered treatment (including medication) for individuals who have a history of medication noncompliance, as a condition of their remaining in the community. Texas is one of 44 states that permit AOT. Studies have supported its effectiveness in keeping the patient from returning to prison. In Texas, it has most commonly been used in Bexar and Dallas counties.

The Texas statute, which is located in Chapter 574 (Court-Ordered Mental Health Services), Health and Safety Code, that authorizes AOT contains a provision that the judge may "advise but not compel" a patient to comply with the program. This has had the effect of discouraging judges from using AOT as they think it bars them from ordering a person to take their medications. The intent of the law instead was to allow the order but not sanction them for violating the order.

C.S.S.B. 646 will strike the two places in the law where the "advise but not compel" language is used. In addition, it clarifies that a person cannot be punished for non-compliance. It also makes provisions regarding non-compliance clearer.

C.S.S.B. 646 amends current law relating to court-ordered outpatient mental health services.

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 Subchapter A, Chapter 574, Health and Safety Code, by adding Section 574.0125, as follows:

Sec. 574.0125. IDENTIFICATION OF PERSON RESPONSIBLE FOR COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. Requires the judge, not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, to identify the person the judge intends to designate to be responsible for those services under Section 574.037 (Court-Ordered Outpatient Services).

SECTION 2. Amends Section 574.037, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), (c-1), (c-2), (c-3), and (c-4), as follows:

(a) Requires the court, in an order that directs a patient to participate in outpatient mental health services, to designate the person identified under Section 574.0125 as responsible for those services or authorizes the court to designate a different person if necessary, rather than requiring the court, in an order that directs a patient to participate in outpatient mental health services, to identify a person who is responsible for those services. Requires the person designated, rather than the person identified, to be the facility administrator or an individual involved in providing court-ordered outpatient services.

(b) Requires the person responsible for the services to submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2), rather than requiring the person responsible for the services to submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. Requires that the program be incorporated into the court order. Requires that the program include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) Requires the person responsible for the services under this section, if the patient is receiving inpatient mental health services at the time the program is being prepared, to seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) Requires the person responsible for the services to submit the program to the court before the hearing under Section 574.034 (Order for Temporary Mental Health Services) or 574.035 (Order for Extended Mental Health Services) or before the court modifies an order under Section 574.061 (Modification of Order for Inpatient Treatment), as appropriate.

(c-1) Authorizes a patient subject to court-ordered outpatient services to petition the court for specific enforcement of the court order.

(c-2) Authorizes a court, on its own motion, to set a status conference with the person responsible for the services, the patient, and the patient's attorney.

(c-3) Requires the court to order the patient to participate in the program but prohibits the court from compelling performance. Authorizes the court, if a court receives information under Subsection (c)(1) (relating to requiring the person responsible for the services to inform the court of the patient's failure to comply with the court order) that a patient is not complying with the court's order, to:

(1) set a modification hearing under Section 574.062 (Motion for Modification of Order for Outpatient Treatment); and

(2) issue an order for temporary detention if an application is filed under Section 574.063 (Order for Temporary Detention).

(c-4) Provides that the failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002 (Contempt of Court), Government Code.

SECTION 3. Amends Section 574.061(f), Health and Safety Code, to require the court, if the court modifies the order, to designate, rather than to identify, a person to be responsible for the outpatient services as prescribed by Section 574.037.

SECTION 4. Amends Section 574.063(b), Health and Safety Code, as follows:

(b) Requires that a sworn application for a patient's temporary detention pending the modification hearing under Section 574.026 (Order for Continued Detention) filed by a person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which the patient receives treatment state the applicant's opinion and detail the reasons for the applicant's opinion that the patient meets the criteria described by Section 574.064(a-1), rather than by Section 574.065(a) (relating to authorizing the court to modify an order for outpatient services at the modification hearing if the court determines that the patient meets certain criteria), and detention in an

inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

SECTION 5. Amends Section 574.064, Health and Safety Code, by adding Subsections (a-1) and (a-2) and amending Subsections (b) and (e), as follows:

(a-1) Requires a physician to evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). Authorizes the determination that the patient presents a substantial risk of serious harm to the patient or others to be demonstrated by the patient's behavior or evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

(a-2) Requires the facility, if the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, to:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) Authorizes a patient who is not released under Subsection (a-2) to be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) (relating requiring the hearing to be held not later than 72 hours after the time that the proposed inmate was detained under a protective custody order) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062, rather than the patient meets the criteria described by Section 574.065(a); and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(e) Provides that a patient released from an inpatient mental health facility under Subsection (a-2) or (d) (relating to requiring a facility administrator to immediately release a patient held under a temporary detention order if the facility administrator does not receive a certain notice) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

SECTION 6. Amends Section 574.065(a), Health and Safety Code, to authorize the court to modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) (relating to authorizing a judge to order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, certain information) or 574.035(a) (relating to authorizing a judge to order a proposed patient to receive court-ordered extended inpatient mental health

services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, certain information).

SECTION 7. Amends the heading to Subchapter G, Chapter 574, Health and Safety Code, to read as follows:

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT
ORDER FOR MENTAL HEALTH SERVICES

SECTION 8. Amends Section 574.102, Health and Safety Code, to provide that this subchapter applies to the application of medication to a patient subject to a court order for mental health services, rather than to a patient subject to an order for inpatient mental health services, under this chapter or other law.

SECTION 9. Amends Section 574.103, Health and Safety Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits a person from administering a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless the patient meets certain criteria.

(c) Prohibits a person from administering a psychoactive medication to a patient under court-ordered outpatient mental health services who refuses to take medication voluntarily unless the person is having a medication-related emergency and the psychoactive medication does not include long-acting injectable medications.

SECTION 10. Repealers: Sections 574.034(i) (relating to authorizing a judge to advise, but prohibiting a judge from compelling, the proposed patient to receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan, participate in counseling, and refrain from the use of alcohol or illicit drugs) and 574.035(j) (relating to authorizing a judge to advise, but prohibiting the judge from compelling, the proposed patient to receive treatment with psychoactive medication as specified by the outpatient mental health services treatment plan, participate in counseling, and refrain from the use of alcohol or illicit drugs), Health and Safety Code.

SECTION 11. Provides that the change in law made by this Act applies only to an application for court-ordered mental health services or temporary detention filed on or after the effective date of this Act. Provides that an application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 12. Effective date: September 1, 2013.