

BILL ANALYSIS

Senate Research Center

S.B. 362
By: Huffman
State Affairs
6/13/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After a review of the interaction between courts and individuals with mental health conditions, interested parties recommended several improvements to the Health and Safety Code. This bill will put into law best practices in mental health treatment and will provide a mechanism to divert individuals with mental health conditions from the criminal justice system and the inpatient mental health treatment system. (Original Author's/Sponsor's Statement of Intent)

S.B. 362 amends current law relating to court-ordered mental health services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 21 (Section 574.081) Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 26 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 137.008(a), Civil Practice and Remedies Code, as follows:

(a) Authorizes a physician or other health care provider to 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, 574.035, or 574.0355, Health and Safety Code, rather than Section 574.034 or 574.035, Health and Safety Code, and treatment is authorized in compliance with Section 574.106 (Hearing and Order Authorizing Psychoactive Medication), Health and Safety Code; or

(2) makes no changes to this subdivision.

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

(c) Authorizes the trial court, after the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) (relating to provision of the expert's written assessment to certain parties) or elects to use the results or a previous determination as described by Subsection (a)(2) (relating to a magistrate not being required to collect certain information if an extant determination exists), as applicable, to:

(1) makes no changes to this subdivision;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B (Incompetency to Stand Trial), rather than 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)–(4) makes nonsubstantive changes to these subdivisions; 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 (Court-Ordered Mental Health Services), Health and Safety Code.

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

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

(c-3) Requires the court, 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, to proceed under this chapter (The Commitment or Discharge of the Accused) or with the trial of the offense.

SECTION 3. Amends Section 55.13(d), Family Code as follows:

(d) Requires the juvenile court, after conducting a hearing on an application under this section (Commitment Proceedings in Juvenile Court):

(1) if the criteria under Section 574.034 or 574.0345, rather than Section 574.034, 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, rather than Section 574.035, Health and Safety Code, are satisfied, order extended mental health services for the child.

SECTION 4. Amends Section 55.38(b), Family Code, to make conforming changes.

SECTION 5. Amends Section 55.57(b), Family Code, to make conforming changes.

SECTION 6. Amends Subchapter B, Chapter 22, Government Code, by adding Section 22.1106, as follows:

Sec. 22.1106. JUDICIAL INSTRUCTION RELATED TO COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. Requires the Texas Court of Criminal Appeals to ensure that judicial training related to court-ordered outpatient mental health services is provided at least once every year. Authorizes the instruction to be provided at the annual Judicial Education Conference.

SECTION 7. Amends Section 501.057(b), Government Code, as follows:

(b) Requires the psychiatrist who examines an inmate to 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, rather than Section 574.034, Health and Safety Code.

SECTION 8. Amends Section 574.002(c), Health and Safety Code, as follows:

(c) Requires any application for commitment to contain certain information according to the applicant's information and belief, including a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, 574.035, or 574.0355, rather than Section 574.034 or 574.035, for court-ordered mental health services.

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

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

(d-2) Prohibits the court, in a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, from making its findings solely from the certificates of medical examination for mental illness but requires the court to hear testimony. Prohibits the court from entering an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. Requires the testimony to include competent medical or psychiatric testimony.

SECTION 10. Amends the heading to Section 574.034, Health and Safety Code to read as follows:

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

SECTION 11. Amends Sections 574.034(g) and (h), Health and Safety Code, as follows:

(g) Requires an order for temporary inpatient, rather than temporary inpatient or outpatient, mental health services to provide for a period of treatment not to exceed 45 days, rather than to state that treatment is authorized for not longer than 45 days, except that the order is authorized to specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) Makes a conforming change to this subsection.

SECTION 12. Amends Subchapter C, Chapter 574, Health and Safety Code, by adding Section 574.0345, as follows:

Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES. (a) Authorizes the judge to 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) Requires that the evidence, in order to be clear and convincing under Subsection (a)(2), 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) Requires an order for temporary outpatient mental health services to state that treatment is authorized for not longer than 45 days, except that the order is authorized to specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d) Prohibits a judge from issuing 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. Amends the heading to Section 574.035, Health and Safety Code, to read as follows:

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

SECTION 14. Amends Sections 574.035(d), (h), and (i), Health and Safety Code, as follows:

(d) Provides that the jury or judge is not required to make the finding under Subsection (a)(4) (relating to the proposed patient having received court-ordered inpatient mental health services for 60 consecutive days in the last year), in a certain period, rather than Subsection (a)(4) or (b)(2)(F) (relating to the proposed patient having received court-ordered inpatient or outpatient mental health services in certain periods) if the proposed patient has already been subject to an order for extended mental health services.

(h) Makes conforming changes and deletes existing text prohibiting an order for extended inpatient or outpatient mental health services from specifying a period shorter than 12 months.

(i) Makes conforming changes to this subsection.

SECTION 15. Amends Subchapter C, Chapter 574, Health and Safety Code, by adding Section 574.0355, as follows:

Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) Authorizes the judge to 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;

(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 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 (Texas Mental Health Code) or under Subchapter D (Procedures After Determination of Incompetency) or E (Civil Commitment: Charges Pending), 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) Provides that 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) Requires the evidence, in order to be clear and convincing under Subsection (a)(2), to 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) Requires an order for extended outpatient mental health services to state that treatment is authorized for not to exceed 12 months.

(e) Prohibits a judge from issuing 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. Amends Section 574.036(e), Health and Safety Code, as follows:

(e) Authorizes the judge to enter an order:

(1) makes no changes to this subdivision; or

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

SECTION 17. Amends Sections 574.037(a), (b-2), and (c-2), Health and Safety Code, as follows:

(a) Prohibits a person from being designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a Department of State Health Services (DSHS) facility or the facility administrator of a community center that provides mental health services in the region in which the committing court is located or in a county where a patient has previously received mental health services. Makes nonsubstantive changes.

(b-2) Requires the person responsible for the services to submit the program to the court before the hearing under Section 574.0345, or 574.0355, rather than under Section 574.034 or 574.035, or, before the court modifies an order under Section 574.061, as appropriate.

(c-2) Authorizes a court to set a status conference in accordance with Section 574.0665, rather than set a status conference on its own motion with the person responsible for the services, the patient, and the patient's attorney.

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

(a) Requires 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, to assess the appropriateness of transferring the patient to outpatient mental health services. Authorizes the facility administrator to recommend that

the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services, rather than to request the court that entered the commitment order to modify the order to require the patient to participate in outpatient mental health services.

(b) Requires a facility administrator's recommendation under Subsection (a) to explain in detail the reason for the recommendation, rather than requiring the facility owner's request to explain in detail the reason for the request. Requires the recommendation to 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, rather than requiring the request to be accompanied by a certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the request.

(c) Requires the patient to be given notice of a facility administrator's recommendation under Subsection (a), rather than notice of the request.

(d) Requires the court, on request of the patient or any other interested person, to hold a hearing on a facility administrator's recommendation that the court modify the commitment order, rather than hold a hearing on the request. Requires the court to appoint an attorney to represent the patient at the hearing and to consult with the local mental health authority before issuing a decision.

(e) Authorizes the court, if a hearing is not requested, to make a decision regarding a facility administrator's recommendation based on the recommendation, the supporting certificate, and consultation with the local mental health authority concerning available resources to treat the patient, rather than to make the decision solely from the request and the supporting certificate. Makes nonsubstantive changes.

(h) Authorizes a modified order to extend beyond the term of the original order, but prohibits the order from exceeding the term of the original order by 60 days, rather than prohibiting a modified order from extending beyond the term of the original order.

SECTION 19. Amends Subchapter E, Chapter 574, Health and Safety Code, by adding Section 574.0665, as follows:

Sec. 574.0665. STATUS CONFERENCE. Authorizes a court on its own motion to 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 (Court-Ordered Outpatient Services).

SECTION 20. Amends Section 574.069(e), Health and Safety Code, to require the court to 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, rather than by Section 574.035.

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

(a-1) Provides that, subject to available resources, Subsections (a) (relating to requiring a physician to complete a continuing care plan in certain circumstances), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from a state hospital or any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission (HHSC) or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) Requires the physician to prepare the plan as prescribed by HHSC rules, rather than DSHS rules, and to consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. Requires the local mental health authority to be informed of and to participate in planning the discharge of a patient. Deletes existing text providing that the local mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(c) Requires the plan to 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. Creates this subdivision from existing text and deletes existing Subdivision (2) relating to requiring the plan to address, if appropriate, the person or entity that is responsible for providing and paying for the medication.

(c-1) Provides that, except as otherwise specified in the plan and subject to available funding provided to HHSC and paid to a private mental health facility for this purpose, a private mental health facility 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.

(c-2) Requires HHSC to adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. Prohibits the executive commissioner of HHSC from adopting rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

SECTION 22. Amends Sections 574.104(a), (b), and (d), 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 a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1)–(2) makes no changes to these subdivisions;

(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, 574.035, or 574.0355, rather than under Section 574.034 or 574.035, has been filed for the patient; and

(4) makes no changes to this subdivision.

(b) and (d) Makes conforming changes to these subsections.

SECTION 23. Amends Section 574.151, Health and Safety Code, as follows:

Sec. 574.151. APPLICABILITY. Provides that this subchapter (Voluntary Admission For Certain Persons For Whom Motion For Court-Ordered Services Has Been Filed) 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, 574.035, or 574.0355, rather than under Section 574.034 or 574.035, and who requests voluntary admission to an inpatient mental health facility in a certain period.

SECTION 24. Amends Section 152.00164(b), Human Resources Code, as follows:

(b) Requires the juvenile board or local juvenile probation department, for a child requiring inpatient psychiatric treatment, to file a sworn application for court-ordered mental health services, as provided in Subchapter C (Proceedings For Court-Ordered Mental Health Services), Chapter 574, Health and Safety Code, if:

(1) makes no changes to this subdivision; 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, rather than in Section 574.034, Health and Safety Code.

SECTION 25. Amends Section 244.012(b), Human Resources Code, as follows:

(b) Requires the Texas Juvenile Justice Department, for a child requiring inpatient psychiatric treatment, to file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) makes no changes to this subdivision; 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 574.03, rather than in Section 574.034, Health and Safety Code.

SECTION 26. Requires the Supreme Court of Texas to:

(1) adopt rules to streamline and promote the efficiency of court processes under Chapter 573 (Emergency Detention), 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. Repealer: Sections 574.034(b) (relating to authorizing a judge to order a proposed patient to receive court-ordered temporary outpatient mental health services), Health and Safety Code.

Repealer: Section 574.034(e) (relating to requirements for clear and convincing evidence), Health and Safety Code.

Repealer: Section 574.034(f) (relating to authorizing the proposed patient and the proposed patient's attorney to waive the right to cross-examine witnesses), Health and Safety Code.

Repealer: Section 574.035(b) (relating to authorizing a judge to order a proposed patient to receive court-ordered extended outpatient mental health services), Health and Safety Code.

Repealer: Section 574.035(f) (relating to requirements for clear and convincing evidence), Health and Safety Code.

Repealer: Section 574.035(g) (relating to prohibiting the court from making its findings solely from the certificates of medical examination for mental illness and requiring the court to hear testimony), Health and Safety Code

SECTION 28. Provides that HHSC is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, HHSC, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 29. Provides that 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. Provides that 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. Effective date: September 1, 2019.