

BILL ANALYSIS

C.S.S.B. 362
By: Huffman
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

After a review of the interaction between courts and individuals with mental health conditions, interested parties recommended a variety of legislative reforms, including a need for measures that would streamline a patient's transition from inpatient to outpatient treatment and requirements for publicly-funded facilities to coordinate patients' admission, treatment plan, and discharge plan with local mental health authorities. Additionally, interested parties note that many individuals with mental health issues encounter delays in treatment through entanglement with the criminal justice system, often resulting in waiting in jail for long periods until limited space in an inpatient treatment facility becomes available. C.S.S.B. 362 seeks to address these issues by implementing stakeholder recommendations, in part by clarifying the standards for court-ordered mental health services and by separating the standards for inpatient and outpatient commitment and making distinct sections for extended and temporary court-ordered treatment, and by expanding the ways through which nonviolent individuals with mental health issues can be diverted from the criminal justice system and inpatient facilities and into the community to receive mental health services at outpatient facilities and including a mental health judicial education component.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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 executive commissioner of the Health and Human Services Commission in SECTION 21 of this bill and to the Supreme Court of Texas in SECTION 26 of this bill.

ANALYSIS

C.S.S.B. 362 repeals Health and Safety Code provisions relating to court-ordered temporary and extended outpatient mental health services and amends the Health and Safety Code to clarify that the judge has authority to order a proposed patient to receive court-ordered temporary or extended outpatient mental health services if:

- the judge finds that appropriate mental health services are available to the proposed patient;
- the judge or jury finds, from clear and convincing evidence, that:
 - the proposed patient is a person with severe and persistent mental illness;
 - 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;
- outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and
- the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by specified criteria; and
- for a proposed patient to receive court-ordered extended outpatient mental health services, in addition to such findings, the judge or jury also find from clear and convincing evidence that:
 - the proposed patient's condition is expected to continue for more than 90 days; and
 - the proposed patient has received court-ordered inpatient or outpatient mental health services for specified lengths of time.

C.S.S.B. 362 establishes that, for purposes of being clear and convincing, the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the requisite findings. The bill 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 may specify a period not to exceed 90 days if the judge finds that the longer period is necessary. The bill establishes that an order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months. The bill prohibits a judge from issuing an order for temporary or 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.

C.S.S.B. 362 authorizes, in a hearing for court-ordered temporary inpatient or outpatient mental health services, the proposed patient or the proposed patient's attorney, by a written document filed with the court, to waive the right to cross-examine witnesses and, if that right is waived, authorizes the court to admit, as evidence, the certificates of medical examination for mental illness. The bill establishes that the certificates constitute competent medical or psychiatric testimony and authorizes the court to make its findings solely from the certificates. If the right to cross-examine witnesses is not waived, the court is required to proceed to hear testimony, which must include competent medical or psychiatric testimony.

C.S.S.B. 362 prohibits the court in a hearing for court-ordered extended inpatient or outpatient mental health services from making its findings solely from the certificates of medical examination for mental illness and requires the court to hear testimony. The bill 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 and requires such testimony to include competent medical or psychiatric testimony.

C.S.S.B. 362 sets a deadline by which a facility administrator of a facility to which a patient is committed for inpatient mental health services must assess the appropriateness of transferring the patient to outpatient mental health services after which the facility administrator may recommend a court order modification. The bill requires the court to consult with the local mental health authority before issuing a decision. The bill replaces the prohibition on the extension of a modified order for inpatient treatment beyond the term of the original order with an authorization for the extension of such an order for no more than 60 days beyond the term of the original order.

C.S.S.B. 362 establishes that, subject to available resources, provisions relating to the requirement for the treating physician to prepare a continuing care plan for a patient scheduled to be furloughed or discharged 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. The bill changes how a local mental health authority participates in the planned discharge of patient from an applicable facility from the authority not being required to participate in planning the discharge to the authority being required to participate. The bill establishes that the authority must be informed of the discharge of the patient.

C.S.S.B. 362 revises the matters a continuing care plan must address, if appropriate, to include the need for:

- outpatient mental health services following furlough or discharge; and
- sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician.

C.S.S.B. 362 establishes that, subject to available funding provided to HHSC and paid to a private mental health facility for such purposes, a private mental health facility that is contracting with a local mental health authority 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. The bill requires HHSC to adopt rules to determine the quantity and manner of providing psychoactive medication on furlough or discharge but 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 such release.

C.S.S.B. 362, with regard to a patient who is directed to participate in outpatient mental health services, includes a person who is the facility administrator of a Department of State Health Services facility or of a community center that provides mental health services in a county where the patient has previously received mental health services among the persons who may be designated to be responsible for the patient's outpatient mental health services without the patient's consent.

C.S.S.B. 362 requires the Supreme Court of Texas to take the following actions:

- adopt rules to streamline and promote the efficiency of court processes under statutory provisions relating to emergency detention; and
- adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.

C.S.S.B. 362 amends the Code of Criminal Procedure to authorize a trial court, based on applicable information relating to a determination that the defendant has a mental illness or is a person with an intellectual disability and if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, to release the defendant on bail for an offense punishable as a Class B misdemeanor or any higher category of offense while the charges are pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services.

C.S.S.B. 362 requires an attorney representing the state to file the application for court-ordered outpatient services if such a transfer order is entered. The bill, on motion of the attorney representing the state:

- if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, authorizes the court to dismiss the charges pending against the defendant and discharge the defendant; and
- if the court determines that the defendant has failed to comply with appropriate court-ordered outpatient treatment, requires the court to proceed with the trial of the offense or with commitment proceedings.

C.S.S.B. 362 amends the Government Code to require the court of criminal appeals to ensure that judicial training related to court-ordered outpatient mental health services is provided at least annually and authorizes the instruction to be provided at the annual Judicial Education Conference.

C.S.S.B. 362 amends the Civil Practice and Remedies Code, the Family Code, and the Human Resources Code to make conforming and nonsubstantive changes.

C.S.S.B. 362 establishes that HHSC is required to implement a provision of the bill only if the legislature appropriates money specifically for that purpose, and if the legislature does not make such an appropriation, HHSC is authorized but not required to implement the provision using other appropriations available for that purpose.

C.S.S.B. 362 repeals the following provisions of the Health and Safety Code:

- Sections 574.034(b), (e), and (f)
- Sections 574.035(b), (f), and (g)

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

C.S.S.B. 362 differs from the engrossed in minor or nonsubstantive ways and makes technical corrections. The following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a specification that the judicial training on mental health services the court of criminal appeals is required to ensure is provided at least once a year relates to outpatient mental health services.

The substitute includes among the persons who may be designated as responsible for court-ordered outpatient mental health services for a patient without the patient's consent a person who is the facility administrator of certain facilities that provide mental health services in a county where the patient has previously received mental health services.

The substitute clarifies the applicability of the bill's provision relating to continuing care plans for certain patients who are scheduled to be furloughed or discharged.