

## **BILL ANALYSIS**

Senate Research Center  
86R7137 EAS-D

S.B. 362  
By: Huffman  
State Affairs  
3/29/2019  
As Filed

### **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.

As proposed, S.B. 362 amends current law relating to court-ordered 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 Chapter 46B, Code of Criminal Procedure, by adding Subchapter B-1, as follows:

#### **SUBCHAPTER B-1. CIVIL COMMITMENT FOR OUTPATIENT MENTAL HEALTH SERVICES: CHARGES PENDING**

Art. 46B.041. OUTPATIENT MENTAL HEALTH SERVICES BEFORE INCOMPETENCY TRIAL FOR CLASS B MISDEMEANOR. (a) Provides that this article applies only to a defendant who is charged with an offense punishable as a Class B misdemeanor and who the court determines is not a danger to others and may be safely released on bail and treated on an outpatient basis while charges remain pending.

(b) Authorizes the court, on the motion of the attorney representing the state and subject to conditions reasonably related to ensuring public safety and the effectiveness of the defendant's treatment, to release the defendant on bail while charges against the defendant remain pending and to enter an order transferring the defendant to the appropriate court for proceedings to commit the defendant to a course of outpatient mental health services to occur before the court proceeds under this chapter or with the trial of the offense, if it appears based on the court's examination of the defendant under Subchapter B that the defendant is a person with mental illness or a person with an intellectual or developmental disability.

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

(d) Requires the court, on the motion of the attorney representing the state, to proceed under this chapter or with the trial of the offense if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment.

SECTION 2. Amends Section 574.001, Healthy and Safety Code, by adding Subsection (g), as follows:

(g) Provides that an order transferring a criminal defendant against whom charges have not been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter B-1, Chapter 46B, Code of Criminal procedure, serves as an application under this section.

SECTION 3. Amends Sections 574.034(b) and (e), Health and Safety Code, as follows:

(b) Deletes existing text and existing Subdivision (2) (D) relating to criteria for ordering court ordered mental health services based on the severity of defendant's mental illness and a defendant's inability to voluntarily participate in outpatient treatment. Authorizes a judge to order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) makes no changes to this subdivision; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) makes no changes to this paragraph;

(B) as a result of mental illness, the proposed patient is unlikely to voluntarily participate in treatment that the court determines is necessary to prevent a relapse or harmful deterioration of the proposed patient's condition; and

(C) the proposed patient has demonstrated noncompliance with mental health treatment, as shown by one or more of the following events having occurred during the 48 months immediately preceding the current proceeding:

(i) the proposed patient was committed by a court to receive inpatient mental health services two or more times;

(ii) the proposed patient was incarcerated two or more times; or

(iii) the proposed patient has committed one or more acts, attempts, or threats of serious violence.

(e) Deletes existing text requiring clear and convincing evidence to include evidence of a recent overt act or a continuing pattern of behavior relating to certain criteria.

SECTION 4. Amends Section 574.037(c-2), Health and Safety Code, as follows:

(c-2) Authorizes a court to set a status conference on a patient's failure to comply with court-ordered outpatient services in accordance with Section 574.0665, rather than with the person responsible for the services, the patient, and the patient's attorney. Deletes existing text providing that such authorization is on the court's own motion.

SECTION 5. Amends Sections 574.061(a), (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 provide notice to the court that entered the commitment order stating the administrator's recommendation regarding the appropriateness for the patient of modifying, the order to require the patient to participate in outpatient mental health services. Deletes existing text authorizing the administrator to request that the court modify the order. Authorizes the facility administrator, at any time during a

patient's commitment to an inpatient mental health facility after the facility administration provides the notice required under this Subsection, to recommend that the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services.

(b) Requires a facility administrator's recommendation, under Subsection (a), rather than the facility administrator's request, to explain in detail the reason for the recommendation and makes conforming and nonsubstantive changes. 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.

(c) Makes a conforming change.

(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 the request. Requires the court to consult with the local mental health authority before issuing a decision.

(e) Makes conforming and nonsubstantive changes.

(h) Authorizes a modified order to extend beyond the term of the original order, rather than prohibiting such extension.

SECTION 6. Amends Subchapter E, Chapter 574, Health and Safety Code, by adding Section 574.0665, as follows:

Sec. 574.0665. STATUS CONFERENCE ON PATIENT'S FAILURE TO COMPLY WITH COURT-ORDERED OUTPATIENT SERVICES. 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 7. Amends Section 574.081, Health and Safety Code, by amending Subsections (b) and (c) and adding Subsections (a-1) and (c-1), as follows:

(a-1) Provides that Subsection (a) applies to a patient scheduled to be furloughed or discharged from an inpatient mental health facility or a private mental health facility if the patient's treatment at the private mental health facility is paid in whole or in part with state money or money received by the state from the federal government.

(b) Requires the physician to prepare the plan as prescribed by Health and Human Services Commission rules, rather than Department of State Health Services 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. 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 that the plan address the patient's mental health and physical needs, including, if appropriate, the need for outpatient mental health services following furlough or discharge and the need for sufficient medication on furlough or discharge to last until the patient can see a physician. Deletes existing text requiring the plan to address 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, the mental health facility is responsible for paying for medication on furlough or discharge sufficient to last until the patient can see a physician.

SECTION 8. Amends Subchapter B, Chapter 22, Government Code, by adding Section 22.1106, as follows:

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

SECTION 9. Repealer: Section 574.065(e) (relating to prohibiting a court from extending the provision of mental health services beyond the period prescribed in the original order), Health and Safety Code.

Repealer: Section 574.081(h) (relating to a provision that certain facilities are not mandated to provide or pay for a medication for a patient), Health and Safety Code.

SECTION 10. Provides that the changes in this 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 proposed patient being evaluated for that purpose occurred before, on, or after the effective date of this Act.

SECTION 11. Provides that the changes in law made by this Act to Chapter 46B, 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 12. Effective date: September 1, 2019.