



86TH TEXAS LEGISLATIVE UPDATE SPOTLIGHT: SB 362

SEN. JOAN HUFFMAN, RELATING TO COURT- ORDERED MENTAL HEALTH SERVICES

Additional Sections for Clarity

This bill adds two new sections to Health & Safety Code: §574.0345 and 574.0355. This bill splits up the inpatient and outpatient procedures so that there is one section for each type of procedure:

§574.034 ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH SERVICES

§574.0345 ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES

§574.035 ORDER FOR EXTENDED INPATIENT MENTAL HEALTH SERVICES

§574.0355 ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES

Roadmap for Diversion from Criminal Justice System to Court-Ordered Outpatient Treatment

This bill adds a roadmap in the Code of Criminal Procedure for prosecutors and trial court judges, once an Article 16.22 report is received, to release the defendant with MI or IDD on bail and transfer the defendant by court order to the appropriate court for court-ordered outpatient mental health services under Chapter 574 of the Health & Safety Code. The judge may only do this "if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person."

- If the judge enters such an order, the attorney for the state will file an application for court-ordered outpatient services.
- If defendant complies with outpatient services requirement, on a motion from the state, the court may dismiss the charges pending.
- If the defendant failed to comply, on the motion from the state, the court will proceed with further commitment proceedings OR with trial.

OUTPATIENT

Clarified Standard for Outpatient Commitment

The bill clarified the standard by replacing the vague requirement that the court find that the patient "will continue to suffer severe and abnormal mental, emotional, or physical distress," with the more specific requirement, that the court find "outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others."

The bill also changed the standard for commitment from requiring that the court find characteristics of the patient's clinical condition "make impossible" a rational and informed decision whether to submit to voluntary outpatient treatment, to a more provable standard; a court must now find that the patient's condition "significantly impairs" that ability.

Court May Designate the Person Responsible for Services from the County Where Patient Received Previous Services

The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person responsible for those services. The designated person may be the facility administrator of a state facility or the facility administrator of a community center in the county where committing court is located, but also “in a county where a patient has previously received mental health services.”

INPATIENT

Definitive Time Period Required for Inpatient Commitment

Health & Safety Code §574.034(g) and (h) are amended: the court must now provide a definitive time period in its order for temporary inpatient treatment not to exceed 45 days, or 90 days if the judge finds it necessary. For extended inpatient treatment, the court also must include a definitive time period in its order not to exceed 12 months.

Note that a facility still must release a person if he or she no longer meets commitment criteria, even if the court-mandated time period has not elapsed. *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) (“even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed.”)

Modification of Inpatient Treatment to Outpatient Treatment

The bill amends §574.061(a), (b), (c), (d), (e), and (h): Previously, an inpatient facility administrator had the discretion to ask the judge to modify the order and require the patient to instead participate in outpatient services. Now, the administrator is required within 30 days to assess whether it is appropriate to transfer the patient to outpatient services.

If the administrator recommends transfer, he or she must support the written request with a certificate of medical examination from a physician who examined the patient within 7 days of the administrator’s request.

The amendments also require the court to now consult with the LMHA concerning available resources to treat the patient before making a decision on the administrator’s request.

The judge can extend the term of the modified order but cannot exceed the original order by more than 60 days.

Cross- Examination of Witnesses

The bill amends §574.031 to add subsections (d-1) and (d-2). These provisions about the right to waive cross-examination of witnesses were originally in §574.034 and §574.035, and they have been pulled out and put into their own section. Additionally, the original statute stated that a patient AND a patient's attorney may by written document waive the right to cross-examine witnesses. The amended statute replaces AND with OR and reads: in temporary civil commitment hearings, the patient or the patient’s attorney may file a written waiver with the court waiving the right to cross-examine witnesses, thereby allowing the court to admit the certificates of medical examination for mental illness as competent medical or psychiatric and to make findings solely from the certificates.

In extended commitment hearings, the judge may not make findings solely on certificates, there must be testimony, and the findings must be supported by this testimony.

Medication upon Discharge from Publicly-Funded Private Facilities

A private mental health facility now has to pay for medications for the patient until the patient sees a physician, but HHSC cannot require the private facility to do this for more than 7 days after discharge. This is subject to available funding from HHSC paid to the private facilities.