

SUBJECT: Court authority to order extended outpatient mental health services

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Hopson,
S. King, Zerwas

0 nays

3 absent — Laubenberg, McReynolds, Truitt

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 887*):
For — Kym Bolado, National Alliance on Mental Illness; Guy Herman, Statutory Probate Court of Texas; Oscar Kazen, Bexar Probate Courts; Mary Helen Lopez, Bexar County; Beth Mitchell, Advocacy, Incorporated; (*Registered, but did not testify*: Ed Berger, Seton Family of Hospitals; Joe Lovelace, Texas Council of Community Mental Health & Mental Retardation Centers; Josette Saxton, Texans Care for Children; Matthew Wall, Texas Hospital Association)

Against — Lee Spiller, Citizens Commission on Human Rights;
(*Registered, but did not testify*: John Breeding; Judith Powell, Parent Guidance Center)

BACKGROUND: Under certain circumstances, a court may order a person to participate in outpatient mental health services under a treatment plan devised by a mental health professional. Judges may order outpatient mental health commitments on a temporary basis for 90 days and on an extended basis for one year.

A judge may order a patient to receive extended outpatient mental health services only if the judge finds that appropriate mental health services are available and the jury, or judge if the right to a jury has been waived, finds clear and convincing evidence of a variety of criteria:

- the patient must be severely and persistently mentally ill, and the condition is expected to continue for more than 90 days;
- the mental illness, if not treated, would result in mental, emotional, or physical distress and loss of the ability to live safely in the community without outpatient mental health services;
- the patient has been deemed unable to participate in voluntary outpatient treatment; and
- the proposed patient has received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months.

DIGEST:

SB 1477 would amend ch. 574 to provide that an application for court-ordered extended outpatient mental health services would be required to state that the person had received court-ordered inpatient mental health services for a total of at least 60 days during the preceding 12 months, or court-ordered outpatient mental health services during the preceding 60 days under ch. 574 or Code of Criminal Procedure, ch.46B.

The list of conditions under which a court could order extended outpatient mental health services would be amended to include that the proposed patient had received court-ordered inpatient mental health services for a total of at least 60 days during the preceding 12 months, or court-ordered outpatient mental health services during the preceding 60 days under ch. 574 or Code of Criminal Procedure, ch. 46B.

The bill would take effect September 1, 2009, and would apply only to applications for court-ordered mental health services made on or after this date.

**SUPPORTERS
SAY:**

SB 1477 would better serve community mental health needs and save time and money in the courts by giving judges more flexibility to authorize extended outpatient mental health commitments.

Currently, judges may order extended outpatient services for someone who received inpatient services for 60 consecutive days in the previous year, but inpatient commitments often are broken by temporary furloughs. When a patient has not stayed in an inpatient facility for 60 consecutive days, in order to achieve the equivalent of an extended outpatient commitment order, a judge must instead issue a series of 90-day, temporary outpatient orders, each requiring a separate hearing. This wastes the court's and the patient's time and can cost the court a significant

amount of money to staff unnecessary cases. SB 1477 would allow a judge to order a one-year outpatient commitment for a person who had been under court-ordered inpatient commitment for a total of 60 days or more during the preceding 12 months or court-ordered outpatient commitment during the preceding 60 days.

A judge's order for extended outpatient commitments still would be based on clear and convincing evidence, provided through expert testimony, that the patient was severely mentally ill, under distress, and likely to deteriorate if outpatient mental health services were not received. The burden of proof to establish these stringent requirements would protect the rights of potential patients. Further, existing law allows a person to request a reexamination and a hearing to determine if the patient continues to meet the requirements necessary for extended commitment.

Under current law, judges may feel that if their only choices are temporary outpatient commitment and inpatient commitment, they must err on the side of caution and order inpatient commitment. Extended outpatient services, when appropriate, are preferable to inpatient commitment because outpatient services allow a patient more readily to access the support of family and friends. SB 1477 would give judges a more realistic option for ordering extended outpatient treatments for mental health patients.

**OPPONENTS
SAY:**

This bill should not ease the standards that allow courts to order extended outpatient mental health commitments. Even out-patient commitments curtail people's rights and impose restrictions on their lives.

People under inpatient commitment who are permitted furloughs and never require a 60-day consecutive inpatient stay may not have the severity of mental illness to later require a year-long outpatient commitment. In the most extreme change to current law, SB 1477 would allow a court to order a person to receive extended outpatient mental health services following any outpatient commitment during the preceding 60 days. No person should be placed under extended outpatient commitment if the person's mental health has never met the stricter standards required to order inpatient commitment.

Issuing a series of temporary outpatient orders benefits patients because they could be released from court order after any 90-day period if their mental health sufficiently improved, rather than remaining subject to court

dictates for a full year. Restoring people's autonomy as quickly as possible is vital to protecting their rights and to restoring their self-confidence following a commitment.

NOTES:

The companion bill, HB 887 by Naishtat, passed the House by 145-0 on April 28 and has been referred to the Senate Administration Committee.