

SUBJECT: Reforming procedures for court-ordered mental health services

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White

0 nays

2 absent — Farrar, Julie Johnson

SENATE VOTE: On final passage, April 11 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Maggie Stern, Children's Defense Fund; Chris Masey, Coalition of Texans with Disabilities; M. Paige Williams, Dallas County Criminal District Attorney John Cruzot; Aaryce Hayes, Disability Rights Texas; Marilyn Hartman, National Alliance on Mental Illness Austin; Greg Hansch and Alissa Sughrue, National Alliance on Mental Illness Texas; Michael Barba, Texas Catholic Conference of Bishops; Lee Johnson, Texas Council of Community Centers; Kevin Stewart, Texas Psychological Association; Guy Herman, Travis County Probate Court)

Against — (*Registered, but did not testify:* Deborah Nelms)

On — David Slayton, Texas Judicial Council; (*Registered, but did not testify:* Trina Ita and Rachel Samsel, Health and Human Services Commission)

BACKGROUND: Health and Safety Code ch. 574 establishes procedures for court-ordered inpatient and outpatient mental health services.

Secs. 574.034 and 574.035 require courts to make certain findings before ordering proposed patients to receive outpatient mental health services, including that:

- the proposed patient is a person with mental illness;
- the nature of the mental illness is severe and persistent;
- the proposed patient will continue to suffer severe and abnormal mental, emotional, or physical distress without treatment and experience deterioration of the ability to function independently to the extent of being unable to live safely in the community without court-ordered outpatient mental health services; and
- the proposed patient has an inability to participate effectively and voluntarily in outpatient treatment services.

Sec. 574.081 requires the physician responsible for the patient's treatment to develop continuing care plans for a patient scheduled to be furloughed or discharged. These plans must address a patient's mental health and physical needs, including the need for sufficient medication on furlough or discharge to last until the patient can see a physician and the persons or entities responsible for providing and paying for such medication.

DIGEST:

CSSB 362 would modify certain procedures and requirements related to court-ordered inpatient and outpatient mental health services, including the standards that would have to be met in order for courts to order such services, the mechanisms for transitioning patients from inpatient to outpatient or continuing care, and the procedures for diverting certain individuals with mental illnesses from the criminal justice system to outpatient services.

Outpatient mental health services. The bill would remove a requirement that courts find that a proposed patient would continue to suffer severe and abnormal mental, emotional, or physical distress without treatment before ordering the patient to receive outpatient mental health services. The bill would establish a requirement that courts find that a proposed patient needed outpatient mental health services in order to prevent a relapse that would likely result in serious harm to the proposed patient or others.

Under the bill, a proposed patient's inability to participate effectively and voluntarily in outpatient treatment services could be demonstrated by

specific characteristics of the patient's clinical condition that significantly impaired, rather than rendered impossible, the patient's ability to make a rational and informed decision about whether to submit to voluntary outpatient treatment.

CSSB 362 also would expand the list of persons who could be designated as responsible for a patient's outpatient services without their consent to include a facility administrator of a department facility or a community center that provided mental health services in a county where the patient previously had received mental health services.

Modification of commitment orders. The bill would require the facility administrator of a facility to which a patient was committed for inpatient mental health services to assess the appropriateness of transferring the patient to outpatient mental health services by the 30th day after the patient was committed.

In a hearing on a facility administrator's recommendation that the court modify a commitment order, the court would have to consult with the local mental health authority before issuing a decision. A court would be allowed to extend the term of the original commitment order by no more than 60 days.

Continuing care. Subject to available resources, continuing care plans would have to be developed for patients scheduled to be furloughed or discharged from a state hospital or from 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.

A continuing care plan would have to address the patient's need for outpatient mental health services following furlough or discharge, if appropriate, but would no longer be required to address the person or entity responsible for providing and paying for a patient's medication. Local mental health authorities would have to be informed of and participate in planning the discharge of patients.

The bill also would require private mental health facilities to provide or pay for enough psychoactive medication and certain other medication prescribed to a patient to last until the patient could see a physician after furlough or discharge. This requirement would be subject to available funding provided to HHSC and paid to private mental health facilities for such purpose.

HHSC would be required to adopt rules to determine the quantity and manner of providing psychoactive medication to patients on furlough or discharge. The commission could not require mental health facilities to provide or pay for such medication for more than seven days after furlough or discharge.

Diversion from the criminal justice system. The bill would specify that trial courts that received an expert assessment that a defendant who was not charged with offenses involving serious bodily injury to another person had a mental illness could release the defendant on bail while the charges remained pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services.

If a court entered such an order, an attorney representing the state would have to file an application for court-ordered outpatient services for the defendant.

On the motion of such an attorney, and if the court determined that the defendant complied with appropriate court-ordered outpatient treatment, the court could dismiss the charges pending against the defendant. Otherwise, the court could proceed with further commitment proceedings or with the trial of the offense.

Implementation. CSSB 362 would require the Texas Supreme Court to adopt rules to streamline and promote the efficiency of court processes regarding emergency detention and to adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.

The court of criminal appeals would be required to ensure that judicial training related to court-ordered outpatient mental health services was provided at least once every year. Instruction could be provided at the annual Judicial Education Conference.

HHSC would be required to implement a provision of this bill only if the Legislature appropriated money specifically for that purpose. If no such money was appropriated, HHSC could choose to implement that provision using other appropriations available for that purpose.

The bill would take effect September 1, 2019, and would apply to commitment proceedings or proceedings for court-ordered mental health services occurring on or after that date.

**SUPPORTERS
SAY:**

CSSB 362 would update the provision of court-ordered mental health services in the state to conform with best practices and would clarify outdated standards.

The transition of individuals with mental health conditions from inpatient to less-restrictive outpatient care would be streamlined, potentially saving the state money by freeing up hospital beds used for inpatient mental health services. The bill also would address a serious gap in care by requiring that individuals being discharged from court-ordered services received enough medication to last them until they could see a physician.

CSSB 362 would clarify the mechanisms for diverting certain defendants with mental illnesses from the criminal justice system to the mental health system and would ensure proper judicial training relating to court-ordered mental health services.

**OPPONENTS
SAY:**

CSSB 362 could erode patients' rights by reducing the standard for a court to order a person to receive outpatient mental health services. The bill would allow courts to order a person to receive such services if the person's clinical condition significantly impaired the person's ability to

decide whether to enter into voluntary treatment. This would be a lower standard than requiring that the person's clinical condition rendered such a decision impossible, which is the standard under current law.