

## **BILL ANALYSIS**

Senate Research Center  
85R2981 SMT-D

S.B. 773  
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Criminal Justice  
3/17/2017  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 773 clarifies when a judge may compel a defendant to take a medication by stating that patients ordered to receive inpatient mental health services may be compelled to take medication if they lack the capacity to make the decision to do so.

Currently, a judge may compel a defendant to take a medication under two circumstances. First, if they lack the capacity to make a decision to take medication. Second, if they have been ordered to receive inpatient mental health services, and the treatment is in their best interest, and either the patient is a danger to themselves or others in an inpatient mental health facility or the patient is in a correctional facility awaiting a spot in an inpatient mental health facility.

The layout of this section of code as written leaves some ambiguity if an individual who has been ordered to receive inpatient mental health services can be compelled to take medication simply if they lack the capacity to make a decision. Case law on this issue has concluded that the provision regarding that lack of capacity also applies to individuals who have been ordered to receive inpatient mental health services, despite the "or" statement.

Nevertheless, the ambiguity has invited challenges by defense attorneys, and mental health advocates have concerns that the law could be applied differently in different probate courts. Adding a line clarifying that individuals who lack capacity may be compelled when they have been ordered to receive inpatient mental health treatment would make the law more clear and accessible and reduce the potential for invalid challenges and misinterpretation.

As proposed, S.B. 773 amends current law relating to the authority of a judge to compel a criminal defendant who lacks capacity to take psychoactive medication.

### **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 Section 574.106(a-1), Health and Safety Code, as follows:

(a-1) Authorizes the court to issue an order under this section only if the court finds by clearing and convincing evidence after the hearing:

(1) makes no changes to this subdivision;

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and, rather than and either:

(A) and (B) makes nonsubstantive changes to these paragraphs; or

(C) the patient lacks the capacity to make a decision regarding the administration of the proposed medication.

SECTION 2. Effective date: September 1, 2017.