



The Supreme Court of Texas

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May 31, 2019

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 86th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2019. The Committee should conclude its work on them by its June 21, 2019 meeting. Many of the changes may be simple and straightforward. They are:

Joint Judicial Campaign Activity. The State Commission on Judicial Conduct has disciplined judges for joint campaign activities based on Canons 2B and 5(2) of the Code of Judicial Conduct. Canon 2B states in part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 5(2) states in part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party." HB 3233, passed by the 86th Legislature, adds Election Code § 253.1612, which states that the "Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates." The Committee should consider whether the text of the rules should be changed or a comment added to reference or restate the statute.

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. SB 827, § 2 adds § 74.1625 to prohibit the MDL panel from transferring two types of actions: (1) DTPA actions (unless specifically allowed under the DTPA) and (2) Texas Medicaid Fraud Prevention Act actions. The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed and a comment added to reference or restate the statute.

Expedited Actions. Rule of Civil Procedure 169 implements Government Code § 22.004(h). SB 2342 adds § 22.004(h-1), which calls for rules, “[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions.” Rules necessary to implement this change must be adopted by January 1, 2021. But the statute makes various other changes that take effect September 1, 2019. The Committee should consider whether other rules should be changed, such as Rules of Civil Procedure 47, 224, and 500.3, or comments added to reference or restate the statute by that date.

Dismissal. Rule of Civil Procedure 91a provides for the dismissal of baseless causes of action, implementing Government Code § 22.004(g). Civil Practice and Remedies Code § 30.021 mandates an award of costs and attorney fees to the prevailing party. HB 3300 amends § 30.021 to make an award discretionary and applies to cases commenced on or after September 1, 2019. The Committee should consider whether other rules should be changed or comments added to reference or restate the statute by that date.

Notice of Appeal. SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. The Committee has already considered this change. The statute is effective September 1, 2019.

One other matter arising from legislation passed by the 86th Legislature requires rule-making by January 1, 2020:

Public Guardians. Section 24 of SB 667, passed by the 86th Legislature, adds Subchapter G-1 to Chapter 1104 of the Estates Code, which governs public guardians and directs the Court “in consultation with the Office of Court Administration . . . and the presiding judge of the statutory probate courts . . . [to] adopt rules necessary to implement this subchapter.” Section 67 of the bill provides that the Court “shall adopt rules necessary to implement Subchapter G-1, . . . including rules governing the transfer of the guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter.” OCA and Judge Guy Herman will draft these rules, and the Committee should review them.

Other matters arising from legislation passed this Session set extended deadlines for rule-making:

Citation. SB 891, passed by the 86th Legislature, amends several state statutes to address citation. The bill adds Government Code § 72.034 directing the Court “by rule [to] establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information” by June 1, 2020. The bill also adds Civil Practice and Remedies Code § 17.033 requiring the Court to “adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence” by December 31, 2020. The Committee should make recommendations.

Protective Order Registry Forms. SB 325 requires the Office of Court Administration to create an online registry for family violence protective orders and applications and to permit public access to certain information about the protective orders by June 1, 2020. The bill also adds Government Code § 72.158 directing the Court to “prescribe a form for use by a person requesting a grant or removal of public access” to the information and permits the Court to prescribe related procedures. The bill does not specify a deadline for the forms. The Committee should recommend appropriate forms.

Criminal Forms. HB 51 adds Government Code § 72.0245 requiring the Office of Court Administration to create a number of forms for use in criminal actions, such as forms to waive a jury trial and enter a plea of guilty or nolo contendere, and forms for a trial court to admonish a defendant before accepting a guilty or nolo contendere plea. It also requires the Supreme Court to “by rule . . . set the date by which all courts with jurisdiction over criminal actions must adopt and use the forms created” OCA will work with Holly Taylor, the Court of Criminal Appeals’ Rules Attorney, to formulate a plan to develop the forms. The Committee should review the forms when drafted. The statutory deadline is September 1, 2020.

Procedures Related to Mental Health. SB 362 directs the Supreme Court to “adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code” and “adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.” The Judicial Commission on Mental Health will draft these rules, and the Committee should review them.

CPS and Juvenile Cases. HB 2737 requires the Court and its Children’s Commission to “annually . . . provide guidance to judges who preside over child protective services cases or juvenile cases,” and requires the Court to “adopt the rules necessary to accomplish the purpose of this section.” The statute sets no deadline. The Children’s Commission is developing an implementation plan. The Committee should review any rules proposed by the Commission.

Transfer on Death Deed Forms. SB 874 requires the Court to promulgate “a form for use to create a transfer on death deed and a form for use to create an instrument for revocation of a transfer on death deed.” The statute sets no deadline. The Probate Forms Task Force will develop these and other forms for the Committee’s review.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Suits Affecting the Parent-Child Relationship. In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

Out-of-Time Appeals in Parental Rights Termination Cases. A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:

- a narrow late-appeal procedure;
- an abate-and-remand procedure like the one proposed in the Phase II Report;
- a habeas- or bill-of-review-style procedure; and
- prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.

Registration of In-House Counsel. A majority of states require that an attorney employed as in-house counsel and residing in one state but licensed in another either register, obtain a limited license, or be fully licensed to practice in the state of residence. The Board of Law Examiners has approved new Rule 23 of the Rules Governing Admission to the Bar, requiring only registration of in-house counsel. The proposed rule is attached. The Committee should review the rule and make recommendations.

Civil Rules in Municipal Courts. Municipal Court Judge Ryan Henry has proposed that procedural rules be adopted for civil cases in municipal courts. The Committee should set up a process for considering Judge Henry's proposals and making recommendations.

Motions for Rehearing in the Courts of Appeals. Justice Christopher and the State Bar Court Rules Committee have each proposed amendments to Rule of Appellate Procedure 49.3, which are attached. The Committee should consider both and make recommendations.

Parental Leave Continuance Rule. In the attached memorandum, the State Bar Court Rules Committee proposes a parental leave continuance rule. The State of Florida has studied such a procedure in depth. The Committee should consider that work and the proposal and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht", with a long horizontal flourish extending to the right.

Nathan L. Hecht
Chief Justice

Attachments

AN ACT

relating to court-ordered mental health services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 137.008(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, ~~574.035~~, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

SECTION 2. Article 16.22, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

1 (1) resume criminal proceedings against the
2 defendant, including any appropriate proceedings related to the
3 defendant's release on personal bond under Article 17.032 if the
4 defendant is being held in custody;

5 (2) resume or initiate competency proceedings, if
6 required, as provided by Chapter 46B ~~[or other proceedings~~
7 ~~affecting the defendant's receipt of appropriate court-ordered~~
8 ~~mental health or intellectual disability services, including~~
9 ~~proceedings related to the defendant's receipt of outpatient mental~~
10 ~~health services under Section 574.034, Health and Safety Code];~~

11 (3) consider the written assessment during the
12 punishment phase after a conviction of the offense for which the
13 defendant was arrested, as part of a presentence investigation
14 report, or in connection with the impositions of conditions
15 following placement on community supervision, including deferred
16 adjudication community supervision; ~~[or]~~

17 (4) refer the defendant to an appropriate specialty
18 court established or operated under Subtitle K, Title 2, Government
19 Code; or

20 (5) if the offense charged does not involve an act,
21 attempt, or threat of serious bodily injury to another person,
22 release the defendant on bail while charges against the defendant
23 remain pending and enter an order transferring the defendant to the
24 appropriate court for court-ordered outpatient mental health
25 services under Chapter 574, Health and Safety Code.

26 (c-1) If an order is entered under Subsection (c)(5), an
27 attorney representing the state shall file the application for

1 court-ordered outpatient services under Chapter 574, Health and
2 Safety Code.

3 (c-2) On the motion of an attorney representing the state,
4 if the court determines the defendant has complied with appropriate
5 court-ordered outpatient treatment, the court may dismiss the
6 charges pending against the defendant and discharge the defendant.

7 (c-3) On the motion of an attorney representing the state,
8 if the court determines the defendant has failed to comply with
9 appropriate court-ordered outpatient treatment, the court shall
10 proceed under this chapter or with the trial of the offense.

11 SECTION 3. Section 55.13(d), Family Code, is amended to
12 read as follows:

13 (d) After conducting a hearing on an application under this
14 section, the juvenile court shall:

15 (1) if the criteria under Section 574.034 or 574.0345,
16 Health and Safety Code, are satisfied, order temporary mental
17 health services for the child; or

18 (2) if the criteria under Section 574.035 or 574.0355,
19 Health and Safety Code, are satisfied, order extended mental health
20 services for the child.

21 SECTION 4. Section 55.38(b), Family Code, is amended to
22 read as follows:

23 (b) After conducting a hearing under Subsection (a)(2), the
24 juvenile court shall:

25 (1) if the criteria under Section 574.034 or 574.0345,
26 Health and Safety Code, are satisfied, order temporary mental
27 health services; or

1 (2) if the criteria under Section [574.035](#) or 574.0355,
2 Health and Safety Code, are satisfied, order extended mental health
3 services.

4 SECTION 5. Section [55.57\(b\)](#), Family Code, is amended to
5 read as follows:

6 (b) After conducting a hearing under Subsection (a)(2), the
7 juvenile court shall:

8 (1) if the criteria under Section [574.034](#) or 574.0345,
9 Health and Safety Code, are satisfied, order temporary mental
10 health services; or

11 (2) if the criteria under Section [574.035](#) or 574.0355,
12 Health and Safety Code, are satisfied, order extended mental health
13 services.

14 SECTION 6. Subchapter B, Chapter [22](#), Government Code, is
15 amended by adding Section 22.1106 to read as follows:

16 Sec. 22.1106. JUDICIAL INSTRUCTION RELATED TO
17 COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. The court of
18 criminal appeals shall ensure that judicial training related to
19 court-ordered outpatient mental health services is provided at
20 least once every year. The instruction may be provided at the
21 annual Judicial Education Conference.

22 SECTION 7. Section [501.057\(b\)](#), Government Code, is amended
23 to read as follows:

24 (b) Not later than the 30th day before the initial parole
25 eligibility date of an inmate identified as mentally ill, an
26 institutional division psychiatrist shall examine the inmate. The
27 psychiatrist shall file a sworn application for court-ordered

1 temporary mental health services under Chapter 574, Health and
2 Safety Code, if the psychiatrist determines that the inmate is
3 mentally ill and as a result of the illness the inmate meets at
4 least one of the criteria listed in Section 574.034 or 574.0345,
5 Health and Safety Code.

6 SECTION 8. Section 574.002(c), Health and Safety Code, is
7 amended to read as follows:

8 (c) Any application must contain the following information
9 according to the applicant's information and belief:

- 10 (1) the proposed patient's name and address;
- 11 (2) the proposed patient's county of residence in this
12 state;
- 13 (3) a statement that the proposed patient is a person
14 with mental illness and meets the criteria in Section 574.034,
15 574.0345, [ex] 574.035, or 574.0355 for court-ordered mental health
16 services; and
- 17 (4) whether the proposed patient is charged with a
18 criminal offense.

19 SECTION 9. Section 574.031, Health and Safety Code, is
20 amended by adding Subsections (d-1) and (d-2) to read as follows:

21 (d-1) In a hearing for temporary inpatient or outpatient
22 mental health services under Section 574.034 or 574.0345, the
23 proposed patient or the proposed patient's attorney, by a written
24 document filed with the court, may waive the right to cross-examine
25 witnesses, and, if that right is waived, the court may admit, as
26 evidence, the certificates of medical examination for mental
27 illness. The certificates admitted under this subsection

1 constitute competent medical or psychiatric testimony, and the
2 court may make its findings solely from the certificates. If the
3 proposed patient or the proposed patient's attorney does not waive
4 in writing the right to cross-examine witnesses, the court shall
5 proceed to hear testimony. The testimony must include competent
6 medical or psychiatric testimony.

7 (d-2) In a hearing for extended inpatient or outpatient
8 mental health services under Section 574.035 or 574.0355, the court
9 may not make its findings solely from the certificates of medical
10 examination for mental illness but shall hear testimony. The court
11 may not enter an order for extended mental health services unless
12 appropriate findings are made and are supported by testimony taken
13 at the hearing. The testimony must include competent medical or
14 psychiatric testimony.

15 SECTION 10. The heading to Section 574.034, Health and
16 Safety Code, is amended to read as follows:

17 Sec. 574.034. ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH
18 SERVICES.

19 SECTION 11. Sections 574.034(g) and (h), Health and Safety
20 Code, are amended to read as follows:

21 (g) An order for temporary inpatient [~~or outpatient~~] mental
22 health services shall provide for a period of treatment not to
23 exceed [~~state that treatment is authorized for not longer than~~] 45
24 days, except that the order may specify a period not to exceed 90
25 days if the judge finds that the longer period is necessary.

26 (h) A judge may not issue an order for temporary inpatient
27 [~~or outpatient~~] mental health services for a proposed patient who

1 is charged with a criminal offense that involves an act, attempt, or
2 threat of serious bodily injury to another person.

3 SECTION 12. Subchapter C, Chapter 574, Health and Safety
4 Code, is amended by adding Section 574.0345 to read as follows:

5 Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH
6 SERVICES. (a) The judge may order a proposed patient to receive
7 court-ordered temporary outpatient mental health services only if:

8 (1) the judge finds that appropriate mental health
9 services are available to the proposed patient; and

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

12 (A) the proposed patient is a person with severe
13 and persistent mental illness;

14 (B) as a result of the mental illness, the
15 proposed patient will, if not treated, experience deterioration of
16 the ability to function independently to the extent that the
17 proposed patient will be unable to live safely in the community
18 without court-ordered outpatient mental health services;

19 (C) outpatient mental health services are needed
20 to prevent a relapse that would likely result in serious harm to the
21 proposed patient or others; and

22 (D) the proposed patient has an inability to
23 participate in outpatient treatment services effectively and
24 voluntarily, demonstrated by:

25 (i) any of the proposed patient's actions
26 occurring within the two-year period that immediately precedes the
27 hearing; or

1 (ii) specific characteristics of the
2 proposed patient's clinical condition that significantly impair
3 the proposed patient's ability to make a rational and informed
4 decision whether to submit to voluntary outpatient treatment.

5 (b) To be clear and convincing under Subsection (a)(2), the
6 evidence must include expert testimony and evidence of a recent
7 overt act or a continuing pattern of behavior that tends to confirm:

8 (1) the deterioration of ability to function
9 independently to the extent that the proposed patient will be
10 unable to live safely in the community;

11 (2) the need for outpatient mental health services to
12 prevent a relapse that would likely result in serious harm to the
13 proposed patient or others; and

14 (3) the proposed patient's inability to participate in
15 outpatient treatment services effectively and voluntarily.

16 (c) An order for temporary outpatient mental health
17 services shall state that treatment is authorized for not longer
18 than 45 days, except that the order may specify a period not to
19 exceed 90 days if the judge finds that the longer period is
20 necessary.

21 (d) A judge may not issue an order for temporary outpatient
22 mental health services for a proposed patient who is charged with a
23 criminal offense that involves an act, attempt, or threat of
24 serious bodily injury to another person.

25 SECTION 13. The heading to Section 574.035, Health and
26 Safety Code, is amended to read as follows:

27 Sec. 574.035. ORDER FOR EXTENDED INPATIENT MENTAL HEALTH

1 SERVICES.

2 SECTION 14. Sections 574.035(d), (h), and (i), Health and
3 Safety Code, are amended to read as follows:

4 (d) The jury or judge is not required to make the finding
5 under Subsection (a)(4) [~~or (b)(2)(F)~~] if the proposed patient has
6 already been subject to an order for extended mental health
7 services.

8 (h) An order for extended inpatient [~~or outpatient~~] mental
9 health services must provide for a period of treatment not to exceed
10 [~~shall state that treatment is authorized for not longer than~~] 12
11 months. [~~The order may not specify a shorter period.~~]

12 (i) A judge may not issue an order for extended inpatient
13 [~~or outpatient~~] mental health services for a proposed patient who
14 is charged with a criminal offense that involves an act, attempt, or
15 threat of serious bodily injury to another person.

16 SECTION 15. Subchapter C, Chapter 574, Health and Safety
17 Code, is amended by adding Section 574.0355 to read as follows:

18 Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH
19 SERVICES. (a) The judge may order a proposed patient to receive
20 court-ordered extended outpatient mental health services only if:

21 (1) the judge finds that appropriate mental health
22 services are available to the proposed patient; and

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

25 (A) the proposed patient is a person with severe
26 and persistent mental illness;

27 (B) as a result of the mental illness, the

1 proposed patient will, if not treated, experience deterioration of
2 the ability to function independently to the extent that the
3 proposed patient will be unable to live safely in the community
4 without court-ordered outpatient mental health services;

5 (C) outpatient mental health services are needed
6 to prevent a relapse that would likely result in serious harm to the
7 proposed patient or others;

8 (D) the proposed patient has an inability to
9 participate in outpatient treatment services effectively and
10 voluntarily, demonstrated by:

11 (i) any of the proposed patient's actions
12 occurring within the two-year period that immediately precedes the
13 hearing; or

14 (ii) specific characteristics of the
15 proposed patient's clinical condition that significantly impair
16 the proposed patient's ability to make a rational and informed
17 decision whether to submit to voluntary outpatient treatment;

18 (E) the proposed patient's condition is expected
19 to continue for more than 90 days; and

20 (F) the proposed patient has received:

21 (i) court-ordered inpatient mental health
22 services under this subtitle or under Subchapter D or E, Chapter
23 46B, Code of Criminal Procedure, for a total of at least 60 days
24 during the preceding 12 months; or

25 (ii) court-ordered outpatient mental
26 health services under this subtitle or under Subchapter D or E,
27 Chapter 46B, Code of Criminal Procedure, during the preceding 60

1 days.

2 (b) The jury or judge is not required to make the finding
3 under Subsection (a)(2)(F) if the proposed patient has already been
4 subject to an order for extended mental health services.

5 (c) To be clear and convincing under Subsection (a)(2), the
6 evidence must include expert testimony and evidence of a recent
7 overt act or a continuing pattern of behavior that tends to confirm:

8 (1) the deterioration of the ability to function
9 independently to the extent that the proposed patient will be
10 unable to live safely in the community;

11 (2) the need for outpatient mental health services to
12 prevent a relapse that would likely result in serious harm to the
13 proposed patient or others; and

14 (3) the proposed patient's inability to participate in
15 outpatient treatment services effectively and voluntarily.

16 (d) An order for extended outpatient mental health services
17 must provide for a period of treatment not to exceed 12 months.

18 (e) A judge may not issue an order for extended outpatient
19 mental health services for a proposed patient who is charged with a
20 criminal offense that involves an act, attempt, or threat of
21 serious bodily injury to another person.

22 SECTION 16. Section 574.036(e), Health and Safety Code, is
23 amended to read as follows:

24 (e) The judge may enter an order:

25 (1) committing the person to a mental health facility
26 for inpatient care if the trier of fact finds that the person meets
27 the commitment criteria prescribed by Section 574.034(a) or

1 574.035(a); or

2 (2) committing the person to outpatient mental health
3 services if the trier of fact finds that the person meets the
4 commitment criteria prescribed by Section 574.0345(a) [~~574.034(b)~~]
5 or 574.0355(a) [~~574.035(b)~~].

6 SECTION 17. Sections 574.037(a), (b-2), and (c-2), Health
7 and Safety Code, are amended to read as follows:

8 (a) The court, in an order that directs a patient to
9 participate in outpatient mental health services, shall designate
10 the person identified under Section 574.0125 as responsible for
11 those services or may designate a different person if necessary.
12 The person designated must be the facility administrator or an
13 individual involved in providing court-ordered outpatient
14 services. A person may not be designated as responsible for the
15 ordered services without the person's consent unless the person is
16 the facility administrator of a department facility or the facility
17 administrator of a community center that provides mental health
18 services:

19 (1) in the region in which the committing court is
20 located; or

21 (2) in a county where a patient has previously
22 received mental health services.

23 (b-2) The person responsible for the services shall submit
24 the program to the court before the hearing under Section 574.0345
25 or 574.0355 [~~574.034 or 574.035~~] or before the court modifies an
26 order under Section 574.061, as appropriate.

27 (c-2) A court may [~~on its own motion,~~] set a status

1 conference in accordance with Section 574.0665 [~~with the person~~
2 ~~responsible for the services, the patient, and the patient's~~
3 ~~attorney~~].

4 SECTION 18. Sections 574.061(a), (b), (c), (d), (e), and
5 (h), Health and Safety Code, are amended to read as follows:

6 (a) The facility administrator of a facility to which a
7 patient is committed for inpatient mental health services, not
8 later than the 30th day after the date the patient is committed to
9 the facility, shall assess the appropriateness of transferring the
10 patient to outpatient mental health services. The facility
11 administrator may recommend that [~~may request~~] the court that
12 entered the commitment order [~~to~~] modify the order to require the
13 patient to participate in outpatient mental health services.

14 (b) A [~~The~~] facility administrator's recommendation under
15 Subsection (a) [~~request~~] must explain in detail the reason for the
16 recommendation [~~request~~]. The recommendation [~~request~~] must be
17 accompanied by a supporting certificate of medical examination for
18 mental illness signed by a physician who examined the patient
19 during the seven days preceding the recommendation [~~request~~].

20 (c) The patient shall be given notice of a facility
21 administrator's recommendation under Subsection (a) [~~the request~~].

22 (d) On request of the patient or any other interested
23 person, the court shall hold a hearing on a facility
24 administrator's recommendation that the court modify the
25 commitment order [~~the request~~]. The court shall appoint an
26 attorney to represent the patient at the hearing and shall consult
27 with the local mental health authority before issuing a decision.

1 The hearing shall be held before the court without a jury and as
2 prescribed by Section 574.031. The patient shall be represented by
3 an attorney and receive proper notice.

4 (e) If a hearing is not requested, the court may make a [the]
5 decision regarding a facility administrator's recommendation based
6 on:

7 (1) [solely from] the recommendation;

8 (2) [request and] the supporting certificate; and

9 (3) consultation with the local mental health
10 authority concerning available resources to treat the patient.

11 (h) A modified order may [not] extend beyond the term of the
12 original order, but may not exceed the term of the original order by
13 more than 60 days.

14 SECTION 19. Subchapter E, Chapter 574, Health and Safety
15 Code, is amended by adding Section 574.0665 to read as follows:

16 Sec. 574.0665. STATUS CONFERENCE. A court on its own motion
17 may set a status conference with the patient, the patient's
18 attorney, and the person designated to be responsible for the
19 patient's court-ordered outpatient services under Section 574.037.

20 SECTION 20. Section 574.069(e), Health and Safety Code, is
21 amended to read as follows:

22 (e) The court shall dismiss the request if the court finds
23 from clear and convincing evidence that the patient continues to
24 meet the criteria for court-ordered extended mental health services
25 prescribed by Section 574.035 or 574.0355.

26 SECTION 21. Section 574.081, Health and Safety Code, is
27 amended by amending Subsections (b) and (c) and adding Subsections

1 (a-1), (c-1), and (c-2) to read as follows:

2 (a-1) Subject to available resources, Subsections (a), (b),
3 (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed
4 or discharged from:

5 (1) a state hospital; or

6 (2) any psychiatric inpatient bed funded under a
7 contract with the Health and Human Services Commission or operated
8 by or funded under a contract with a local mental health authority
9 or a behavioral mental health authority.

10 (b) The physician shall prepare the plan as prescribed by
11 Health and Human Services Commission [~~department~~] rules and shall
12 consult the patient and the local mental health authority in the
13 area in which the patient will reside before preparing the plan.
14 The local mental health authority shall be informed of and must
15 participate in planning the discharge of a patient [~~is not required~~
16 ~~to participate in preparing a plan for a patient furloughed or~~
17 ~~discharged from a private mental health facility)].~~

18 (c) The plan must address the patient's mental health and
19 physical needs, including, if appropriate:

20 (1) the need for outpatient mental health services
21 following furlough or discharge; and

22 (2) the need for sufficient psychoactive medication on
23 furlough or discharge to last until the patient can see a
24 physician [~~, and~~

25 [~~(2) the person or entity that is responsible for~~
26 ~~providing and paying for the medication)].~~

27 (c-1) Except as otherwise specified in the plan and subject

1 to available funding provided to the Health and Human Services
2 Commission and paid to a private mental health facility for this
3 purpose, a private mental health facility is responsible for
4 providing or paying for psychoactive medication and any other
5 medication prescribed to the patient to counteract adverse side
6 effects of psychoactive medication on furlough or discharge
7 sufficient to last until the patient can see a physician.

8 (c-2) The Health and Human Services Commission shall adopt
9 rules to determine the quantity and manner of providing
10 psychoactive medication, as required by this section. The
11 executive commissioner may not adopt rules requiring a mental
12 health facility to provide or pay for psychoactive medication for
13 more than seven days after furlough or discharge.

14 SECTION 22. Sections 574.104(a), (b), and (d), Health and
15 Safety Code, are amended to read as follows:

16 (a) A physician who is treating a patient may, on behalf of
17 the state, file an application in a probate court or a court with
18 probate jurisdiction for an order to authorize the administration
19 of a psychoactive medication regardless of the patient's refusal
20 if:

21 (1) the physician believes that the patient lacks the
22 capacity to make a decision regarding the administration of the
23 psychoactive medication;

24 (2) the physician determines that the medication is
25 the proper course of treatment for the patient;

26 (3) the patient is under an order for inpatient mental
27 health services under this chapter or other law or an application

1 for court-ordered mental health services under Section 574.034,
2 574.0345, [~~or~~] 574.035, or 574.0355 has been filed for the patient;
3 and

4 (4) the patient, verbally or by other indication,
5 refuses to take the medication voluntarily.

6 (b) An application filed under this section must state:

7 (1) that the physician believes that the patient lacks
8 the capacity to make a decision regarding administration of the
9 psychoactive medication and the reasons for that belief;

10 (2) each medication the physician wants the court to
11 compel the patient to take;

12 (3) whether an application for court-ordered mental
13 health services under Section 574.034, 574.0345, [~~or~~] 574.035, or
14 574.0355 has been filed;

15 (4) whether a court order for inpatient mental health
16 services for the patient has been issued and, if so, under what
17 authority it was issued;

18 (5) the physician's diagnosis of the patient; and

19 (6) the proposed method for administering the
20 medication and, if the method is not customary, an explanation
21 justifying the departure from the customary methods.

22 (d) The hearing on the application may be held on the date of
23 a hearing on an application for court-ordered mental health
24 services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355
25 but shall be held not later than 30 days after the filing of the
26 application for the order to authorize psychoactive medication. If
27 the hearing is not held on the same day as the application for

1 court-ordered mental health services under those sections [~~Section~~
2 ~~574.034~~ or ~~574.035~~] and the patient is transferred to a mental
3 health facility in another county, the court may transfer the
4 application for an order to authorize psychoactive medication to
5 the county where the patient has been transferred.

6 SECTION 23. Section 574.151, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 574.151. APPLICABILITY. This subchapter applies only
9 to a person for whom a motion for court-ordered mental health
10 services is filed under Section 574.001, for whom a final order on
11 that motion has not been entered under Section 574.034, 574.0345,
12 [~~or~~] 574.035, or 574.0355 and who requests voluntary admission to
13 an inpatient mental health facility:

14 (1) while the person is receiving at that facility
15 involuntary inpatient services under Subchapter B or under Chapter
16 573; or

17 (2) before the 31st day after the date the person was
18 released from that facility under Section 573.023 or 574.028.

19 SECTION 24. Section 152.00164(b), Human Resources Code, is
20 amended to read as follows:

21 (b) Before a child who is identified as having a mental
22 illness is discharged from the custody of the juvenile board or
23 local juvenile probation department under Section 152.00163(b),
24 the juvenile board or local juvenile probation department shall
25 arrange for a psychiatrist to examine the child. The juvenile board
26 or local juvenile probation department shall refer a child
27 requiring outpatient psychiatric treatment to the appropriate

1 mental health authority. For a child requiring inpatient
2 psychiatric treatment, the juvenile board or local juvenile
3 probation department shall file a sworn application for
4 court-ordered mental health services, as provided in Subchapter C,
5 Chapter 574, Health and Safety Code, if:

6 (1) the child is not receiving court-ordered mental
7 health services; and

8 (2) the psychiatrist who examined the child determines
9 that the child has a mental illness and the child meets at least one
10 of the criteria listed in Section 574.034 or 574.0345, Health and
11 Safety Code.

12 SECTION 25. Section 244.012(b), Human Resources Code, is
13 amended to read as follows:

14 (b) Before a child who is identified as mentally ill is
15 discharged from the department's custody under Section 244.011(b),
16 a department psychiatrist shall examine the child. The department
17 shall refer a child requiring outpatient psychiatric treatment to
18 the appropriate mental health authority. For a child requiring
19 inpatient psychiatric treatment, the department shall file a sworn
20 application for court-ordered mental health services, as provided
21 in Subchapter C, Chapter 574, Health and Safety Code, if:

22 (1) the child is not receiving court-ordered mental
23 health services; and

24 (2) the psychiatrist who examined the child determines
25 that the child is mentally ill and the child meets at least one of
26 the criteria listed in Section 574.034 or 574.0345, Health and
27 Safety Code.

1 SECTION 26. The Supreme Court shall:

2 (1) adopt rules to streamline and promote the
3 efficiency of court processes under Chapter 573, Health and Safety
4 Code; and

5 (2) adopt rules or implement other measures to create
6 consistency and increase access to the judicial branch for mental
7 health issues.

8 SECTION 27. The following provisions of the Health and
9 Safety Code are repealed:

10 (1) Sections 574.034(b), (e), and (f); and

11 (2) Sections 574.035(b), (f), and (g).

12 SECTION 28. The Health and Human Services Commission is
13 required to implement a provision of this Act only if the
14 legislature appropriates money specifically for that purpose. If
15 the legislature does not appropriate money specifically for that
16 purpose, the Health and Human Services Commission may, but is not
17 required to, implement a provision of this Act using other
18 appropriations available for that purpose.

19 SECTION 29. The changes in law made by this Act to Chapter
20 574, Health and Safety Code, apply to a commitment proceeding under
21 that chapter that occurs on or after the effective date of this Act,
22 regardless of whether conduct of a proposed patient being evaluated
23 for that purpose occurred before, on, or after the effective date of
24 this Act.

25 SECTION 30. The changes in law made by this Act to Article
26 16.22, Code of Criminal Procedure, and Chapter 574, Health and
27 Safety Code, apply to a proceeding for court-ordered mental health

1 services that occurs on or after the effective date of this Act,
2 regardless of when an offense with which the defendant is charged
3 was committed.

4 SECTION 31. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 362 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 21, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 362 passed the House, with amendment, on May 15, 2019, by the following vote: Yeas 141, Nays 4, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor