

SUBJECT: Amending emergency procedures for court-ordered mental health services

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Julie Johnson, Davis, Flores, Murr, Schofield, Slawson, Vasut

0 nays

1 absent — Moody

WITNESSES: For — Jennifer Tharp, Comal County Criminal District Attorney's Office; Brad Nitschke, Dallas County Hospital District dba Parkland Health (*Registered, but did not testify*: Jesse Sifuentez, Baylor Scott & White Health; James Parnell, Dallas Police Association; Michael Dole, Driscoll Health System; Eric Woomer, Federation of Texas Psychiatry; Ray Hunt, HPOU; Hannah Gill, NAMI Texas; Shannon Doyle, National Association of Social Workers - Texas Chapter; Guy Herman, Presiding Judge of the Statutory Probate Courts of Texas; Timothy Ottinger, St. Luke's Health; Jessica Schleifer, Teaching Hospitals of Texas; John Litzler, Texas Baptist Christian Life Commission; Marcus Mitias, Texas Health Resources; Steve Wohleb, Texas Hospital Association; John Wilkerson, Texas Municipal Police Association; Elisa Hernandez, University Medical Center of El Paso)

Against — (*Registered, but did not testify*: Chris Ponder)

On — Lee Spiller, Citizens Commission on Human Rights

BACKGROUND: **Applications for emergency detention.** Health and Safety Code sec. 573.011 establishes that an application for emergency detention may be made to a judge or magistrate if an applicant has a reason to believe that a person evidences mental illness and a substantial risk of harm to themselves or others.

Application for court-ordered mental health services. Sec. 574.001

allows for the filing of a court-ordered mental health services.

Sec. 574.001(b) requires applications for court-ordered mental health services to be filed with the county clerk in the county in which the patient:

- resides;
- is found;
- is receiving mental health services by court order or emergency detention.

Sec. 574.003 requires judges to appoint an attorney to represent a proposed patient within 24 hours after an application for court-ordered mental health services is filed, if the patient does not have an attorney.

Release from protective custody. Sec. 574.028(a) requires the magistrate or associate judge to order the release of a person under a protective custody order if they determine after a hearing that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to themselves or others.

Sec. 574.028(c) requires a facility administrator to discharge a person held under a protective custody order if they do not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours of detention, excluding Saturdays, Sundays, legal holidays, and certain extensions for extreme emergencies.

Hearing on probable cause. Sec. 574.025 provides requirements for a hearing to be held to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others.

Sec. 574.025(d) provides the proposed patient and their attorney with the opportunity to appear and present evidence to challenge this allegation.

Concerns have been raised that state law should be clarified on procedures

for emergency detention and court-ordered mental health services to help increase safety and access to behavioral health services for Texans who are experiencing a mental health crisis.

DIGEST:

CSHB 3504 would make changes to the Health and Safety Code on the procedures for emergency detention and court-ordered mental health services for individuals who evidenced mental illness and posed a substantial risk of harm to themselves and others.

The bill would remove emergency detention as a prerequisite for the issuance of an order of protective custody and clarify that court-ordered mental health services had to be filed in the county in which the patient was apprehended under an emergency detention or was located at the time of application. The bill would also require judges and magistrates to accept applications for court-ordered services whenever they were on duty.

The bill also would amend provisions on the use of technology, including requiring the use of electronic filing and allowing for remote testimony for medical or psychiatric professionals under certain conditions.

Applications for emergency detention. The bill would require, rather than allow, a judge or magistrate to accept electronic applications for emergency detention made by physicians provided that certain security measures were followed.

Application for court-ordered mental health services. The bill would revise certain requirements under sec. 574.001(b) for applications for court-ordered mental health services. Applications could be filed in the county in which the patient:

- resided;
- was located at the time the application is filed;
- was apprehended by a peace officer; or
- was receiving mental health services by court order or emergency detention.

The bill would require judges or magistrates to accept an application filed at any time that the judge or magistrate was on duty.

The bill would amend sec. 574.003 to require judges to appoint an attorney within 24 hours after an application for court-ordered mental health services, regardless of whether the proposed patient was known or perceived by the judge to be indigent.

Recommendation for treatment. The bill would establish requirements for local mental health authorities who did not recommend the confinement of proposed patients. These authorities would be required to include in their recommendation:

- a certificate of medical examination for mental illness and certain information including the proposed patient, their diagnosis, treatment, and whether or not they believe that the patient posed a serious danger to themselves or others; and
- identification of the criteria for commitment that the proposed patient did not satisfy and the facts upon which the determination was based.

Motion for order of protective custody. The bill would specify that motions for orders of protective custody did not require a recommendation from a local mental health authority. A court would be prohibited from considering a recommendation from a local mental health authority that failed to comply with certain requirements.

Issuance of order of protective custody. The bill would require, rather than allow, a judge to file a protective custody order if the judge or magistrate determined:

- that a physician had provided an opinion and detailed reasons for why the proposed patient was a person with mental illness; and
- the proposed patient presented a substantial risk of serious harm to themselves or others if not immediately restrained pending a

hearing.

The bill would require judges to set a hearing date and take additional evidence if a fair determination of a protective custody order could not be made only from consideration of the application for court-ordered mental health services and the certificate of medical examination.

The bill would prohibit a judge or magistrate from rejecting a motion for a protective custody order solely on the basis that the proposed patient was not emergency detained at the time that an application was filed.

Transportation. The bill would permit a physician who completed a certificate of medical examination to, in addition to the local mental health authority, deem a mental health care facility suitable for the proposed patient.

Hearing on probable cause. The bill would allow an applicant, in addition to the proposed patient and the patient's attorney, to appear at the hearing on probable cause and provide evidence on the allegation of that the proposed patient presented a substantial risk of serious harm to themselves or others.

Release from protective custody. The bill would amend sec. 574.028 to require a magistrate or judge to release the person under protective custody order if no probable cause warranting protective custody existed. The order would be required to include written findings of fact that no probable cause existed. An order could be immediately appealed.

The bill would amend sec. 574.028 to require facility administrators to discharge a person held under protective custody if the facility administrator received an order from which no appeal had been filed.

Release after hearing for temporary mental health services. The bill would require an order to deny an application for court-ordered temporary or extended mental health services to include a written finding of facts on which it was based. This order could be appealed.

Appeal of an order denying court-ordered mental health services. The bill would amend sec. 574.070(a) to allow for the appeal of an order denying the requirement of court-ordered mental health services.

The bill would require a judge to enter a finding of facts based on evidence presented at the hearing before they may stay the order and release the patient from custody and require an appearance bond in an amount set by the court.

Electronic filing. The bill would require the court to allow for motions for order of protective custody and applications for court-ordered mental health services to be filed in the same manner as any other document filed with the court, including through the use of an electronic filing system.

Teleconferencing. The bill would allow for competent medical or psychiatric testimony to be provided for hearings on applications for court-ordered mental health services by closed-circuit video teleconferencing if:

- closed-circuit video teleconferencing was available to the court for that purpose;
- the court had good cause to not conduct in-person testimony, including that conducting the testimony through closed-circuit video teleconferencing would minimize the disruption of care to the testifying person's other patients; and
- the closed-circuit video teleconferencing system provided for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the proceedings.

Effect. The bill would take effect September 1, 2023 and would apply only to:

- emergency detentions that began on or after the effective date;
- court-ordered mental health services submitted on or after the

effective date; and

- a proceeding for court-ordered mental health services that occurred on or after the effective date of the bill, regardless of when an offense with which the defendant was charged was committed.