

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 443  
By: Moncrief  
Jurisprudence  
3-11-97  
Committee Report (Substituted)

### **DIGEST**

Currently, Texas law provides no legal remedy for individuals who are wrongly referred to psychiatric facilities and who receive medically unnecessary services. An interim study prior to the 73rd Legislature uncovered significant abuses by psychiatric facilities, including fraudulent referrals and admissions of individuals who had no need of psychiatric services. While the legislature passed several psychiatric hospital reform measures during the 73rd legislative session, problems remain. This legislation provides a mechanism whereby persons can expunge information regarding medically unnecessary psychiatric admissions and services from their medical records.

### **PURPOSE**

As proposed, C.S.S.B. 443 establishes the right to petition a court for an order to seal or destroy records related to certain admissions to a mental health facility; and provides a criminal penalty.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 144, as follows:

#### **CHAPTER 144. DESTRUCTION OF CERTAIN RECORDS**

Sec. 144.001. DEFINITIONS. Defines "former mental health patient" as an individual who, between January 1, 1985 and December 31, 1993, was admitted to a mental health facility that has pled guilty, or whose parent corporation has pled guilty, to unlawfully conspiring to remunerate any person to induce that person to refer individuals to the facility for services; and who has been released from that mental health facility, but was not admitted to the facility on the basis of certain court proceedings. Defines "record" and "court."

Sec. 144.002. SUIT AND ORDER FOR DESTRUCTION OF ADMISSION RECORDS. Authorizes a former mental health patient to bring suit for an order that all records related to the individual's admission to or treatment at a mental health facility be sealed or destroyed. Provides that if the former mental patient has attained majority at the time the suit is brought, the person is entitled to the court order to destroy the records if the court finds, based on competent medical evidence, that the admission or treatment was medically unnecessary. Sets forth the procedure regarding suit and order for destruction of admission records if the former mental patient is a minor at the time the suit is brought.

Sec. 144.003. PROCEDURE FOR PETITION, NOTICE, HEARING, AND ORDER. Requires a petitioner to provide a list of each health care provider, agency, hospital, and other person or facility believed to have possession of a record subject to sealing or destruction if the court orders the sealing or destruction under Section 144.002. Requires the court to set and give notice of a hearing on the petition. Sets forth the terms by which the court is required to issue an order directing that the records be sent to the court or otherwise sealed or destroyed, and by which the court or the clerk of the court is required to send certain information to each person the petitioner lists in the petition.

Sec. 144.004. ACTIONS FOLLOWING COURT ORDER. Sets forth the terms by which, on receipt of an order, a person is required to delete certain index references from the person's records and record storage system; and remove certain records and present them to the court or seal or destroy certain portions of the record and notify the court by sworn affidavit.

Sec. 144.005. COURT RECORDS CONCERNING ORDER. Requires the court to seal records concerning an order and ensure that the court's records are not open for inspection by any person except the former mental patient, or upon further order of the court after notice to the former mental patient and a finding of good cause.

Sec. 144.006. COLLATERAL EFFECTS OF ORDER. Authorizes a former mental patient who successfully petitions for an order to deny the existence of any record subject to the order; the existence of the order itself; and the admission to a mental health facility or any admission-related treatment if the records of the admission are subject to the order. Provides that a former mental patient who makes a denial under Subsection (a) is not liable for a civil or criminal penalty for perjury.

Sec. 144.007. LIMITATION ON CERTAIN LAWSUITS. Prohibits a former mental patient who successfully petitions a court for an order or a person acting on the patient's behalf from filing a suit or complaint against a facility or health care provider an action related to an event or activity that formed the basis of a record subject to the court's order.

Sec. 144.008. DISCLOSURE OF INFORMATION SUBJECT TO ORDER; PENALTY. Provides that a person commits a Class B misdemeanor if the person knows of a former mental patient's admission to a mental health facility and of a court order that relates to that admission, and intentionally releases, disseminates, publishes, or otherwise uses a record or index reference subject to that order. Establishes that a person also commits a Class B misdemeanor if the person knowingly fails to delete, seal, destroy, or present to the court a record or index reference subject to an order, and knows or should know that the record or index reference is subject to that order.

Sec. 144.009. EXPIRATION OF CERTAIN PROVISIONS. Provides that Sections 144.002, 144.003, and 144.004 expire January 1, 1999.

SECTION 2. Makes application of this Act prospective regarding an action filed on or before January 1, 1999.

SECTION 3. Effective date: September 1, 1997.

Makes application of this Act retroactive regarding a record.

SECTION 4. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Amends the relating clause to include the right to petition a court for an order to seal records related to certain admissions to a mental health facility.

Amends SECTION 1 by deleting proposed Chapter 322, and adding Chapter 144, entitled, "DESTRUCTION OF CERTAIN RECORDS," as follows:

- More narrowly defines "former mental patient."
- Defines "record" and "court."
- Replaces all references to "petitioner" with "former mental patient."
- Authorizes a former mental patient to bring suit for an order that all records related to the

individual's admission to or treatment at a mental health facility be sealed or destroyed, rather than just destroyed.

- Replaces all references to "expunction of records" with "sealing or destruction of records."
- Provides that a person is entitled to the court order to destroy the records if the court finds, based on competent medical evidence, that the admission or treatment was medically unnecessary.
- Sets forth the procedure by which a suit and order to seal and destroy admission records is brought if the former mental patient is a minor.
- Deletes the provision requiring the court to destroy all records presented to the court when all appeals related to the order are exhausted.
- Requires the court to seal records concerning an order and ensure that the court's records are not open for inspection, or upon further order of the court after notice to the former mental patient and a finding of good cause.
- Authorizes a former mental patient who successfully petitions for an order to deny the existence of any record subject to the order, as well as any treatment related to the admission, provided certain conditions are met. Provides that a former mental patient who makes such a denial is not liable for perjury.
- Prohibits a person acting for a former mental health patient who successfully petitions a court for an order from filing a suit or complaint against a facility or health care provider an action relating to an event or activity that formed the basis of a record subject to the court's order.
- Deletes the provision prohibiting the release, dissemination, or use of expunged records and files for any purpose after entry of an expunction order.
- Provides that a person commits a Class B, rather than a Class A, misdemeanor if the person intentionally releases, disseminates, publishes, or otherwise uses a record or index reference subject to an order; or if the person knowingly fails to delete, seal, destroy, or present to the court a record or index reference subject to an order. Clarifies the meaning of "knowingly."
- Provides that Sections 144.002, 144.003, and 144.004 expire January 1, 1999.

Amends SECTION 2 to change the prospective date from January 1, 2005 to January 1, 1999.

Amends SECTION 3 to make application of this Act retroactive regarding a record.