

## BILL ANALYSIS

Senate Research Center  
78R11431 MTB-D

H.B. 2679  
By: Hartnett (Harris)  
Administration  
5/12/2003  
Engrossed

### DIGEST AND PURPOSE

Under current law, a guardian is not allowed to voluntarily admit an adult ward for inpatient mental health services. Hospitals generally refuse to allow wards to voluntarily admit themselves, because the wards may lack the capacity to do such. However, guardians often must watch their wards refuse to take medication or otherwise deteriorate but are unable to do anything about the situation until it reaches the point the sheriff or police must intervene. H.B. 2679 grants to a guardian the authority to transport a ward to an inpatient mental health facility for a preliminary examination; enables a guardian to consent to the administration of psychoactive medication to an adult ward; and grants to a guardian the ability to secure the emergency detention of a ward under certain circumstances.

### 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 743(b), Texas Probate Code, to require the guardian of a person, whether or not there is a separate guardian of the estate, to submit to the court an annual report by sworn affidavit that contains certain information, including whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code, and if applicable, the number of times the guardian has filed and the dates of the applications.

SECTION 2. Amends Section 767, Texas Probate Code, as follows:

Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a) Created from existing text.

(b) Provides that notwithstanding Subsection (a)(4) of this section, a guardian of the person of a ward has the power to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

SECTION 3. Amends Section 770(b), Texas Probate Code, to authorize the person or the person's guardian, if care and treatment in a psychiatric or a residential facility are necessary, to perform certain acts, including transporting the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

SECTION 4. Amends Subpart E, Part 4, Chapter XIII, Texas Probate Code, by adding Section 770A, as follows:

Sec. 770A. ADMINISTRATION OF MEDICATION. (a) Defines "psychoactive medication."

(b) Authorizes the guardian of the person of the ward, if a person under a protective custody order as provided by Subchapter B, Chapter 574, Health and

Safety Code, is a ward who is not a minor, to consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

SECTION 5. Amends the heading of Subchapter A, Chapter 573, Health and Safety Code, to read as follows:

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER  
OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

SECTION 6. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Sections 573.003 and 573.004, as follows:

Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN. (a) Authorizes a guardian of the person of a ward, without the assistance of a peace officer, to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that the ward is mentally ill and because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(b) Authorizes a substantial risk of serious harm to the ward or others under Subsection (a)(2) to be demonstrated by the ward's behavior or evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION. (a) Requires a guardian, after transporting a ward to a facility under Section 573.003, to immediately file an application for detention with the facility.

(b) Requires the application for detention to contain certain information.

(c) Requires the guardian to immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

SECTION 7. Amends Section 573.021(c), Health and Safety Code, to require a physician to examine the person as soon as possible within 24 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

SECTION 8. Amends Section 573.023(a), Health and Safety Code, to require a person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B to be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

SECTION 9. Amends Section 573.024(c), Health and Safety Code, to require arrangements, if the person was apprehended by a peace officer under Subchapter A, to be made to immediately transport the person. Provides that if the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

SECTION 10. Amends Section 573.025, Health and Safety Code, as follows:

Sec. 573.025. New heading: RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION. (a) Provides that a person apprehended, detained, or transported for emergency detention under this chapter has certain rights.

(b) Makes a conforming change.

SECTION 11. Amends Section 574.103, Health and Safety Code, as follows:

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES. (a) Defines “ward.”

(b) Prohibits a person from administering a psychoactive medication to a patient who refuses to take the medication voluntarily unless certain conditions exist, including the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

SECTION 12. Effective date: September 1, 2003.