

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1947  
By: Burkett et al. (Zaffirini)  
Health & Human Services  
5/15/2013  
Committee Report (Substituted)

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

Subtitle C (Texas Mental Health Code), Title 7 (Mental Health and Mental Retardation), Health and Safety Code, has not been substantially revised since 1985. During this time the Texas mental health system has undergone dramatic change, and an update is required to address those changes. Current law is unwieldy and difficult to navigate, resulting in inefficient allocation of state resources. It has been suggested that the increased number of forensic commitments to state hospitals through the criminal justice system is in part a product of the difficulties in navigating the civil commitment process.

The current standard for court-ordered mental health treatment has been interpreted to mean that someone can be detained if their mental or physical state is "likely" to deteriorate to the point where they cannot provide for their food, clothing, and shelter.

This bill changes the standard for court-ordered mental health treatment to focus the court's determination on the person's present ability to provide for his or her food, clothing, and shelter given the person's present mental state would be a more definite standard.

Relying on "likelihood" of deterioration creates an indeterminate standard. Changing the standard to make it more consistent with that used nationally, which defines it as "gravely disabled," as focusing the court's determination on the person's present ability to provide for his or her food, clothing, and shelter given the person's present mental state, would be a more definite standard.

Increasing consistency of the application of this standard would result in the same outcome for an order of protective custody filed in Harlingen, Houston, or Dallas which is currently not the case. Some judges over-utilize the standard as currently written while others do not use it at all. Making the definition of this standard more consistent with national standards (i.e., the gravely disabled standard) would direct a judge to make assessments based on present condition of meeting the criteria. This would reduce the number of persons committed to psychiatric facilities, more accurately balance the state's interest in safety and a person's interest in freedom, and lead to more consistent and predictable determinations by judges.

C.S.H.B. 1947 amends current law relating to the criteria for commitment or detention of a person with mental illness.

### **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 571.003, Health and Safety Code, by adding Subdivision (7-a), to define "gravely disabled."

SECTION 2. Amends the heading to Subchapter A, Chapter 573, Health and Safety Code, to read as follows:

SUBCHAPTER A. APPREHENSION, TRANSPORTATION, OR DETENTION WITHOUT  
JUDGE'S OR MAGISTRATE'S ORDER

SECTION 3. Amends Section 573.001, Health and Safety Code, by amending Subsection (b) and adding Subsection (g), as follows:

(b) Provides that a substantial risk of serious harm to the person or others under Subsection (a)(1)(B) (relating to authorizing a peace officer, without a warrant, to take a person into custody if the officer has reason to believe and does believe that because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained) may be demonstrated by the person's behavior or evidence of the person being gravely disabled to the extent that the person cannot remain at liberty, rather than by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(g) Authorizes a peace officer to take a person who has been admitted to a facility into custody under this section. Provides that, for the purposes of this section, "facility" has the meaning assigned by Section 573.005.

SECTION 4. Amends Section 573.003(b), Health and Safety Code, to provide that a substantial risk of serious harm to the ward or others under Subsection (a)(2) (relating to authorizing a guardian of the person of a ward who is 18 years of age or older, 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 (Preliminary Examination) if the guardian has reason to believe and does believe that because of the mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained) may be demonstrated by the ward's behavior or evidence of the ward being gravely disabled to the extent that the ward cannot remain at liberty, rather than 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.

SECTION 5. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Section 573.005, as follows:

Sec. 573.005. TEMPORARY DETENTION BY CERTAIN FACILITIES. (a) Defines "facility" in this section.

(b) Provides that this section does not apply to a person who has been transported to a facility for emergency detention under this chapter (Emergency Detention).

(c) Authorizes a facility to detain a person who voluntarily requested treatment from the facility or who lacks the capacity to consent to treatment, as provided by this section, if:

(1) the person expresses a desire to leave the facility or attempts to leave the facility before the examination or treatment is completed; and

(2) a physician at the facility:

(A) has reason to believe and does believe that:

(i) the person has a mental illness; and

(ii) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(B) believes that there is not sufficient time to file an application for emergency detention or for an order of protective custody.

(d) Requires the facility staff or physician to notify the person if the facility intends to detain the person under this section.

(e) Requires the physician to document a decision to detain a person under this section and place that notice of detention in the person's medical record. Requires that the notice of detention contain:

(1) a statement that the physician has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the physician has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a specific description of the risk of harm;

(4) a statement that the physician has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the physician's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the physician; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(f) Prohibits the period of a person's detention authorized by this section from exceeding four hours following the time the person first expressed a desire to leave, or attempted to leave, the facility. Requires that the facility release the person not later than the end of the four-hour period unless the facility arranges for a peace officer to take the person into custody under Section 573.001 (Apprehension by Peace Officer Without Warrant) or an order of protective custody is issued.

(g) Provides that a physician, person, or facility that detains or fails to detain a person under this section and who acts in good faith and without malice is not civilly or criminally liable for that action.

SECTION 6. Amends Section 573.012(c), Health and Safety Code, to provide that a substantial risk of serious harm to the person or others under Subsection (b)(2) (relating to requiring the magistrate to deny the application unless the magistrate finds that there is reasonable cause to believe that the person evidences a substantial risk of serious harm to himself or others) may be demonstrated by the person's behavior or evidence of the person being gravely disabled to the extent that the person cannot remain at liberty, rather than by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

SECTION 7. Amends Section 573.022(a), Health and Safety Code, to authorize a person to be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that, among other criteria, includes a description of the nature of the person's mental illness, a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of the person being gravely disabled to the extent that the person cannot remain at liberty, rather than a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty, and the specific detailed information from which the physician formed a certain opinion.

SECTION 8. Amends Section 574.011(d), Health and Safety Code, to provide that the harm may be demonstrated by the examined person's behavior or by evidence of the person being gravely disabled, rather than by evidence of severe emotional distress and deterioration in the examined person's mental condition, to the extent that the examined person cannot remain at liberty.

SECTION 9. Amends Section 574.022(b), Health and Safety Code, to provide that the determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of the person being gravely disabled, rather than by evidence of severe emotional distress and deterioration in the proposed patient's mental condition, to the extent that the proposed patient cannot remain at liberty.

SECTION 10. Amends Sections 574.034(a) and (d), Health and Safety Code, as follows:

(a) Authorizes the judge to order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that the proposed patient is mentally ill; and as a result of that mental illness the proposed patient is likely to cause serious harm to himself, is likely to cause serious harm to others, or is gravely disabled. Deletes existing text authorizing the judge to order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that as a result of that mental illness the proposed patient is suffering severe and abnormal mental, emotional, or physical distress; experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and unable to make a rational and informed decision as to whether or not to submit to treatment.

(d) Requires that evidence, to be clear and convincing under Subsection (a), include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to the proposed patient or others or the proposed patient being gravely disabled, rather than the proposed patient's distress and the deterioration of the proposed patient's ability to function.

SECTION 11. Amends Sections 574.035(a) and (e), Health and Safety Code, as follows:

(a) Authorizes the judge to order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that the proposed patient is mentally ill; as a result of that mental illness the proposed patient is likely to cause serious harm to himself, is likely to cause serious harm to others, or is gravely disabled; the proposed patient's condition is expected to continue for more than 90 days; and the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. Deletes existing text authorizing the judge to order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that as a result of that mental illness the proposed patient is suffering severe and abnormal mental, emotional, or physical distress; experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and unable to make a rational and informed decision as to whether or not to submit to treatment.

(e) Requires that the evidence, to be clear and convincing under Subsection (a), include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to the proposed patient or others or the proposed patient being gravely disabled, rather than include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the

likelihood of serious harm to the proposed patient or others or the proposed patient's distress and the deterioration of the proposed patient's ability to function.

SECTION 12. Effective date: September 1, 2013.