

BILL ANALYSIS

Senate Research Center

H.B. 1318
By: Moody (Rodríguez)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The importance of improving children's access to mental health services is crucial to stemming the growing mental health crisis. Unfortunately, there are situations in which a parent, managing conservator, or guardian fails to seek adequate mental health services for a child. Giving a person with the actual care, control, and custody of a child the ability to petition a court for temporary authorization to consent to voluntary inpatient mental health services for a child would be beneficial. H.B. 1318 seeks to address these concerns by creating a process, including parental notice, for the child's caretaker to petition the court to allow for inpatient care for up to 10 days or for fewer days on the caretaker's request or when the child makes sufficient improvements.

H.B. 1318 amends current law relating to the provision of mental health services to persons younger than 18 years of age.

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 Subtitle A, Title 2, Family Code, by adding Chapter 35A, as follows:

CHAPTER 35A. TEMPORARY AUTHORIZATION FOR INPATIENT MENTAL HEALTH SERVICES FOR MINOR CHILD

Sec. 35A.001. **APPLICABILITY.** Provides that this chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001(a)(1) (relating to authorizing a grandparent of a child to consent to certain medical treatment of the child when the person having the right to consent as otherwise provided by law cannot be contacted and the person has not given notice to the contrary), (2) (relating to authorizing an adult brother or sister of a child to consent to certain medical treatment of the child when the person having the right to consent as otherwise provided by law cannot be contacted and the person has not given notice to the contrary), or (3) (relating to authorizing an aunt or uncle of a child to consent to certain medical treatment of the child when the person having the right to consent as otherwise provided by law cannot be contacted and the person has not given notice to the contrary), and who has had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

Sec. 35A.002. **TEMPORARY AUTHORIZATION.** Authorizes a person described by Section 35A.001 to seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

Sec. 35A.003. **PETITION FOR TEMPORARY AUTHORIZATION.** Requires a petition for temporary authorization to consent to voluntary inpatient mental health services for a child to meet certain criteria and include certain information.

Sec. 35A.004. NOTICE; HEARING. (a) Requires the court, on receipt of the petition, to set a hearing.

(b) Requires a copy of the petition and notice of the hearing to be delivered to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the last known address of the parent, conservator, or guardian.

(c) Requires proof of service under Subsection (b) to be filed with the court at least three days before the date of the hearing.

Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION. (a) Authorizes the court, at the hearing on the petition, to hear evidence relating to the child's need for inpatient mental health services by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian.

(b) Requires the court to dismiss the petition for temporary authorization if an objection is made by the child's parent, conservator, or guardian.

(c) Requires the court to grant the petition for temporary authorization only if the court finds:

(1) by a preponderance of the evidence that the child does not have available a parent, conservator, guardian, or other legal representative to give consent under Section 572.001 (Request For Admission), Health and Safety Code, for voluntary inpatient mental health services; and

(2) by clear and convincing evidence that the child is a person with mental illness or who demonstrates symptoms of a serious emotional disorder and who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(d) Provides that, subject to Subsection (e), the order granting temporary authorization under this chapter expires on the earliest of:

(1) the date the petitioner requests that the child be discharged from the inpatient mental health facility;

(2) the date a physician determines that the criteria listed in Subsection (c)(2) no longer apply to the child; or

(3) subject to Subsection (e), the 10th day after the date the order for temporary authorization is issued under this section.

(e) Provides that the order granting temporary authorization continues in effect until the earlier occurrence of an event described by Subsection (d)(1) or (2) if the petitioner obtains an order for temporary managing conservatorship before the order expires as provided by Subsection (d)(3).

(f) Requires a copy of an order granting temporary authorization to be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child and be sent to the last known address of the child's parent, conservator, or guardian.

SECTION 2. Amends Section 572.001, Health and Safety Code, by amending Subsections (a), (a-1), (c-1), and (c-2), and adding Subsection (a-2), as follows:

(a) Authorizes the parent, managing conservator, or guardian of a person younger than 18 years of age, subject to Subsection (c-1), rather than the parent, managing conservator, or guardian of a person younger than 18 years of age, to request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a

request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) Authorizes a person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, to request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. Authorizes the petitioner for temporary authorization to be represented by the county attorney or district attorney.

(a-2) Creates this subsection from existing text and makes a conforming change.

(c-1) Creates this subsection from existing text and removes the provision that a person younger than 18 years of age is prohibited from being involuntarily committed unless provided by other state law.

(c-2) Authorizes the Department of Family and Protective Services (DFPS), if DFPS is the guardian or managing conservator of a person younger than 18 years of age, to request the admission to an inpatient mental health facility of a minor in the guardianship or managing conservatorship of DFPS only if a psychiatrist states under oath the psychiatrist's opinion, and the detailed reasons for that opinion, rather than authorizing DFPS to request the admission to an inpatient mental health facility of a minor in the managing conservatorship of DFPS only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

(1)–(2) makes no changes to these subdivisions.

SECTION 3. Amends Section 573.001(a), Health and Safety Code, as follows:

(a) Authorizes a peace officer, without warrant, to take a person into custody, regardless of the age of the person, rather than to take a person into custody under certain conditions.

SECTION 4. Repealer: Section 572.001(c) (relating to authorizing a certain person to request admission of the person younger than 18 years of age to an inpatient mental health facility only under certain circumstances), Health and Safety Code.

SECTION 5. Effective date: September 1, 2019.