

## **BILL ANALYSIS**

Senate Research Center

S.B. 1238  
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Health & Human Services  
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Enrolled

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

Under current law, before a patient may be admitted for voluntary inpatient mental health treatment, the state requires a mental health screening to be performed by a mental health professional, followed by an examination to be conducted by a physician. Federal law then requires an additional post-admission examination that covers the same elements required by the state examination.

S.B. 1238 will reduce the amount of time an individual waits to receive voluntary treatment by allowing physicians the option of either examining the patient up to 72 hours before admission or immediately after admission. By allowing the option of performing the examination either before or immediately after admission, the process will be streamlined for the patient and the mental health facility to ensure a continuity of care. There is no known opposition to the bill. Supporters include NAMI and THA. (Original Author's/Sponsor's Statement of Intent)

S.B. 1238 amends current law relating to the admission, examination, and discharge of a person for mental health services.

### **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 the child to consent to certain treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary), (2) (relating to authorizing an adult brother or sister of the child to consent to certain treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary), or (3) (relating to authorizing an adult aunt or uncle of the child to consent to certain treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual 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:

- (1) be styled "ex parte" and be in the name of the child;
- (2) be verified by the petitioner;
- (3) state:
  - (A) the name, date of birth, and current physical address of the child;
  - (B) the name, date of birth, and current physical address of the petitioner; and
  - (C) the name and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;
- (4) describe the status and location of any court proceeding in this or another state with respect to the child;
- (5) describe the petitioner's relationship to the child;
- (6) provide the dates during the preceding six months that the child has resided with the petitioner;
- (7) contain a certificate of medical examination for mental illness prepared by a physician who has examined the child not earlier than the third day before the date the petition is filed and be accompanied by a sworn statement containing the physician's opinion, and the detailed reasons for that opinion, that the child is a person:
  - (A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and
  - (B) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized; and
- (8) state any reason that the petitioner is unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

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.

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:

(A) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(B) 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:

(1) be filed under the cause number in any court that has rendered a conservatorship or guardian order regarding the child; and

(2) 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), and (c-1) 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), 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. Makes a nonsubstantive change.

(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. Authorizes an inpatient mental health facility, except as provided by Subsection (c-1), rather than Subsection (c), to admit or provide services to a person 16 years of age or older and younger than 18 years of age if

the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(c-1) Prohibits a person younger than 18 years of age from being involuntarily committed unless provided by this chapter (Voluntary Mental Health Services), Chapter 55 (Proceedings Concerning Children With Mental Illness or Intellectual Disability), Family Code, or Department of State Health Services (DSHS) rule, rather than this chapter, other state law, or DSHS rule.

SECTION 3. Amends Section 572.0025, Health and Safety Code, by amending Subsections (f) and (g) and adding Subsection (f-1), (f-2), and (f-3), as follows:

(f) Prohibits a prospective voluntary patient from being formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order. Creates Paragraphs (A)(i) and (B)(i) from existing text and requires the order to be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within:

(i) 72 hours before admission, rather than 72 hours of the admission; or

(ii) 24 hours after admission; or

(B) makes conforming changes to this paragraph; and

(2) makes no changes to this subdivision.

(f-1) Requires a person who is admitted to a facility before the performance of the physical and psychiatric examination required by Subsection (f) to be discharged by the physician immediately if the physician conducting the physical and psychiatric examination determines the person does not meet the clinical standards to receive inpatient mental health services.

(f-2) Prohibits a facility that discharges a patient under the circumstances described by Subsection (f-1) from billing the patient or the patient's third-party payor for the temporary admission of the patient to the inpatient mental health facility.

(f-3) Provides that Section 572.001(c-2) (relating to authorizing the Department of Family and Protective Services to request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person with certain medical conditions) applies to the admission of a minor in the managing conservatorship of the Department of Family and Protective Services to an inpatient mental health facility.

(g) Provides that an assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician, rather than a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician before admission.

SECTION 4. Amends Section 573.001(a), Health and Safety Code, as follows:

(a) Authorizes a peace officer, without a warrant, to take a person into custody, regardless of the age of the person, rather than to take a person into custody without a warrant, if the officer has certain reasonable beliefs.

SECTION 5. Effective date: September 1, 2019.