

By: Ortega

H.B. No. 3904

A BILL TO BE ENTITLED

AN ACT

relating to emergency detention by a physician of certain persons with mental illness for preliminary examination at a facility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Sections 573.006 and 573.007 to read as follows:

Sec. 573.006. DETENTION FOR PRELIMINARY EXAMINATION BY PHYSICIAN. (a) A physician may detain a person for preliminary examination at a mental health facility if the physician:

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

(A) the person is a person with mental illness;

and

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

(2) believes that there is not sufficient time to obtain a warrant or for a peace officer to take the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that

1 the person cannot remain at liberty.

2 (c) The physician may form the belief that the person meets
3 the criteria for detention under this section based on:

4 (1) a representation made by a credible person; or

5 (2) the conduct of the detained person or the
6 circumstances under which the person is detained.

7 (d) A physician who detains a person at a mental health
8 facility under Subsection (a) shall immediately inform the person
9 orally in simple, nontechnical terms:

10 (1) of the reason for the detention; and

11 (2) that a staff member of the facility will inform the
12 person of the person's rights within 24 hours after the time the
13 person is admitted to the facility, as provided by Section
14 573.025(b).

15 Sec. 573.007. PHYSICIAN'S NOTIFICATION OF DETENTION. (a)
16 A mental health facility at which a person is detained by a
17 physician under Section 573.006 shall provide to the person and
18 maintain in the facility's records a physician's notification of
19 detention in the manner provided under this section.

20 (b) The physician's notification of detention must contain:

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

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

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

27 (4) a statement that the physician has reason to

1 believe and does believe that the risk of harm is imminent unless
2 the person is immediately restrained;

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

7 (6) a detailed description of the specific behavior,
8 acts, attempts, or threats; and

9 (7) the name and relationship to the detained person
10 of any person who reported or observed the behavior, acts,
11 attempts, or threats.

12 (c) A physician's notification of detention must be
13 provided to the person who is being detained within 12 hours of the
14 commencement of the person's detention.

15 (d) A physician's notification of detention is considered
16 to be made under oath and must be provided on the following form:

17 NOTIFICATION OF EMERGENCY DETENTION

18 DATE: _____ TIME: _____

19 APPLICANT'S NAME/TELEPHONE: _____

20 I, the above applicant, physician, make this application for the
21 emergency detention of:

22 _____, D.O.B. _____, who
23 can be found at _____.

24 EMERGENCY DETENTION IS SOUGHT FOR THE FOLLOWING REASONS:

25 1. I have reason to believe and do believe that the person
26 evidences mental illness.

27 2. I have reason to believe and do believe that the person presents

1 a substantial and imminent risk of harm to self or others unless the
2 person is immediately restrained.

3 3. My above stated beliefs are based on the following specific
4 recent behavior, overt acts, attempts, or threats, or evidence of
5 severe emotional distress and deterioration in the person's mental
6 condition to the extent that the person cannot remain at liberty:

7 _____
8 _____
9 _____
10 _____

11 (please continue on separate sheet if necessary),
12 which were personally observed by me _____ (PHYSICIAN
13 OBSERVER) or which were reliably reported to me by another
14 individual, _____ (REPORTER).

15 My relation to the detained is _____.

16 If applicable, the relation to the detained of the individual
17 listed above as the reporter is _____.

18 Executed under penalty of perjury at _____ a.m./p.m. on this
19 _____ day of _____, 20__.

20 FOR FACILITY USE ONLY--A person accepted for a preliminary
21 examination may be detained in custody for not longer than 48 hours
22 after the time the person is presented to the facility unless a
23 written order for protective custody is obtained. A physician
24 shall examine the person as soon as possible within 12 hours after
25 the time the person is detained.

26 Accepted for Preliminary Examination for Emergency Detention
27 (i.e., time Patient arrived at this facility) on this _____ day

1 of _____, 20__, at _____ a.m./p.m.

2 _____

3 SIGNATURE OF FACILITY EMPLOYEE

4 Completed Preliminary Examination for Emergency Detention on this

5 _____ day of _____, 20__, at _____ a.m./p.m.

6 _____

7 SIGNATURE OF FACILITY PHYSICIAN

8 SECTION 2. Section 573.021(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) A facility shall temporarily accept and detain a person:

11 (1) for whom an application for detention is filed;

12 (2) [~~or~~] for whom a peace officer or emergency medical
13 services personnel of an emergency medical services provider
14 transporting the person in accordance with a memorandum of
15 understanding executed under Section 573.005 files a notification
16 of detention completed by the peace officer under Section
17 573.002(a); or

18 (3) if a physician at the facility detains the person
19 under Section 573.006, regardless of whether the physician has
20 completed the physician's notification of detention required under
21 Section 573.007.

22 SECTION 3. The changes in law made by this Act apply only to
23 an emergency detention that begins on or after the effective date of
24 this Act. An emergency detention that begins before the effective
25 date of this Act is governed by the law as it existed immediately
26 before that date, and that law is continued in effect for that
27 purpose.

1 SECTION 4. This Act takes effect September 1, 2023.