

By: Lalani

H.B. No. 3986

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities and physicians to temporarily detain a person with mental illness.

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

SECTION 1. The heading to Subchapter A, Chapter 573, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. APPREHENSION, ~~[BY PEACE OFFICER OR]~~ TRANSPORTATION, ~~OR DETENTION WITHOUT JUDGE'S OR MAGISTRATE'S ORDER [FOR EMERGENCY DETENTION BY GUARDIAN]~~

SECTION 2. Section 573.001, Health and Safety Code, is amended by adding Subsection (i) to read as follows:

(i) A peace officer may take a person who has been admitted to a facility into custody under this section. For purposes of this subsection, "facility" has the meaning assigned by Section 573.005.

SECTION 3. Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Section 573.005 to read as follows:

Sec. 573.005. TEMPORARY DETENTION IN CERTAIN FACILITIES.

(a) In this section, "facility" means:

(1) an inpatient mental health facility other than a community center, a facility operated by or under contract with a community center, an entity that the department designates to provide mental health services, a local mental health authority, or a facility operated by or under contract with a local mental health

1 authority, unless the facility is licensed under Chapter 577;

2 (2) a hospital, or the emergency department of a  
3 hospital, licensed under Chapter 241; and

4 (3) a freestanding emergency medical care facility  
5 licensed under Chapter 254.

6 (b) The governing body of a facility may adopt and implement  
7 a written policy that provides for the facility or a physician at  
8 the facility to detain a person who voluntarily requested treatment  
9 from the facility or who lacks the capacity to consent to treatment,  
10 as provided by this section, if:

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

14 (2) a physician at the facility:

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

16 (i) the person has a mental illness; and

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

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

23 (c) A policy adopted and implemented by a facility under  
24 this section may not allow the facility or a physician at the  
25 facility to detain a person who has been transported to the facility  
26 for emergency detention under this chapter.

27 (d) A policy adopted and implemented by a facility under

1 this section must require:

2 (1) the facility staff or the physician who intends to  
3 detain the person under the policy to notify the person of that  
4 intention;

5 (2) a physician to document a decision by the facility  
6 or the physician to detain a person under the policy and to place a  
7 notice of detention in the person's medical record that contains  
8 the same information as required in a peace officer's notification  
9 of detention under Section 573.002; and

10 (3) the period of a person's detention under the policy  
11 to be less than four hours following the time the person first  
12 expressed a desire to leave, or attempted to leave, the facility,  
13 and the facility or physician to release the person not later than  
14 the end of the four-hour period unless the facility staff or  
15 physician arranges for a peace officer to take the person into  
16 custody under Section 573.001 or an order of protective custody is  
17 issued.

18 (e) Detention of a person under a policy adopted and  
19 implemented by a facility under this section is not considered  
20 involuntary psychiatric hospitalization for purposes of Section  
21 411.172(e), Government Code.

22 (f) A physician, person, or facility that detains or does  
23 not detain a person under a policy adopted and implemented by a  
24 facility under this section and that acts in good faith and without  
25 malice is not civilly or criminally liable for that action.

26 (g) A facility is not civilly or criminally liable for its  
27 governing body's decision to adopt or not to adopt a policy under

1 this section.

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