

By: Sherman, Sr.

H.B. No. 5210

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of a peace officer to apprehend a person
3 for emergency detention and the authority of certain facilities and
4 professionals to temporarily detain a person with mental illness.

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

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

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

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

13 (i) A peace officer may take a person who has been admitted
14 to a facility into custody under this section. For purposes of this
15 subsection, "facility" has the meaning assigned by Section 573.006.

16 SECTION 3. Subchapter A, Chapter 573, Health and Safety
17 Code, is amended by adding Sections 573.0015, 573.0016, and 573.006
18 to read as follows:

19 Sec. 573.0015. APPLICATION FOR EMERGENCY DETENTION BY
20 MENTAL HEALTH PROFESSIONAL. (a) A non-physician mental health
21 professional specified in Section 571.003(15)(A) or (B) may file an
22 application for emergency detention with an inpatient mental health
23 facility for a preliminary examination in accordance with Section
24 573.021 without the assistance of a peace officer if the

1 professional has reason to believe and does believe that:

2 (1) the person is a person with mental illness; and

3 (2) because of that mental illness there is a
4 substantial risk of serious harm to the person or to others unless
5 the person is immediately restrained.

6 (b) A substantial risk of serious harm to the person or
7 others under Subsection (a)(2) may be demonstrated by:

8 (1) the person's behavior; or

9 (2) evidence of severe emotional distress and
10 deterioration in the person's mental condition to the extent that
11 the person cannot remain at liberty.

12 (c) The application for detention must contain:

13 (1) a statement that the non-physician mental health
14 professional has reason to believe and does believe that the person
15 evidences mental illness;

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

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

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

23 (5) a statement that the professional's beliefs are
24 derived from specific recent behavior, overt acts, attempts, or
25 threats that were observed by the professional; and

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

1 Sec. 573.0016. DETENTION AT A HOSPITAL OR EMERGENCY CUSTODY
2 BY A PEACE OFFICER. A person may be taken into custody by a peace
3 officer and placed in a facility, or the person may be detained at a
4 hospital at which the person presented or was brought to receive
5 medical or mental health care, if the peace officer or a physician
6 medical staff member of the hospital or a physician's assistant or
7 advanced practice registered nurse practicing in the hospital has
8 reason to believe that the person is gravely disabled due to mental
9 illness or the person's continued liberty poses an imminent danger
10 to that person or others, as evidenced by a threat of substantial
11 physical harm; provided, under no circumstances may the proposed
12 patient be detained in a nonmedical unit used for the detention of
13 individuals charged with or convicted of penal offenses.

14 Sec. 573.006. TEMPORARY DETENTION IN CERTAIN FACILITIES.

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

16 (1) an inpatient mental health facility other than a
17 community center, a facility operated by or under contract with a
18 community center, an entity that the department designates to
19 provide mental health services, a local mental health authority, or
20 a facility operated by or under contract with a local mental health
21 authority, unless the facility is licensed under Chapter 577;

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

24 (3) a freestanding emergency medical care facility
25 licensed under Chapter 254.

26 (b) The governing body of a facility may adopt and implement
27 a written policy that provides for the facility or a physician at

1 the facility to detain a person who voluntarily requested treatment
2 from the facility or who lacks the capacity to consent to treatment,
3 as provided by this section, if:

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

7 (2) a physician at the facility:

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

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

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

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

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

20 (d) A policy adopted and implemented by a facility under
21 this section must require:

22 (1) the facility staff or the physician who intends to
23 detain the person under the policy to notify the person of that
24 intention;

25 (2) a physician to document a decision by the facility
26 or the physician to detain a person under the policy and to place a
27 notice of detention in the person's medical record that contains

1 the same information as required in a peace officer's notification
2 of detention under Section 573.002;

3 (3) the period of a person's detention under the policy
4 to be less than four hours following the time the person first
5 expressed a desire to leave, or attempted to leave, the facility;
6 and

7 (4) the facility or physician to release the person
8 not later than the end of the four-hour period unless the facility
9 staff or physician arranges for a peace officer to take the person
10 into custody under Section 573.001 or an order of protective
11 custody is issued.

12 (e) Whenever a person is taken into custody or detained
13 under this section without court order, the evidence supporting the
14 claim of grave disability due to mental illness or imminent danger
15 must be presented to a duly authorized court within four hours from
16 the time the individual was placed in custody or detained.

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

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

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

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