

BILL ANALYSIS

C.S.H.B. 2679
By: Hartnett
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a guardian is not allowed to voluntarily admit an adult ward for inpatient mental health services. Unfortunately, hospitals generally refuse to allow wards to voluntarily admit themselves because the wards may lack the capacity to do so. Guardians in such cases face a real dilemma. They often must watch their wards refuse to take medication or otherwise deteriorate but be unable to do anything about the situation until it reaches the point they must call the sheriff or police.

C.S.H.B. 2679 gives a guardian the authority to transport a ward to an inpatient mental health facility for a preliminary examination, provides for the ability of a guardian to consent to the administration of psychoactive medication to an adult ward, and grants a guardian the ability to secure the emergency detention of a ward under certain circumstances.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2679 amends the Probate Code to provide that a guardian of the person of a ward has the power to transport the ward to an inpatient mental health facility for a preliminary examination under certain conditions set forth in the Health and Safety Code.

The bill provides that information regarding whether the guardian has filed for emergency detention of the ward under the Health and Safety Code may be included in the guardian's annual sworn affidavit to the court, and that this information may include the number of times the guardian has filed for emergency detention of the ward and the dates of the applications.

The bill provides that a guardian of a ward who is not a minor may, if the ward is under a protective custody order as provided by the Health and Safety Code, consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preference regarding treatment with psychoactive medication.

The bill also amends the Health and Safety Code regarding the emergency detention of a ward by a guardian. The bill provides that a guardian, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with certain provisions of the Health and Safety Code if the guardian has reason to believe and does believe that the ward is mentally ill, and that because of that mental illness, there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained. This substantial risk may be demonstrated by the ward's behavior or evidence of severe emotional distress and deterioration in the ward's mental condition to the extent the ward cannot remain at liberty.

The bill also provides that after transporting a ward to a facility as provided above, the guardian shall immediately file an application for detention with the facility. This application must contain a statement that

the guardian has reason to believe and does believe that the ward evidences mental illness; a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of harm to the ward or others; a specific description of the risk of harm; a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained; a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and a detailed description of the specific behavior, acts, attempts or threats. The guardian shall immediately provide written notice of the filing of such an application to the court that granted the guardianship.

The bill also provides that if a patient is a ward who is 18 years of age or older, the guardian of the person of the ward may consent to the administration of psychoactive medication regardless of the ward's expressed preference regarding treatment with psychoactive medication in situations dealing with the administration of medication under court ordered mental health services arising under Section 574.103 of the Health and Safety Code

The bill also adds persons "transported for emergency detention" to the current statute's provision for the rights of persons apprehended or detained.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute provides that if the patient is a ward "who is 18 years of age or older," the guardian of the person of the ward may consent to the administration of psychoactive medication. The language in the original referred to a ward "who is not a minor."

The substitute also adds persons "transported for emergency detention" to the current statute's provision for the rights of persons apprehended or detained.