

BILL ANALYSIS

Senate Research Center
78R4002 MTB-D

S.B. 1450
By: Harris
Jurisprudence
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DIGEST AND PURPOSE

Currently, guardians are prohibited by law from voluntarily admitting an adult ward for inpatient mental health services. Guardians must stand by and watch while wards refuse to take medication, and the wards may become a danger to themselves or others. The guardian must then petition for a warrant to have a sheriff apprehend the ward or call the police to make a warrantless apprehension. As proposed, S.B. 1450 allows a guardian of the person of an adult ward, acting without the assistance of a peace officer, to transport the ward to a psychiatric hospital and to apply for emergency detention when a ward, due to mental illness, becomes a substantial risk of serious harm to himself, herself, or others; allows guardians improved access to inpatient mental health services for their wards without using law enforcement officials to apprehend wards; and clarifies that a guardian of the person of an adult ward may authorize the hospital to administer psychoactive medication as prescribed by the ward's treating physician during the protective custody period pending the hearing on the commitment.

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 Section 743(b), Texas Probate Code, to require the guardian of the person, whether or not there is a separate guardian of the estate, to submit to the court an annual report by sworn affidavit that contains certain information, including whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code, and if applicable, the number of times the guardian has filed and the dates of the applications.

SECTION 2. Amends Section 767, Texas Probate Code, as follows:

Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a) Created from existing text.

(b) Provides that notwithstanding Subsection (a)(4) of this section, 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 in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

SECTION 3. Amends Section 770(b), Texas Probate Code, to authorize a person or a person's guardian, if care and treatment in a psychiatric or a residential facility are necessary, to perform certain acts, including the transportation of the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

SECTION 4. Amends Subpart E, Part 4, Chapter XIII, Texas Probate Code, by adding Section 770A, as follows:

Sec. 770A. ADMINISTRATION OF MEDICATION. (a) Defines "psychoactive

medication.”

(b) Authorizes the guardian of the person of the ward, if a person under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, is a ward who is not a minor, to consent to the administration of psychoactive medication as prescribed by the ward’s treating physician regardless of the ward’s expressed preferences regarding treatment with psychoactive medication.

SECTION 5. Amends the heading of Subchapter A, Chapter 573, Health and Safety Code, to read as follows:

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER
OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

SECTION 6. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Sections 573.003 and 573.004, as follows:

Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN. (a) Authorizes a guardian of the person of a ward, without the assistance of a peace officer, to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe certain circumstances exist.

(b) Authorizes a substantial risk of serious harm to the ward or others under Subsection (a)(2) to be demonstrated by certain factors.

Sec. 573.004. GUARDIAN’S APPLICATION FOR EMERGENCY DETENTION. (a) Requires a guardian, after transporting a ward to a facility under Section 573.003, to immediately file an application for detention with the facility.

(b) Requires the application for detention to contain certain information.

(c) Requires the guardian to immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

SECTION 7. Amends Section 573.021(c), Health and Safety Code, to require a physician to examine the person as soon as possible within 24 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person’s guardian.

SECTION 8. Amends Section 573.023(a), Health and Safety Code, to require a person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B to be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

SECTION 9. Amends Section 573.024(c), Health and Safety Code, to require arrangements, if the person was apprehended by a peace officer under Subchapter A, to be made to immediately transport the person. Provides that if the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

SECTION 10. Amends Section 574.103, Health and Safety Code, as follows:

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES. (a) Defines “minor” and “ward.”

(b) Prohibits a person from administering a psychoactive medication to a patient who refuses to take the medication voluntarily unless a certain exception applies,

including that the patient is a ward who is not a minor and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

SECTION 11. Effective date: September 1, 2003.