

By: Hartnett

H.B. No. 2679

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the authority of a guardian of the person of a ward to  
3 transport the ward to an inpatient mental health facility and file  
4 for emergency detention under certain circumstances and to consent  
5 to the administration of certain medication.

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

7 SECTION 1. Section 743(b), Texas Probate Code, is amended  
8 to read as follows:

9 (b) The guardian of the person, whether or not there is a  
10 separate guardian of the estate, shall submit to the court an annual  
11 report by sworn affidavit that contains the following information:

12 (1) the guardian's current name, address, and phone  
13 number;

14 (2) the ward's current:

15 (A) name, address, and phone number; and

16 (B) age and date of birth;

17 (3) the type of home in which the ward resides,  
18 described as the ward's own; a nursing, guardian's, foster, or  
19 boarding home; a relative's home, and the ward's relationship to the  
20 relative; a hospital or medical facility; or other type of  
21 residence;

22 (4) the length of time the ward has resided in the  
23 present home and, if there has been a change in the ward's residence  
24 in the past year, the reason for the change;

1           (5) the date the guardian most recently saw the ward,  
2 and how frequently the guardian has seen the ward in the past year;

3           (6) a statement indicating whether or not the guardian  
4 has possession or control of the ward's estate;

5           (7) the following statements concerning the ward's  
6 health during the past year:

7                   (A) whether the ward's mental health has  
8 improved, deteriorated, or remained unchanged, and a description if  
9 there has been a change; and

10                   (B) whether the ward's physical health has  
11 improved, deteriorated, or remained unchanged, and a description if  
12 there has been a change;

13           (8) a statement concerning whether or not the ward has  
14 regular medical care, and the ward's treatment or evaluation by any  
15 of the following persons during the last year, including the name of  
16 that person, and the treatment involved:

17                   (A) a physician;

18                   (B) a psychiatrist, psychologist, or other  
19 mental health care provider;

20                   (C) a dentist;

21                   (D) a social or other caseworker; or

22                   (E) another individual who provided treatment;

23           (9) a description of the ward's activities during the  
24 past year, including recreational, educational, social, and  
25 occupational activities, or if no activities are available or if  
26 the ward is unable or has refused to participate in them, a  
27 statement to that effect;

1           (10) the guardian's evaluation of the ward's living  
2 arrangements as excellent, average, or below average, including an  
3 explanation if the conditions are below average;

4           (11) the guardian's evaluation of whether the ward is  
5 content or unhappy with the ward's living arrangements;

6           (12) the guardian's evaluation of unmet needs of the  
7 ward;

8           (13) a statement of whether or not the guardian's power  
9 should be increased, decreased, or unaltered, including an  
10 explanation if a change is recommended;

11           (14) a statement that the guardian has paid the bond  
12 premium for the next reporting period; and

13           (15) any additional information the guardian desires  
14 to share with the court regarding the ward, including whether the  
15 guardian has filed for emergency detention of the ward under  
16 Subchapter A, Chapter 573, Health and Safety Code, and if  
17 applicable, the number of times the guardian has filed and the dates  
18 of the applications.

19           SECTION 2. Section 767, Texas Probate Code, is amended to  
20 read as follows:

21           Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON. (a)  
22 The guardian of the person is entitled to the charge and control of  
23 the person of the ward, and the duties of the guardian correspond  
24 with the rights of the guardian. A guardian of the person has:

25           (1) the right to have physical possession of the ward  
26 and to establish the ward's legal domicile;

27           (2) the duty of care, control, and protection of the

1 ward;

2 (3) the duty to provide the ward with clothing, food,  
3 medical care, and shelter; and

4 (4) the power to consent to medical, psychiatric, and  
5 surgical treatment other than the in-patient psychiatric  
6 commitment of the ward.

7 (b) Notwithstanding Subsection (a)(4) of this section, a  
8 guardian of the person of a ward has the power to transport the ward  
9 to an inpatient mental health facility for a preliminary  
10 examination in accordance with Subchapters A and C, Chapter 573,  
11 Health and Safety Code.

12 SECTION 3. Section 770(b), Texas Probate Code, is amended  
13 to read as follows:

14 (b) Except as provided by Subsection (c) or (d) of this  
15 section, a guardian may not voluntarily admit an incapacitated  
16 person to a public or private in-patient psychiatric facility or to  
17 a residential facility operated by the Texas Department of Mental  
18 Health and Mental Retardation for care and treatment. If care and  
19 treatment in a psychiatric or a residential facility are necessary,  
20 the person or the person's guardian may:

21 (1) apply for services under Section 593.027 or  
22 593.028, Health and Safety Code;

23 (2) [~~7-01~~] apply to a court to commit the person under  
24 Subtitle D, Title 7, Health and Safety Code (Persons with Mental  
25 Retardation Act), Subtitle C, Title 7, Health and Safety Code  
26 (Texas Mental Health Code), or Chapter 462, Health and Safety Code;

27 or

1           (3) transport the ward to an inpatient mental health  
2 facility for a preliminary examination in accordance with  
3 Subchapters A and C, Chapter 573, Health and Safety Code.

4           SECTION 4. Subpart E, Part 4, Chapter XIII, Texas Probate  
5 Code, is amended by adding Section 770A to read as follows:

6           Sec. 770A. ADMINISTRATION OF MEDICATION. (a) In this  
7 section, "psychoactive medication" has the meaning assigned by  
8 Section 574.101, Health and Safety Code.

9           (b) If a person under a protective custody order as provided  
10 by Subchapter B, Chapter 574, Health and Safety Code, is a ward who  
11 is not a minor, the guardian of the person of the ward may consent to  
12 the administration of psychoactive medication as prescribed by the  
13 ward's treating physician regardless of the ward's expressed  
14 preferences regarding treatment with psychoactive medication.

15           SECTION 5. The heading of Subchapter A, Chapter 573, Health  
16 and Safety Code, is amended to read as follows:

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

19           SECTION 6. Subchapter A, Chapter 573, Health and Safety  
20 Code, is amended by adding Sections 573.003 and 573.004 to read as  
21 follows:

22           Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY  
23 GUARDIAN. (a) A guardian of the person of a ward, without the  
24 assistance of a peace officer, may transport the ward to an  
25 inpatient mental health facility for a preliminary examination in  
26 accordance with Section 573.021 if the guardian has reason to  
27 believe and does believe that:

1           (1) the ward is mentally ill; and

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

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

7           (1) the ward's behavior; or

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

11           Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY  
12 DETENTION. (a) After transporting a ward to a facility under  
13 Section 573.003, a guardian shall immediately file an application  
14 for detention with the facility.

15           (b) The application for detention must contain:

16           (1) a statement that the guardian has reason to  
17 believe and does believe that the ward evidences mental illness;

18           (2) a statement that the guardian has reason to  
19 believe and does believe that the ward evidences a substantial risk  
20 of serious harm to the ward or others;

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

22           (4) a statement that the guardian has reason to  
23 believe and does believe that the risk of harm is imminent unless  
24 the ward is immediately restrained;

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

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

3           (c) The guardian shall immediately provide written notice  
4 of the filing of an application under this section to the court that  
5 granted the guardianship.

6           SECTION 7. Section 573.021(c), Health and Safety Code, is  
7 amended to read as follows:

8           (c) A physician shall examine the person as soon as possible  
9 within 24 hours after the time the person is apprehended by the  
10 peace officer or transported for emergency detention by the  
11 person's guardian.

12           SECTION 8. Section 573.023(a), Health and Safety Code, is  
13 amended to read as follows:

14           (a) A person apprehended by a peace officer or transported  
15 for emergency detention under Subchapter A or detained under  
16 Subchapter B shall be released on completion of the preliminary  
17 examination unless the person is admitted to a facility under  
18 Section 573.022.

19           SECTION 9. Section 573.024(c), Health and Safety Code, is  
20 amended to read as follows:

21           (c) If the person was apprehended by a peace officer under  
22 Subchapter A, arrangements must be made to immediately transport  
23 the person. If the person was transported for emergency detention  
24 under Subchapter A or detained under Subchapter B, the person is  
25 entitled to reasonably prompt transportation.

26           SECTION 10. Section 573.025, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, ~~[OR]~~ DETAINED,  
2 OR TRANSPORTED FOR EMERGENCY DETENTION. (a) A person apprehended,  
3 ~~[or]~~ detained, or transported for emergency detention under this  
4 chapter has the right:

5           (1) to be advised of the location of detention, the  
6 reasons for the detention, and the fact that the detention could  
7 result in a longer period of involuntary commitment;

8           (2) to a reasonable opportunity to communicate with  
9 and retain an attorney;

10           (3) to be transported to a location as provided by  
11 Section 573.024 if the person is not admitted for emergency  
12 detention, unless the person is arrested or objects;

13           (4) to be released from a facility as provided by  
14 Section 573.023;

15           (5) to be advised that communications with a mental  
16 health professional may be used in proceedings for further  
17 detention; and

18           (6) to be transported in accordance with Sections  
19 573.026 and 574.045, if the person is detained under Section  
20 573.022 or transported under an order of protective custody under  
21 Section 574.023.

22           (b) A person apprehended, ~~[or]~~ detained, or transported for  
23 emergency detention under this subtitle shall be informed of the  
24 rights provided by this section:

25           (1) orally in simple, nontechnical terms, within 24  
26 hours after the time the person is admitted to a facility, and in  
27 writing in the person's primary language if possible; or



1           (2) through the use of a means reasonably calculated  
2 to communicate with a hearing or visually impaired person, if  
3 applicable.

4           SECTION 11. Section 574.103, Health and Safety Code, is  
5 amended to read as follows:

6           Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER  
7 COURT-ORDERED MENTAL HEALTH SERVICES. (a) In this section, "ward"  
8 has the meaning assigned by Section 601, Texas Probate Code.

9           (b) A person may not administer a psychoactive medication to  
10 a patient who refuses to take the medication voluntarily unless:

11           (1) the patient is having a medication-related  
12 emergency; ~~[or]~~

13           (2) the patient is under an order issued under Section  
14 574.106 authorizing the administration of the medication  
15 regardless of the patient's refusal; or

16           (3) the patient is a ward who is 18 years of age or  
17 older and the guardian of the person of the ward consents to the  
18 administration of psychoactive medication regardless of the ward's  
19 expressed preferences regarding treatment with psychoactive  
20 medication.

21           SECTION 12. This Act takes effect September 1, 2003.