

By: Harris

S.B. No. 1450

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

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

(2) the ward's current:

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

(B) age and date of birth;

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

(4) the length of time the ward has resided in the present home and, if there has been a change in the ward's residence 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.

22 (a) The guardian of the person is entitled to the charge and
23 control of the person of the ward, and the duties of the guardian
24 correspond with the rights of the guardian. A guardian of the
25 person has:

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

1 (2) the duty of care, control, and protection of the
2 ward;

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

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

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

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

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

22 (1) apply for services under Section 593.027 or
23 593.028, Health and Safety Code;

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

1 or

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

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

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

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

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

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

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

23 Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY
24 GUARDIAN. (a) A guardian of the person of a ward who is 18 years of
25 age or older, without the assistance of a peace officer, may
26 transport the ward to an inpatient mental health facility for a
27 preliminary examination in accordance with Section 573.021 if the

1 guardian has reason to believe and does believe that:

2 (1) the ward is mentally ill; and

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

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

8 (1) the ward's behavior; or

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

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

16 (b) The application for detention must contain:

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

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

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

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

26 (5) a statement that the guardian's beliefs are
27 derived from specific recent behavior, overt acts, attempts, or

1 threats that were observed by the guardian; and

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

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

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

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

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

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

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

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

27 SECTION 10. Section 573.025, Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

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

26 (1) orally in simple, nontechnical terms, within 24
27 hours after the time the person is admitted to a facility, and in

1 writing in the person's primary language if possible; or

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

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

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

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

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

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

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

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