

BILL ANALYSIS

C.S.S.B. 44
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides that a jail or similar detention facility is not a suitable place to detain individuals under emergency detention orders or certain orders for protective custody except in an extreme emergency. Observers note that courts have ruled that detaining an individual in jail even for a day is unconstitutional if the individual is not being held on criminal charges. Additionally, these observers assert that data on the use of jails to detain individuals with mental illness who have not been charged with a crime is needed, but is not currently being collected. Finally, these observers contend that changes are needed to ensure that persons with mental illness who are experiencing a psychiatric emergency are transported in a manner that allows them to remain in an upright position without undue difficulty.

C.S.S.B. 44 seeks to prevent the detention of individuals with mental illness who have not been charged with a crime in jails or other similar detention facilities and ensure the safe transportation of such individuals by limiting the conditions that constitute an extreme emergency to hazardous weather or other threatening circumstances, requiring the sheriff or officeholder responsible for a jail or similar detention facility to report certain information relating to the detention of persons who have not committed a crime, and amending current law relating to the transportation of a person with mental illness.

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.S.B. 44 amends the Health and Safety Code to prohibit a jail or similar detention facility from being deemed suitable for detention of a person taken into custody by a peace officer without a warrant for an emergency detention because of circumstances relating to the person's mental illness except in an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or person transporting the proposed patient.

C.S.S.B. 44 authorizes such a person, in the event of an extreme emergency, to be detained in a jail or similar detention facility under such conditions during the extreme emergency and for not longer than 12 hours after the extreme emergency ends. The bill requires the sheriff or other officeholder responsible for the facility to document and report to the Commission on Jail Standards on a monthly basis for each person detained in a jail or similar detention facility for emergency detention, the time the person's detention begins, the duration of and reason for the detention, and the time a representative of the local mental health authority is notified and arrives at the facility. The bill specifies that the sheriff or officeholder responsible for a jail or a similar detention facility is required to ensure that such a person detained in the jail or similar detention facility is kept separate from any person who is charged with or convicted of a crime.

C.S.S.B. 44 clarifies that a person apprehended under a protective custody order for purposes of provisions relating to court-ordered mental health services may be detained only in the manner provided by provisions, as amended by the bill, relating to detention of a person in protective custody in a certain suitable mental health facility.

C.S.S.B. 44 specifies that a person detained under a protective custody order for purposes of provisions relating to court-ordered mental health services is prohibited from being detained in a jail or nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or the person transporting the proposed patient. The bill authorizes such a person, in the event of an extreme emergency, to be detained in a jail or nonmedical facility under such conditions for not longer than 12 hours after the extreme emergency ends.

C.S.S.B. 44 requires the sheriff or other officeholder responsible for the facility to document and report to the Commission on Jail Standards on a monthly basis for each person detained in a jail or nonmedical facility under a protective custody order for purposes of provisions relating to court-ordered mental health services the time the person's detention begins, the duration of and reason for the detention, and the time a representative of the local mental health authority is notified and arrives at the facility. The bill requires the sheriff or officeholder responsible for a jail or nonmedical facility to ensure that such a person detained in the jail or nonmedical facility under such a protective custody order is kept separate from any person who is charged with or convicted of a crime. The bill removes a provision prohibiting a person under such a protective custody order from being detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by provisions of law regarding probable cause hearings for an extreme emergency.

C.S.S.B. 44 authorizes a patient who is physically restrained in order to protect the patient's health and safety or that of a person traveling with the patient to be restrained only during the apprehension, detention, or transportation of the patient. The bill requires the method of restraint to permit the patient to sit in an upright position without undue difficulty.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 44 omits a provision included in the original including a medical facility or other facility that a local mental health authority deems suitable as an alternative facility to which a peace officer is required to immediately transport a person taken into custody without a warrant for an emergency detention because of circumstances relating to the person's mental illness if neither an appropriate inpatient mental health facility nor a mental health facility deemed suitable by the local mental health authority is available.

C.S.S.B. 44 differs from the original by prohibiting a jail or similar detention facility from being deemed suitable for the detention of a person taken into custody without a warrant for an emergency detention except in an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or person transporting the proposed patient, whereas the original establishes that such a facility used to detain persons charged with or convicted of a crime is not a facility suitable for the emergency detention of such persons unless an appropriate inpatient or other suitable mental health facility is not available and the nearest medical facility is located more than 75 miles from the location where the peace officer has custody of the person and makes a related conforming change.

C.S.S.B. 44 differs from the original by specifying that a person detained under a protective custody order for purposes of provisions relating to court-ordered mental health services is prohibited from being detained in a jail or nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or the person transporting the proposed patient, whereas the original prohibits such detention unless another suitable mental health facility is not available and the nearest medical facility or other facility deemed suitable by the local mental health authority is located more than 75 miles from the location where the peace officer has custody of the person and makes a related conforming change.

C.S.S.B. 44 differs from the original, in the bill provisions authorizing a person taken into custody without a warrant for an emergency detention or a person detained in a jail or a nonmedical facility under a protective custody order for purposes of provisions relating to court-ordered mental health services to be detained in a jail or similar detention or nonmedical facility, as applicable, under such conditions for not longer than 12 hours, by specifying that a person is authorized to stay in such a facility in the event of an extreme emergency during the emergency and for not longer than 12 hours after the extreme emergency ends, whereas the original contains no such specifications.

C.S.S.B. 44 contains a provision not included in the original requiring the sheriff or other officeholder responsible for the facility in which such persons are detained for an emergency detention or under a protective custody order to report certain information to the Commission on Jail Standards on a monthly basis for each person detained in a jail or similar detention or nonmedical facility, as applicable. The substitute contains a specification not included in the original that the information required to be documented and reported by the sheriff or other officeholder responsible for those facilities includes the time a representative of the local mental health authority is notified.