

1-1 By: Burkett, Naishtat, N. Gonzalez of El Paso H.B. No. 1947
 1-2 (Senate Sponsor - Zaffirini)
 1-3 (In the Senate - Received from the House May 6, 2013;
 1-4 May 7, 2013, read first time and referred to Committee on Health
 1-5 and Human Services; May 16, 2013, reported adversely, with
 1-6 favorable Committee Substitute by the following vote: Yeas 7,
 1-7 Nays 0; May 16, 2013, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9 Nelson	X			
1-10 Deuell	X			
1-11 Huffman			X	
1-12 Nichols	X			
1-13 Schwertner			X	
1-14 Taylor	X			
1-15 Uresti	X			
1-16 West	X			
1-17 Zaffirini	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 1947 By: Zaffirini

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the criteria for commitment or detention of a person
 1-23 with mental illness.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 571.003, Health and Safety Code, is
 1-26 amended by adding Subdivision (7-a) to read as follows:

1-27 (7-a) "Gravely disabled" means a person who, as a
 1-28 result of mental illness, is:

1-29 (A) suffering severe and ongoing mental,
 1-30 emotional, or physical distress;

1-31 (B) in danger of serious physical harm or serious
 1-32 illness due to the person's inability to function independently,
 1-33 which is exhibited by the person's inability due to mental illness,
 1-34 except for reasons of indigence, to provide for the person's basic
 1-35 needs, including food, clothing, shelter, medical care, health, or
 1-36 safety; and

1-37 (C) unable to make a rational and informed
 1-38 decision as to whether to submit to treatment.

1-39 SECTION 2. The heading to Subchapter A, Chapter 573, Health
 1-40 and Safety Code, is amended to read as follows:

1-41 SUBCHAPTER A. APPREHENSION, ~~[BY PEACE OFFICER OR]~~ TRANSPORTATION,
 1-42 ~~OR DETENTION WITHOUT JUDGE'S OR MAGISTRATE'S ORDER [FOR EMERGENCY~~
 1-43 ~~DETENTION BY GUARDIAN]~~

1-44 SECTION 3. Section 573.001, Health and Safety Code, is
 1-45 amended by amending Subsection (b) and adding Subsection (g) to
 1-46 read as follows:

1-47 (b) A substantial risk of serious harm to the person or
 1-48 others under Subsection (a)(1)(B) may be demonstrated by:

1-49 (1) the person's behavior; or

1-50 (2) evidence of the person being gravely disabled
 1-51 ~~[severe emotional distress and deterioration in the person's mental~~
 1-52 ~~condition]~~ to the extent that the person cannot remain at liberty.

1-53 (g) A peace officer may take a person who has been admitted
 1-54 to a facility into custody under this section. For purposes of this
 1-55 subsection, "facility" has the meaning assigned by Section 573.005.

1-56 SECTION 4. Section 573.003(b), Health and Safety Code, is
 1-57 amended to read as follows:

1-58 (b) A substantial risk of serious harm to the ward or others
 1-59 under Subsection (a)(2) may be demonstrated by:

1-60 (1) the ward's behavior; or

2-1 (2) evidence of the ward being gravely disabled
2-2 [~~severe emotional distress and deterioration in the ward's mental~~
2-3 ~~condition~~] to the extent that the ward cannot remain at liberty.

2-4 SECTION 5. Subchapter A, Chapter 573, Health and Safety
2-5 Code, is amended by adding Section 573.005 to read as follows:

2-6 Sec. 573.005. TEMPORARY DETENTION BY CERTAIN FACILITIES.

2-7 (a) In this section, "facility" means:

2-8 (1) a mental health facility;

2-9 (2) a hospital, or the emergency department of a
2-10 hospital, licensed under Chapter 241; and

2-11 (3) a freestanding emergency medical care facility
2-12 licensed under Chapter 254.

2-13 (b) This section does not apply to a person who has been
2-14 transported to a facility for emergency detention under this
2-15 chapter.

2-16 (c) A facility may detain a person who voluntarily requested
2-17 treatment from the facility or who lacks the capacity to consent to
2-18 treatment, as provided by this section, if:

2-19 (1) the person expresses a desire to leave the
2-20 facility or attempts to leave the facility before the examination
2-21 or treatment is completed; and

2-22 (2) a physician at the facility:

2-23 (A) has reason to believe and does believe that:

2-24 (i) the person has a mental illness; and

2-25 (ii) because of that mental illness there
2-26 is a substantial risk of serious harm to the person or to others
2-27 unless the person is immediately restrained; and

2-28 (B) believes that there is not sufficient time to
2-29 file an application for emergency detention or for an order of
2-30 protective custody.

2-31 (d) The facility staff or physician shall notify the person
2-32 if the facility intends to detain the person under this section.

2-33 (e) The physician shall document a decision to detain a
2-34 person under this section and place that notice of detention in the
2-35 person's medical record. The notice of detention must contain:

2-36 (1) a statement that the physician has reason to
2-37 believe and does believe that the person evidences mental illness;

2-38 (2) a statement that the physician has reason to
2-39 believe and does believe that the person evidences a substantial
2-40 risk of serious harm to the person or others;

2-41 (3) a specific description of the risk of harm;

2-42 (4) a statement that the physician has reason to
2-43 believe and does believe that the risk of harm is imminent unless
2-44 the person is immediately restrained;

2-45 (5) a statement that the physician's beliefs are
2-46 derived from specific recent behavior, overt acts, attempts, or
2-47 threats that were observed by or reliably reported to the
2-48 physician; and

2-49 (6) a detailed description of the specific behavior,
2-50 acts, attempts, or threats.

2-51 (f) The period of a person's detention authorized by this
2-52 section may not exceed four hours following the time the person
2-53 first expressed a desire to leave, or attempted to leave, the
2-54 facility. The facility shall release the person not later than the
2-55 end of the four-hour period unless the facility arranges for a peace
2-56 officer to take the person into custody under Section 573.001 or an
2-57 order of protective custody is issued.

2-58 (g) A physician, person, or facility that detains or fails
2-59 to detain a person under this section and who acts in good faith and
2-60 without malice is not civilly or criminally liable for that action.

2-61 SECTION 6. Section 573.012(c), Health and Safety Code, is
2-62 amended to read as follows:

2-63 (c) A substantial risk of serious harm to the person or
2-64 others under Subsection (b)(2) may be demonstrated by:

2-65 (1) the person's behavior; or

2-66 (2) evidence of the person being gravely disabled
2-67 [~~severe emotional distress and deterioration in the person's mental~~
2-68 ~~condition~~] to the extent that the person cannot remain at liberty.

2-69 SECTION 7. Section 573.022(a), Health and Safety Code, is

3-1 amended to read as follows:

3-2 (a) A person may be admitted to a facility for emergency
3-3 detention only if the physician who conducted the preliminary
3-4 examination of the person makes a written statement that:

3-5 (1) is acceptable to the facility;
3-6 (2) states that after a preliminary examination it is
3-7 the physician's opinion that:

3-8 (A) the person is mentally ill;
3-9 (B) the person evidences a substantial risk of
3-10 serious harm to himself or others;

3-11 (C) the described risk of harm is imminent unless
3-12 the person is immediately restrained; and

3-13 (D) emergency detention is the least restrictive
3-14 means by which the necessary restraint may be accomplished; and

3-15 (3) includes:

3-16 (A) a description of the nature of the person's
3-17 mental illness;

3-18 (B) a specific description of the risk of harm
3-19 the person evidences that may be demonstrated either by the
3-20 person's behavior or by evidence of the person being gravely
3-21 disabled [~~severe emotional distress and deterioration in the~~
3-22 ~~person's mental condition~~] to the extent that the person cannot
3-23 remain at liberty; and

3-24 (C) the specific detailed information from which
3-25 the physician formed the opinion in Subdivision (2).

3-26 SECTION 8. Section 574.011(d), Health and Safety Code, is
3-27 amended to read as follows:

3-28 (d) If the certificate is offered in support of a motion for
3-29 a protective custody order, the certificate must also include the
3-30 examining physician's opinion that the examined person presents a
3-31 substantial risk of serious harm to himself or others if not
3-32 immediately restrained. The harm may be demonstrated by the
3-33 examined person's behavior or by evidence of the person being
3-34 gravely disabled [~~severe emotional distress and deterioration in~~
3-35 ~~the examined person's mental condition~~] to the extent that the
3-36 examined person cannot remain at liberty.

3-37 SECTION 9. Section 574.022(b), Health and Safety Code, is
3-38 amended to read as follows:

3-39 (b) The determination that the proposed patient presents a
3-40 substantial risk of serious harm may be demonstrated by the
3-41 proposed patient's behavior or by evidence of the person being
3-42 gravely disabled [~~severe emotional distress and deterioration in~~
3-43 ~~the proposed patient's mental condition~~] to the extent that the
3-44 proposed patient cannot remain at liberty.

3-45 SECTION 10. Sections 574.034(a) and (d), Health and Safety
3-46 Code, are amended to read as follows:

3-47 (a) The judge may order a proposed patient to receive
3-48 court-ordered temporary inpatient mental health services only if
3-49 the judge or jury finds, from clear and convincing evidence, that:

3-50 (1) the proposed patient is mentally ill; and
3-51 (2) as a result of that mental illness the proposed
3-52 patient:

3-53 (A) is likely to cause serious harm to himself;

3-54 (B) is likely to cause serious harm to others; or

3-55 (C) is gravely disabled [+
3-56 [~~(i) suffering severe and abnormal mental,~~
3-57 ~~emotional, or physical distress,~~

3-58 [~~(ii) experiencing substantial mental or~~
3-59 ~~physical deterioration of the proposed patient's ability to~~
3-60 ~~function independently, which is exhibited by the proposed~~
3-61 ~~patient's inability, except for reasons of indigence, to provide~~
3-62 ~~for the proposed patient's basic needs, including food, clothing,~~
3-63 ~~health, or safety; and~~

3-64 [~~(iii) unable to make a rational and~~
3-65 ~~informed decision as to whether or not to submit to treatment~~].

3-66 (d) To be clear and convincing under Subsection (a), the
3-67 evidence must include expert testimony and, unless waived, evidence
3-68 of a recent overt act or a continuing pattern of behavior that tends
3-69 to confirm:

4-1 (1) the likelihood of serious harm to the proposed
4-2 patient or others; or

4-3 (2) the proposed patient being gravely disabled
4-4 [~~patient's distress and the deterioration of the proposed patient's~~
4-5 ~~ability to function~~].

4-6 SECTION 11. Sections 574.035(a) and (e), Health and Safety
4-7 Code, are amended to read as follows:

4-8 (a) The judge may order a proposed patient to receive
4-9 court-ordered extended inpatient mental health services only if the
4-10 jury, or the judge if the right to a jury is waived, finds, from
4-11 clear and convincing evidence, that:

4-12 (1) the proposed patient is mentally ill;

4-13 (2) as a result of that mental illness the proposed
4-14 patient:

4-15 (A) is likely to cause serious harm to himself;

4-16 (B) is likely to cause serious harm to others; or

4-17 (C) is gravely disabled [+
4-18 [~~(i) suffering severe and abnormal mental,~~

4-19 ~~emotional, or physical distress,~~

4-20 [~~(ii) experiencing substantial mental or~~

4-21 ~~physical deterioration of the proposed patient's ability to~~

4-22 ~~function independently, which is exhibited by the proposed~~

4-23 ~~patient's inability, except for reasons of indigence, to provide~~

4-24 ~~for the proposed patient's basic needs, including food, clothing,~~

4-25 ~~health, or safety; and~~

4-26 [~~(iii) unable to make a rational and~~

4-27 ~~informed decision as to whether or not to submit to treatment~~];

4-28 (3) the proposed patient's condition is expected to

4-29 continue for more than 90 days; and

4-30 (4) the proposed patient has received court-ordered

4-31 inpatient mental health services under this subtitle or under

4-32 Chapter 46B, Code of Criminal Procedure, for at least 60

4-33 consecutive days during the preceding 12 months.

4-34 (e) To be clear and convincing under Subsection (a), the

4-35 evidence must include expert testimony and evidence of a recent

4-36 overt act or a continuing pattern of behavior that tends to confirm:

4-37 (1) the likelihood of serious harm to the proposed

4-38 patient or others; or

4-39 (2) the proposed patient being gravely disabled

4-40 [~~patient's distress and the deterioration of the proposed patient's~~
4-41 ~~ability to function~~].

4-42 SECTION 12. This Act takes effect September 1, 2013.

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