

## **BILL ANALYSIS**

Senate Research Center  
84R5652 EES-F

S.B. 359  
By: West  
Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, emergency departments and hospitals are not authorized to hold an individual who initially requests mental health services, then subsequently requests to leave. This provides hospital employees with few options other than calling law enforcement in the case of emergency.

S.B. 359 provides that a mental health facility, a hospital licensed under Chapter 241 (Hospitals) of the Health and Safety Code, or a freestanding emergency medical care facility licensed under Chapter 254 (Freestanding Emergency Medical Care Facilities) of the Health and Safety Code may detain a person who voluntarily requested treatment if a physician at the facility (1) believes the person has a mental illness and that due to that mental illness there is substantial risk of harm to the person or to others, and (2) believes there is not sufficient time to file an application for emergency detention or order of protective custody. That decision and the reasons for it must be documented by the physician and included in the person's medical record. The detention may not last longer than four hours.

S.B. 359 also clarifies that a police officer may enter a facility to initiate an emergency detention after the four-hour hold has run. Supporters of the bill indicate there have been instances where officers have declined to enter the facility to initiate detention because the subject is already in a safe place.

As proposed, S.B. 359 amends current law relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities to temporarily detain a person with mental illness.

### **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 the heading to Subchapter A, Chapter 573, Health and Safety Code, to read as follows:

#### **SUBCHAPTER A. APPREHENSION, TRANSPORTATION, OR DETENTION WITHOUT JUDGE'S OR MAGISTRATE'S ORDER**

SECTION 2. Amends Section 573.001, Health and Safety Code, by adding Subsection (i), as follows:

(i) Authorizes a peace officer to take a person who has been admitted to a facility into custody under this section. Provides that for purposes of this subsection, "facility" has the meaning assigned by Section 573.005.

SECTION 3. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Section 573.005, as follows:

Sec. 573.005. TEMPORARY DETENTION BY CERTAIN FACILITIES. (a) Provides that in this section "facility" means a mental health facility; a hospital, or the emergency department of a hospital, licensed under Chapter 241 (Hospitals); and a freestanding emergency medical care facility licensed under Chapter 254 (Freestanding Emergency Medical Care Facilities).

(b) Provides that this section does not apply to a person who has been transported to a facility for emergency detention under this chapter.

(c) Authorizes a facility to detain a person who voluntarily requested treatment from the facility or who lacks the capacity to consent to treatment, as provided by this section, if:

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

(2) a physician at the facility has reason to believe and does believe that the person has a mental illness and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained, and believes that there is not sufficient time to file an application for emergency detention or for an order of protective custody.

(d) Requires the facility staff or physician to notify the person if the facility intends to detain the person under this section.

(e) Requires the physician to document a decision to detain a person under this section and place that notice of detention in the person's medical record. Requires that the notice contain a statement that the physician has reason to believe and does believe that the person evidences mental illness, a statement that the physician has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others, a specific description of the risk of harm, a statement that the physician has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained, a statement that the physician's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the physician, and a detailed description of the specific behavior, acts, attempts, or threats.

(f) Prohibits the period of a person's detention authorized by this section from exceeding four hours following the time the person first expressed a desire to leave, or attempted to leave, the facility. Requires the facility to release the person no later than the end of the four-hour period unless the facility arranges for a peace officer to take the person into custody under Section 573.001 (Apprehension by Peace Officer Without Warrant) or an order of protective custody is issued.

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

SECTION 4. Effective date: September 1, 2015.