

By: Nelson

S.B. No. 355

A BILL TO BE ENTITLED

AN ACT

relating to control measures for an individual exposed to a communicable disease.

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

SECTION 1. Sections 81.083(e) and (m), Health and Safety Code, are amended to read as follows:

(e) An individual may be subject to detention under Section 81.0891 and court orders under Subchapter G if the individual is infected or is reasonably suspected of being exposed to or infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(m) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure an individual subject to an order issued under Subsection (b) or the members of a group subject to an order issued under Subsection (k); and

1 (2) except as directed by the department or health
2 authority, prevent:

3 (A) an individual subject to an order issued
4 under this section from leaving a facility or location designated
5 in the order; or

6 (B) the members of a group subject to an order
7 issued under Subsection (k) from leaving the group or other
8 individuals from joining the group.

9 SECTION 2. Subchapter E, Chapter 81, Health and Safety
10 Code, is amended by adding Sections 81.0891, 81.0892, 81.0893,
11 81.0894, and 81.0895 to read as follows:

12 Sec. 81.0891. APPREHENSION BY PEACE OFFICER WITHOUT
13 WARRANT. (a) A peace officer, without a warrant, may take an
14 individual who is the subject of a control order issued under
15 Section 81.083 into custody if the officer has reason to believe and
16 does believe that:

17 (1) the individual, or for a minor individual the
18 individual's parent, legal guardian, or managing conservator, is
19 not complying with the written orders of the department or a health
20 authority under Section 81.083;

21 (2) the individual has or has been exposed to a
22 communicable disease; and

23 (3) as a result of that communicable disease, there is
24 a substantial risk of serious harm to others unless the individual
25 is immediately detained.

26 (b) A substantial risk of serious harm to others under
27 Subsection (a)(3) may be demonstrated by:

1 (1) the individual's violation of a control order
2 issued under Section 81.083, including a failure to remain at a
3 facility or location designated in the order;

4 (2) evidence of illness and deterioration of the
5 individual's physical condition to the extent that the individual
6 cannot remain at liberty; or

7 (3) information provided to the peace officer by the
8 department or a health authority that issued a control order under
9 Section 81.083.

10 (c) A peace officer may form the belief that an individual
11 meets the criteria described by Subsection (a):

12 (1) on information and belief from a credible person,
13 including the department or a health authority that issued a
14 control order under Section 81.083;

15 (2) through observation of the individual's conduct;
16 or

17 (3) by the circumstances under which the individual is
18 apprehended.

19 (d) A peace officer who takes an individual into custody
20 under Subsection (a) shall immediately transport the individual to:

21 (1) the nearest appropriate health facility; or

22 (2) a location considered suitable by the department
23 or health authority that issued a control order under Section
24 81.083.

25 (e) A nonmedical facility used to detain individuals who are
26 charged with or convicted of a crime may be considered suitable
27 under Subsection (d)(2) only if no other appropriate facility is

1 available. If an individual is detained in a jail or a similar
2 detention facility under this subsection, the detained individual
3 must be isolated from any individual who is charged with or
4 convicted of a crime. The department or a health authority that
5 issued a control order under Section 81.083 shall ensure that
6 proper isolation methods are used and medical care is made
7 available to the individual.

8 (f) A peace officer who takes an individual into custody
9 under Subsection (a) shall immediately inform the individual orally
10 in simple, nontechnical terms:

11 (1) of the reason for the detention; and

12 (2) that not later than the 24th hour after the time
13 the person is apprehended under this section, the individual will
14 be informed of the individual's rights under Section 81.0895 by a
15 staff member of:

16 (A) the health facility where the individual is
17 detained; or

18 (B) the department or a health authority that
19 issued a control order under Section 81.083 for an individual
20 detained at a location designated by the department or health
21 authority.

22 Sec. 81.0892. PEACE OFFICER'S NOTIFICATION OF DETENTION.

23 (a) After transporting an individual to a facility or location, a
24 peace officer shall immediately file a notification of detention
25 described by this section with:

26 (1) a health facility and the department or health
27 authority that issued a control order under Section 81.083 for an

1 individual detained in the health facility; or

2 (2) the department or health authority that issued a
3 control order under Section 81.083 for an individual detained in a
4 location designated by the department or health authority.

5 (b) The notification of detention must contain:

6 (1) a statement that the peace officer has reason to
7 believe and does believe that the individual is the subject of a
8 control order under Section 81.083;

9 (2) a statement that the peace officer has reason to
10 believe and does believe that the individual poses a substantial
11 risk of serious harm to others;

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

13 (4) a statement that the peace officer has reason to
14 believe and does believe that the risk of harm is imminent unless
15 the individual is immediately detained;

16 (5) a statement that the peace officer's beliefs are
17 derived from specific recent behavior, overt acts, attempts,
18 statements, or threats that were observed by or reliably reported
19 to the officer;

20 (6) a detailed description of the specific behavior,
21 acts, attempts, statements, or threats; and

22 (7) the name of the person who reported or observed the
23 behavior, acts, attempts, statements, or threats.

24 (c) If an individual is detained at a health facility, the
25 facility shall include in the individual's file the notification of
26 detention described by this section.

27 (d) A peace officer shall give the notification of detention

1 described by this section on the following form:

2 Notification-Communicable Disease Emergency Detention

3 NO. _____

4 DATE: _____ TIME: _____

5 THE STATE OF TEXAS

6 FOR THE BEST INTEREST AND PROTECTION OF:

7 _____

8 NOTIFICATION OF COMMUNICABLE DISEASE EMERGENCY DETENTION

9 Now comes _____, a peace officer with

10 _____ (name of agency), of the State of

11 Texas, and states as follows:

12 1. I have reason to believe and do believe that

13 _____ (name of person to be detained) is the

14 subject of a control order issued under Section 81.083, Health and

15 Safety Code, and has either been exposed to a communicable disease

16 or evidences symptoms reasonably believed to be a communicable

17 disease.

18 2. I have reason to believe and do believe that the above-named

19 person evidences a substantial risk of serious harm to others based

20 on the following:

21 _____

22 _____

23 _____

24 _____

25 3. I have reason to believe and do believe that the above risk of

26 harm is imminent unless the above-named person is immediately

27 detained.

1 4. My beliefs are based on the following recent behavior, overt
2 acts, attempts, statements, or threats observed by me or reliably
3 reported to me:

4 _____
5 _____
6 _____
7 _____

8 5. The names and addresses of the persons who reported or observed
9 recent behavior, acts, attempts, statements, or threats of the
10 above-named person are (if applicable):

11 _____
12 _____
13 _____
14 _____

15 For the above reasons, I present this notification to
16 _____ (name of facility, health authority, or
17 department) for the detention of _____ (name
18 of person to be detained).

19 6. Was the person restrained in any way? Yes No

20 _____ BADGE NO. _____

21 PEACE OFFICER'S SIGNATURE

22 Address: _____ Zip Code: _____

23 Telephone: _____

24 The Department of State Health Services, a health authority,
25 or a health or detention facility may not require a peace officer to
26 execute any form other than this form as a requirement to accept for
27 temporary admission a person detained under Section 81.0891, Health

1 and Safety Code.

2 (e) The department, a health authority, a health facility,
3 or the owner or person in control of a location designated by the
4 department or health authority may not require a peace officer to
5 execute any form other than the form provided by Subsection (d) as a
6 requirement to accept for temporary admission an individual
7 detained under Section 81.0891.

8 Sec. 81.0893. ACCEPTANCE OF INDIVIDUAL. A health facility
9 or a person who owns or is in control of a location designated by the
10 department or health authority that issued a control order under
11 Section 81.083 shall accept an individual for whom a peace officer
12 files a notification of detention under Section 81.0892 until the
13 individual is required to be released under Section 81.0894.

14 Sec. 81.0894. RELEASE FROM TEMPORARY DETENTION. (a) An
15 individual apprehended under Section 81.0891 may be detained for a
16 period not to exceed 48 hours from the time the individual is
17 transported to a facility or location required under Section
18 81.0891(d) unless a written order for further custody or detention
19 is obtained under Subchapter G.

20 (b) If the 48-hour period described by Subsection (a) ends
21 on a Saturday, Sunday, or legal holiday, the individual may be
22 detained until the first succeeding business day. If the 48-hour
23 period ends at any other time, the individual may be detained only
24 until the day the 48-hour period ends.

25 (c) If extremely hazardous weather conditions exist or a
26 disaster occurs, the judge or magistrate of a court in which an
27 application for a court order for management of the individual is

1 filed may, by written order made each day, extend by an additional
2 24 hours the period during which the individual may be detained.
3 The written order must declare that an emergency exists because of
4 the weather or the occurrence of a disaster.

5 (d) An individual must be released in the manner provided by
6 Section 81.168(b).

7 Sec. 81.0895. RIGHTS OF DETAINED INDIVIDUALS. (a) An
8 individual apprehended or detained under this chapter has the right
9 to:

10 (1) be advised of the detention location, of the
11 reasons for the detention, and that the detention could result in a
12 longer period of court-ordered management;

13 (2) a reasonable opportunity to communicate with and
14 retain an attorney;

15 (3) be released from a facility as provided by Section
16 81.0894;

17 (4) be advised that communications with the
18 department, a health authority, or a health professional may be
19 used in proceedings for further detention; and

20 (5) a reasonable opportunity to communicate with a
21 relative or other responsible individual who has a proper interest
22 in the detained individual's welfare.

23 (b) Not later than the 24th hour after the time an
24 individual is admitted to or detained in a facility or a location
25 designated by the department or a health authority that issued a
26 control order under Section 81.083, the individual must be informed
27 of the rights provided by this subchapter:

1 (1) orally in simple, nontechnical terms, and in
2 writing that, if possible, is in the individual's primary language;
3 or

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

7 (c) The executive commissioner of the Health and Human
8 Services Commission by rule shall prescribe the manner in which an
9 individual is informed of the individual's rights under this
10 subchapter.

11 SECTION 3. The heading to Subchapter G, Chapter 81, Health
12 and Safety Code, is amended to read as follows:

13 SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS EXPOSED TO OR
14 INFECTED WITH COMMUNICABLE DISEASES

15 SECTION 4. Section 81.151(e), Health and Safety Code, is
16 amended to read as follows:

17 (e) A single application may be filed for a group if:

18 (1) the department or health authority reasonably
19 suspects that a group of five or more persons has been exposed to or
20 infected with a communicable disease; and

21 (2) each person in the group meets the criteria of this
22 chapter for court orders for the management of a person exposed to
23 or infected with a communicable disease.

24 SECTION 5. Sections 81.152(a), (b), and (c), Health and
25 Safety Code, are amended to read as follows:

26 (a) An application for a court order for the management of a
27 person exposed to or infected with a communicable disease must be

1 styled using the person's initials and not the person's full name.

2 (b) The application must state whether the application is
3 for temporary or extended management of a person with or exposed to
4 a communicable disease.

5 (c) Any application must contain the following information
6 according to the applicant's information and belief:

7 (1) the person's name and address;

8 (2) the person's county of residence in this state;

9 (3) a statement that the person is infected with or is
10 reasonably suspected of having been exposed to or ~~[being]~~ infected
11 with a communicable disease that presents a threat to public health
12 and that the person meets the criteria of this chapter for court
13 orders for the management of a person with a communicable disease;
14 and

15 (4) a statement, to be included only in an application
16 for inpatient treatment, that the person fails or refuses to comply
17 with written orders of the department or health authority under
18 Section 81.083, if applicable.

19 SECTION 6. Section 81.153(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) The judge shall appoint an attorney to represent a
22 person not later than the 24th hour after the time an application
23 for a court order for the management of a person exposed to or
24 infected with a communicable disease is filed if the person does not
25 have an attorney. The judge shall also appoint a language or sign
26 interpreter if necessary to ensure effective communication with the
27 attorney in the person's primary language.

1 SECTION 7. Section 81.158(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) An affidavit of medical evaluation must be dated and
4 signed by the commissioner or the commissioner's designee, or by a
5 health authority with the concurrence of the commissioner or the
6 commissioner's designee. The certificate must include:

7 (1) the name and address of the examining physician,
8 if applicable;

9 (2) the name and address of the person examined or to
10 be examined;

11 (3) the date and place of the examination, if
12 applicable;

13 (4) a brief diagnosis of the examined person's
14 physical and mental condition, if applicable;

15 (5) the period, if any, during which the examined
16 person has been under the care of the examining physician;

17 (6) an accurate description of the health treatment,
18 if any, given by or administered under the direction of the
19 examining physician; and

20 (7) the opinion of the health authority or department
21 and the reason for that opinion, including laboratory reports,
22 that:

23 (A) the examined person is infected with or is
24 reasonably suspected of having been exposed to or ~~being~~ infected
25 with a communicable disease that presents a threat to public
26 health; and

27 (B) as a result of that communicable disease the

1 examined person:

2 (i) is likely to cause serious harm to self
3 [~~himself~~]; or

4 (ii) will, if not examined, observed, or
5 treated, continue to endanger public health.

6 SECTION 8. Section 81.159(a), Health and Safety Code, is
7 amended to read as follows:

8 (a) The commissioner shall designate health care facilities
9 throughout the state that are capable of providing services for the
10 examination, observation, isolation, or treatment of persons
11 having or suspected of being exposed to or having a communicable
12 disease. However, the commissioner may not designate:

13 (1) a nursing home or custodial care home required to
14 be licensed under Chapter 242; or

15 (2) an intermediate care facility for persons with an
16 intellectual or developmental disability [~~the mentally retarded~~]
17 required to be licensed under Chapter 252.

18 SECTION 9. Section 81.161(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) A motion for an order of protective custody may be filed
21 only in the court in which an application for a court order for the
22 management of a person exposed to or infected with a communicable
23 disease is pending.

24 SECTION 10. Sections 81.162(a) and (f), Health and Safety
25 Code, are amended to read as follows:

26 (a) The judge or designated magistrate may issue a
27 protective custody order if the judge or magistrate determines:

1 (1) that the health authority or department has stated
2 its opinion and the detailed basis for its opinion that the person
3 is infected with or is reasonably suspected of having been exposed
4 to or [~~being~~] infected with a communicable disease that presents an
5 immediate threat to the public health; and

6 (2) that the person fails or refuses to comply with the
7 written orders of the health authority or the department under
8 Section 81.083, if applicable.

9 (f) Notwithstanding Section 81.161 or Subsection (c), a
10 judge or magistrate may issue a temporary protective custody order
11 before the filing of an application for a court order for the
12 management of a person exposed to or infected with a communicable
13 disease under Section 81.151 if:

14 (1) the judge or magistrate takes testimony that an
15 application under Section 81.151, together with a motion for
16 protective custody under Section 81.161, will be filed with the
17 court on the next business day; and

18 (2) the judge or magistrate determines based on
19 evidence taken under Subsection (d) that there is probable cause to
20 believe that the person presents a substantial risk of serious harm
21 to self [~~himself~~] or others to the extent that the person cannot be
22 at liberty pending the filing of the application and motion.

23 SECTION 11. Section 81.165(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) A hearing must be held to determine if:

26 (1) there is probable cause to believe that a person
27 under a protective custody order presents a substantial risk of

1 serious harm to self [~~himself~~] or others to the extent that the
2 person cannot be at liberty pending the hearing on a court order for
3 the management of a person exposed to or infected with a
4 communicable disease; and

5 (2) the health authority or department has stated its
6 opinion and the detailed basis for its opinion that the person is
7 infected with or is reasonably suspected of being exposed to or
8 infected with a communicable disease that presents an immediate
9 threat to public health.

10 SECTION 12. Section 81.166(d), Health and Safety Code, is
11 amended to read as follows:

12 (d) The notification of probable cause hearing shall read as
13 follows:

14 (Style of Case)

15 NOTIFICATION OF PROBABLE CAUSE HEARING

16 On this the _____ day of _____, 20 [~~19~~], the
17 undersigned hearing officer heard evidence concerning the need for
18 protective custody of _____ (hereinafter referred to as
19 proposed patient). The proposed patient was given the opportunity
20 to challenge the allegations that (s)he presents a substantial risk
21 of serious harm to self or others.

22 The proposed patient and his or her attorney
23 _____ have been given written notice that the
24 proposed patient was placed under an order of protective custody
25 and the reasons for such order on _____ (date of notice).

26 I have examined the affidavit of medical evaluation and
27 _____ (other evidence considered). Based on this

1 evidence, I find that there is probable cause to believe that the
2 proposed patient presents a substantial risk of serious harm to
3 himself or herself (yes ____ or no ____) or others (yes ____ or no
4 ____) such that (s)he cannot be at liberty pending final hearing
5 because (s)he is infected with or is reasonably suspected of being
6 exposed to or infected with a communicable disease that presents an
7 immediate threat to the public health and (s)he has failed or
8 refused to comply with the orders of the health authority or the
9 [~~Texas~~] Department of State Health Services delivered on _____
10 (date of service) _____.

11 SECTION 13. Section 81.167(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) The head of a facility or the facility head's designee
14 shall detain a person under a protective custody order in the
15 facility pending a court order for the management of a person
16 exposed to or infected with a communicable disease or until the
17 person is released or discharged under Section 81.168.

18 SECTION 14. Section 81.168(c), Health and Safety Code, is
19 amended to read as follows:

20 (c) The head of a facility shall discharge a person held
21 under a protective custody order if:

22 (1) the head of the facility does not receive notice
23 within 72 hours after detention begins, excluding Saturdays,
24 Sundays, legal holidays, the period prescribed by Section 81.165(b)
25 for an extreme weather emergency, and the duration of a public
26 health disaster, that a probable cause hearing was held and the
27 person's continued detention was authorized;

1 (2) a final court order for the management of a person
2 exposed to or infected with a communicable disease has not been
3 entered within the time prescribed by Section 81.154; or

4 (3) the health authority or commissioner determines
5 that the person no longer meets the criteria for protective custody
6 prescribed by Section 81.162.

7 SECTION 15. Section 81.169(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) Except as provided by Subsection (b), the judge may hold
10 a hearing on an application for a court order for the management of
11 a person exposed to or infected with a communicable disease at any
12 suitable location in the county. The hearing should be held in a
13 physical setting that is not likely to have a harmful effect on the
14 public or the person.

15 SECTION 16. Section 81.170(f), Health and Safety Code, is
16 amended to read as follows:

17 (f) The jury shall determine if the person is infected with
18 or is reasonably suspected of being exposed to or infected with a
19 communicable disease that presents a threat to the public health
20 and, if the application is for inpatient treatment, has refused or
21 failed to follow the orders of the health authority. The jury may
22 not make a finding about the type of services to be provided to the
23 person.

24 SECTION 17. Section 81.171(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) The court shall enter an order denying an application
27 for a court order for temporary or extended management if after a

1 hearing the judge or jury fails to find, from clear and convincing
2 evidence, that the person:

3 (1) is infected with or is reasonably suspected of
4 being exposed to or infected with a communicable disease that
5 presents a threat to the public health;

6 (2) has refused or failed to follow the orders of the
7 health authority if the application is for inpatient treatment; and

8 (3) meets the applicable criteria for orders for the
9 management of a person exposed to or infected with a communicable
10 disease.

11 SECTION 18. Section 81.172(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) The judge or jury may determine that a person requires
14 court-ordered examination, observation, isolation, or treatment
15 only if the judge or jury finds, from clear and convincing evidence,
16 that:

17 (1) the person is infected with or is reasonably
18 suspected of being exposed to or infected with a communicable
19 disease that presents a threat to the public health and, if the
20 application is for inpatient treatment, has failed or refused to
21 follow the orders of the health authority or department; and

22 (2) as a result of the communicable disease the
23 person:

24 (A) is likely to cause serious harm to self
25 [~~himself~~]; or

26 (B) will, if not examined, observed, isolated, or
27 treated, continue to endanger public health.

1 SECTION 19. Section 81.174(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) The judge shall dismiss the jury, if any, after a
4 hearing in which a person is found:

5 (1) to be infected with or reasonably suspected of
6 being exposed to or infected with a communicable disease;

7 (2) to have failed or refused to follow the orders of a
8 health authority or the department if the application is for
9 inpatient treatment; and

10 (3) to meet the criteria for orders for the management
11 of a patient exposed to or infected with a communicable disease.

12 SECTION 20. Section 81.176, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 81.176. DESIGNATION OF FACILITY. In a court order for
15 the temporary or extended management of a person exposed to or
16 infected with a communicable disease specifying inpatient care, the
17 court shall commit the person to a health care facility designated
18 by the commissioner or a health authority in accordance with
19 Section 81.159.

20 SECTION 21. Section 81.183(b), Health and Safety Code, is
21 amended to read as follows:

22 (b) The court shall appoint an attorney to represent the
23 person if a hearing is scheduled. The person shall be given notice
24 of the matters to be considered at the hearing. The notice must
25 comply with the requirements of Section 81.155 for notice before a
26 hearing on an application for court orders for the management of a
27 person exposed to or infected with a communicable disease.

1 SECTION 22. Section 81.186(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) The court may modify an order for outpatient services at
4 the modification hearing if the court determines that the person
5 continues to meet the applicable criteria for court orders for the
6 management of a person exposed to or infected with a communicable
7 disease and that:

8 (1) the person has not complied with the court's order;
9 or

10 (2) the person's condition has deteriorated to the
11 extent that outpatient services are no longer appropriate.

12 SECTION 23. Section 81.188(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) The court may set aside an order for the management of a
15 person exposed to or infected with a communicable disease and grant
16 a motion for rehearing for good cause shown.

17 SECTION 24. Section 81.190(d), Health and Safety Code, is
18 amended to read as follows:

19 (d) The hearing is held before the court and without a jury.
20 The hearing must be held in accordance with the requirements for a
21 hearing on an application for a court order for the management of a
22 person exposed to or infected with a communicable disease.

23 SECTION 25. Section 81.191(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) An appeal from an order for the management of a person
26 exposed to or infected with a communicable disease, or from a
27 renewal or modification of an order, must be filed in the court of

1 appeals for the county in which the order is entered.

2 SECTION 26. Section 81.193(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) The head of a facility may permit a person admitted to
5 the facility under order for extended inpatient management of a
6 person exposed to or infected with a communicable disease to leave
7 the facility under a pass.

8 SECTION 27. This Act takes effect September 1, 2015.