

By: Moody

H.B. No. 1318

A BILL TO BE ENTITLED

AN ACT

relating to the provision of mental health services to persons younger than 18 years of age.

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

SECTION 1. Subtitle A, Title 2, Family Code, is amended by adding Chapter 35A to read as follows:

CHAPTER 35A. TEMPORARY AUTHORIZATION FOR INPATIENT MENTAL HEALTH SERVICES FOR MINOR CHILD

Sec. 35A.001. APPLICABILITY. This chapter applies to a person whose relationship to a child would make the person eligible to consent to treatment under Section 32.001(a)(1), (2), or (3), and who has had actual care, custody, and control of the child for the six months preceding the filing of a petition under this chapter.

Sec. 35A.002. TEMPORARY AUTHORIZATION. A person described by Section 35A.001 may seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child by filing a petition in the district court in the county in which the person resides.

Sec. 35A.003. PETITION FOR TEMPORARY AUTHORIZATION. A petition for temporary authorization to consent to voluntary inpatient mental health services for a child must:

(1) be styled "ex parte" and be in the name of the child;

- 1           (2) be verified by the petitioner;  
2           (3) state:  
3                 (A) the name, date of birth, and current physical  
4 address of the child;  
5                 (B) the name, date of birth, and current physical  
6 address of the petitioner; and  
7                 (C) the name and, if known, the current physical  
8 and mailing addresses of the child's parents, conservators, or  
9 guardians;  
10           (4) describe the status and location of any court  
11 proceeding in this or another state with respect to the child;  
12           (5) describe the petitioner's relationship to the  
13 child;  
14           (6) provide the dates during the preceding six months  
15 that the child has resided with the petitioner;  
16           (7) contain a certificate of medical examination for  
17 mental illness prepared by a psychiatrist who has examined the  
18 child not earlier than the third day before the date the petition is  
19 filed and be accompanied by a sworn statement containing the  
20 psychiatrist's opinion, and the detailed reasons for that opinion,  
21 that the child is a person:  
22                 (A) with mental illness or who demonstrates  
23 symptoms of a serious emotional disorder; and  
24                 (B) who presents a risk of serious harm to self or  
25 others if not immediately restrained or hospitalized; and  
26           (8) state any reason that the petitioner is unable to  
27 obtain signed, written documentation from a parent, conservator, or

1 guardian of the child.

2 Sec. 35A.004. NOTICE; HEARING. (a) On receipt of the  
3 petition, the court shall set a hearing.

4 (b) A copy of the petition and notice of the hearing shall be  
5 delivered to the parent, conservator, or guardian of the child by  
6 personal service or by certified mail, return receipt requested, at  
7 the last known address of the parent, conservator, or guardian.

8 (c) Proof of service under Subsection (b) must be filed with  
9 the court at least three days before the date of the hearing.

10 Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION. (a) At  
11 the hearing on the petition, the court may hear evidence relating to  
12 the child's need for inpatient mental health services by the  
13 petitioner, any other matter raised in the petition, and any  
14 objection or other testimony of the child's parent, conservator, or  
15 guardian.

16 (b) The court shall dismiss the petition for temporary  
17 authorization if an objection is made by the child's parent,  
18 conservator, or guardian.

19 (c) The court shall grant the petition for temporary  
20 authorization only if the court finds:

21 (1) by a preponderance of the evidence that the child  
22 does not have available a parent, conservator, guardian, or other  
23 legal representative to give consent under Section 572.001, Health  
24 and Safety Code, for voluntary inpatient mental health services;  
25 and

26 (2) by clear and convincing evidence that the child is  
27 a person:

1                   (A) with mental illness or who demonstrates  
2 symptoms of a serious emotional disorder; and

3                   (B) who presents a risk of serious harm to self or  
4 others if not immediately restrained or hospitalized.

5           (d) Subject to Subsection (e), the order granting temporary  
6 authorization under this chapter expires on the earliest of:

7                   (1) the date the petitioner requests that the child be  
8 discharged from the inpatient mental health facility;

9                   (2) the date a physician determines that the criteria  
10 listed in Subsection (c)(2) no longer apply to the child; or

11                   (3) subject to Subsection (e), the 10th day after the  
12 date the order for temporary authorization is issued under this  
13 section.

14           (e) The order granting temporary authorization continues in  
15 effect until the earlier occurrence of an event described by  
16 Subsection (d)(1) or (2) if the petitioner obtains an order for  
17 temporary managing conservatorship before the order expires as  
18 provided by Subsection (d)(3).

19           (f) A copy of an order granting temporary authorization  
20 must:

21                   (1) be filed under the cause number in any court that  
22 has rendered a conservatorship or guardian order regarding the  
23 child; and

24                   (2) be sent to the last known address of the child's  
25 parent, conservator, or guardian.

26           SECTION 2. Section [572.001](#), Health and Safety Code, is  
27 amended by amending Subsections (a), (a-1), (c-1), and (c-2) and

1 adding Subsection (a-2) to read as follows:

2 (a) A person 16 years of age or older may request admission  
3 to an inpatient mental health facility or for outpatient mental  
4 health services by filing a request with the administrator of the  
5 facility where admission or outpatient treatment is  
6 requested. Subject to Subsection (c-1), the [The] parent,  
7 managing conservator, or guardian of a person younger than 18 years  
8 of age may request the admission of the person to an inpatient  
9 mental health facility or for outpatient mental health services by  
10 filing a request with the administrator of the facility where  
11 admission or outpatient treatment is requested.

12 (a-1) A person eligible to consent to treatment for the  
13 person under Section 32.001(a)(1), (2), or (3), Family Code, may  
14 request temporary authorization for the admission of the person to  
15 an inpatient mental health facility by petitioning under Chapter  
16 35A, Family Code, in the district court in the county in which the  
17 person resides for an order for temporary authorization to consent  
18 to voluntary mental health services under this section. The  
19 petitioner for temporary authorization may be represented by the  
20 county attorney or district attorney.

21 (a-2) Except as provided by Subsection (c-1) [~~e~~], an  
22 inpatient mental health facility may admit or provide services to a  
23 person 16 years of age or older and younger than 18 years of age if  
24 the person's parent, managing conservator, or guardian consents to  
25 the admission or services, even if the person does not consent to  
26 the admission or services.

27 (c-1) A person younger than 18 years of age may not be

1 involuntarily committed unless provided by this chapter[~~, other~~  
2 ~~state law,~~] or department rule.

3 (c-2) If the [~~The~~] Department of Family and Protective  
4 Services is the guardian or managing conservator of a person  
5 younger than 18 years of age, that department may request the  
6 admission to an inpatient mental health facility of a minor in the  
7 guardianship or managing conservatorship of that department only if  
8 a psychiatrist [~~physician~~] states under oath the psychiatrist's  
9 [~~physician's~~] opinion, and the detailed reasons for that opinion,  
10 that the minor is a person:

11 (1) with mental illness or who demonstrates symptoms  
12 of a serious emotional disorder; and

13 (2) who presents a risk of serious harm to self or  
14 others if not immediately restrained or hospitalized.

15 SECTION 3. Section 573.001(a), Health and Safety Code, is  
16 amended to read as follows:

17 (a) A peace officer, without a warrant, may take a person  
18 into custody, regardless of the age of the person, if the officer:

19 (1) has reason to believe and does believe that:

20 (A) the person is a person with mental illness;  
21 and

22 (B) because of that mental illness there is a  
23 substantial risk of serious harm to the person or to others unless  
24 the person is immediately restrained; and

25 (2) believes that there is not sufficient time to  
26 obtain a warrant before taking the person into custody.

27 SECTION 4. Section 572.001(c), Health and Safety Code, is

1 repealed.

2 SECTION 5. This Act takes effect September 1, 2019.