

By: Moody

H.B. No. 1318

Substitute the following for H.B. No. 1318:

By: Ortega

C.S.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(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;

(2) be verified by the petitioner;

1 (3) state:

2 (A) the name, date of birth, and current physical
3 address of the child;

4 (B) the name, date of birth, and current physical
5 address of the petitioner; and

6 (C) the name and, if known, the current physical
7 and mailing addresses of the child's parents, conservators, or
8 guardians;

9 (4) describe the status and location of any court
10 proceeding in this or another state with respect to the child;

11 (5) describe the petitioner's relationship to the
12 child;

13 (6) provide the dates during the preceding six months
14 that the child has resided with the petitioner;

15 (7) contain a certificate of medical examination for
16 mental illness prepared by a psychiatrist who has examined the
17 child not earlier than the third day before the date the petition is
18 filed and be accompanied by a sworn statement containing the
19 psychiatrist's opinion, and the detailed reasons for that opinion,
20 that the child is a person:

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

23 (B) who presents a risk of serious harm to self or
24 others if not immediately restrained or hospitalized; and

25 (8) state any reason that the petitioner is unable to
26 obtain signed, written documentation from a parent, conservator, or
27 guardian of the child.

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

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

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

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

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

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

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

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

27 (A) with mental illness or who demonstrates

1 symptoms of a serious emotional disorder; and

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

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

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

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

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

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

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

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

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

25 SECTION 2. Section 572.001, Health and Safety Code, is
26 amended by amending Subsections (a), (a-1), (c-1), and (c-2) and
27 adding Subsection (a-2) to read as follows:

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

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

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

26 (c-1) A person younger than 18 years of age may not be
27 involuntarily committed unless provided by this chapter[~~, other~~

1 ~~state law,~~] or department rule.

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

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

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

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

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

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

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

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

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

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

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