

AN ACT

relating to the admission, examination, and discharge of a person for mental health services.

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 physician who has examined the child  
18 not earlier than the third day before the date the petition is filed  
19 and be accompanied by a sworn statement containing the physician's  
20 opinion, and the detailed reasons for that opinion, that the child  
21 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 Sec. 35A.005. ORDER FOR TEMPORARY AUTHORIZATION. (a) At  
9 the hearing on the petition, the court may hear evidence relating to  
10 the child's need for inpatient mental health services by the  
11 petitioner, any other matter raised in the petition, and any  
12 objection or other testimony of the child's parent, conservator, or  
13 guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (a) A person 16 years of age or older may request admission

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

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

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

25 (c-1) A person younger than 18 years of age may not be  
26 involuntarily committed unless provided by this chapter, Chapter  
27 55, Family Code, [~~other state law,~~] or department rule.

1 SECTION 3. Section 572.0025, Health and Safety Code, is  
2 amended by amending Subsections (f) and (g) and adding Subsections  
3 (f-1), (f-2), and (f-3) to read as follows:

4 (f) A prospective voluntary patient may not be formally  
5 accepted for treatment in a facility unless:

6 (1) the facility has a physician's order admitting the  
7 prospective patient, which order may be issued orally,  
8 electronically, or in writing, signed by the physician, provided  
9 that, in the case of an oral order or an electronically transmitted  
10 unsigned order, a signed original is presented to the mental health  
11 facility within 24 hours of the initial order; the order must be  
12 from:

13 (A) an admitting physician who has, either in  
14 person or through the use of audiovisual or other  
15 telecommunications technology, conducted a physical and  
16 psychiatric examination within:

17 (i) 72 hours before [of the] admission; or

18 (ii) 24 hours after admission; or

19 (B) an admitting physician who has consulted with  
20 a physician who has, either in person or through the use of  
21 audiovisual or other telecommunications technology, conducted an  
22 examination within:

23 (i) 72 hours before [of the] admission; or

24 (ii) 24 hours after admission; and

25 (2) the facility administrator or a person designated  
26 by the administrator has agreed to accept the prospective patient  
27 and has signed a statement to that effect.

1       (f-1) A person who is admitted to a facility before the  
2 performance of the physical and psychiatric examination required by  
3 Subsection (f) must be discharged by the physician immediately if  
4 the physician conducting the physical and psychiatric examination  
5 determines the person does not meet the clinical standards to  
6 receive inpatient mental health services.

7       (f-2) A facility that discharges a patient under the  
8 circumstances described by Subsection (f-1) may not bill the  
9 patient or the patient's third-party payor for the temporary  
10 admission of the patient to the inpatient mental health facility.

11       (f-3) Section 572.001(c-2) applies to the admission of a  
12 minor in the managing conservatorship of the Department of Family  
13 and Protective Services to an inpatient mental health facility.

14       (g) An assessment conducted as required by rules adopted  
15 under this section does not satisfy a statutory or regulatory  
16 requirement for a personal evaluation of a patient or a prospective  
17 patient by a physician [~~before admission~~].

18       SECTION 4. Section 573.001(a), Health and Safety Code, is  
19 amended to read as follows:

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

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

23                       (A) the person is a person with mental illness;

24 and

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

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

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

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1238 passed the Senate on April 16, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 23, 2019, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1238 passed the House, with amendments, on May 21, 2019, by the following vote: Yeas 107, Nays 40, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor