

By: Shaheen

H.B. No. 1254

A BILL TO BE ENTITLED

AN ACT

relating to the emergency detention of certain persons with a mental illness or cognitive disability; authorizing a fee.

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

SECTION 1. Section 573.0001, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Cognitive disability" means a condition that places certain limitations on a person's mental functioning or skills. Cognitive disabilities include autism, Down syndrome, traumatic brain injury, and dementia.

SECTION 2. Section 573.001, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (i) and (j) to read as follows:

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

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

(A) the person is a person with mental illness or cognitive disability; and

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

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

(i) A peace officer who takes a person into custody under

1 Subsection (a) because the peace officer believes that the person
2 is a person with a cognitive disability shall make a good faith
3 effort to:

4 (1) use the least restrictive available and
5 appropriate means of transport; and

6 (2) include in transporting the person the person's
7 parent, appointed guardian, managing conservator, or possessory
8 conservator, as applicable.

9 (j) A peace officer who transports a person to a facility
10 under Subsection (d) shall immediately transfer custody of the
11 person to the facility.

12 SECTION 3. Section 573.012, Health and Safety Code, is
13 amended by amending Subsections (b), (d), and (e) and adding
14 Subsections (d-1), (f-1), (f-2), and (j) to read as follows:

15 (b) The judge or magistrate shall deny the application
16 unless the judge or magistrate finds that there is reasonable cause
17 to believe that:

18 (1) the person evidences mental illness;

19 (2) the person evidences a substantial risk of serious
20 harm to the person [~~himself~~] or others;

21 (3) the risk of harm is imminent unless the person is
22 immediately restrained; and

23 (4) the necessary restraint cannot be accomplished
24 without emergency detention.

25 (d) The judge or magistrate shall issue to an on-duty peace
26 officer a warrant for the person's immediate apprehension if the
27 judge or magistrate finds that each criterion under Subsection (b)

1 is satisfied. The judge or magistrate shall notify the applicable
2 law enforcement agency of the warrant by:

3 (1) e-mail with the warrant attached as a secure
4 document in a portable document format (PDF); or

5 (2) secure electronic means, including:

6 (A) satellite transmission;

7 (B) closed-circuit television transmission; or

8 (C) any other method of two-way electronic
9 communication that:

10 (i) is secure;

11 (ii) is available to the judge or
12 magistrate; and

13 (iii) provides for a simultaneous,
14 compressed full-motion video and interactive communication of
15 image and sound between the judge or magistrate and the agency.

16 (d-1) A law enforcement agency that receives a warrant
17 issued under Subsection (d) shall serve the warrant not later than
18 48 hours after the agency receives the warrant.

19 (e) Except as provided by Subsection (f-1), a [A] person
20 apprehended under this section shall be transported for a
21 preliminary examination in accordance with Section 573.021 to:

22 (1) the nearest appropriate inpatient mental health
23 facility; or

24 (2) a mental health facility deemed suitable by the
25 local mental health authority, if an appropriate inpatient mental
26 health facility is not available.

27 (f-1) If a law enforcement agency has entered into a

1 memorandum of understanding with a local mental health authority to
2 use telehealth service, as defined by Section 111.001, Occupations
3 Code, a peace officer who apprehends a person under this section may
4 arrange for a physician to conduct a telehealth appointment with
5 the apprehended person to determine whether emergency detention is
6 necessary before transporting the person to a facility described by
7 Subsection (e). If the physician conducting the telehealth
8 appointment determines that emergency detention is not required,
9 the peace officer shall release the person.

10 (f-2) If a peace officer releases an apprehended person
11 under Subsection (f-1), the peace officer must notify the judge or
12 magistrate who issued the warrant for apprehension under Subsection
13 (d) not later than 24 hours after the peace officer released the
14 person.

15 (j) A court may not charge a fee in excess of \$25 for filing
16 an application for emergency detention or for issuing a warrant
17 under this subchapter.

18 SECTION 4. Section 573.021, Health and Safety Code, is
19 amended by adding Subsections (c-1), (c-2), and (c-3) to read as
20 follows:

21 (c-1) A facility may not discharge a person who has been
22 accepted for a preliminary examination before the expiration of the
23 48-hour period allowed by this section unless a:

24 (1) preliminary examination is completed; or
25 (2) physician has determined that the person is not a
26 substantial risk of serious harm to the person or others.

27 (c-2) If a peace officer is contacted to locate a person who

1 has left a facility before the earlier of the time a preliminary
2 exam is completed or the expiration of the 48-hour period allowed by
3 this section, the peace officer must make a good faith effort to
4 locate the person.

5 (c-3) If a peace officer locates a person described by
6 Subsection (c-2), the peace officer must:

7 (1) reevaluate whether the person meets the criteria
8 for apprehension under Section 573.001; and

9 (2) if the person meets the criteria for apprehension
10 under that section, transport the person to an appropriate facility
11 described by Subsection (d)(1) of that section.

12 SECTION 5. Section 573.024(c), Health and Safety Code, is
13 amended to read as follows:

14 (c) If the person was apprehended by a peace officer under
15 Subchapter A, the facility the person was transported to shall make
16 arrangements [must be made] to immediately transport the person
17 under this section. If the person was transported for emergency
18 detention under Subchapter A or detained under Subchapter B, the
19 person is entitled to reasonably prompt transportation.

20 SECTION 6. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2021.