

BILL ANALYSIS

C.S.H.B. 3504
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Mental health advocates have expressed a need for an array of clarifications in state law to help increase safety and access to behavioral health services for Texans undergoing a mental health crisis. Specifically, these advocates suggest modernizing procedures for emergency detention and the provision of court-ordered mental health services. C.S.H.B. 3504 seeks to ensure faster access to care for Texans at their most vulnerable moment by providing for this modernization and clarification in emergency detention and court-ordered mental health procedures.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3504 amends the Health and Safety Code to replace the authorization for a judge or magistrate to permit an applicant who is a physician applying for the emergency detention of another person to present the application by email or secure electronic means with a requirement for the judge or magistrate to do so.

C.S.H.B. 3504 includes among the counties in which an application for court-ordered mental health services may be filed with the county clerk the county in which the proposed patient is located at the time the application is filed and the county in which that patient was apprehended by a peace officer or transported by a guardian. The bill requires a judge or magistrate to accept an application filed at any time that the judge or magistrate is on duty, regardless of whether the application is filed after 5:00 p.m. on a weekday, on a Saturday or Sunday, or on a state or national holiday. The bill requires a court to allow a qualifying application for court-ordered mental health services and a motion for an order of protective custody to be filed in the same manner as any other document filed with the court, including through the use of the statewide electronic filing system, if applicable.

C.S.H.B. 3504 requires a local mental health authority in the county in which an application for court-ordered mental health services is filed who does not recommend that a proposed patient be committed, as part of the recommendation that must be filed with the applicable court:

- to include the requisite information included in a certificate of medical examination for mental illness; and
- identify the criteria for commitment that the proposed patient does not satisfy and include the facts on which that determination is based.

The bill prohibits a court from considering a recommendation from a local mental health authority if the authority's recommendation fails to comply with filing requirements and, to the extent applicable, the bill's requirements relating to a recommendation that a proposed patient not be committed. The bill establishes that a motion for an order of protective custody is not required to include a recommendation from a local mental health authority.

C.S.H.B. 3504 replaces the authorization for a judge or designated magistrate to issue a protective custody order if the judge or magistrate determines that a physician has stated the physician's opinion and the detailed reasons for the opinion that the proposed patient is a person with mental illness and the patient presents a substantial risk of serious harm to the patient or others if not immediately restrained pending the hearing with a requirement for the judge or magistrate to do so. The bill replaces the authorization for such a judge or magistrate to take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only with a requirement for the judge or magistrate to set a hearing date and take additional evidence under the same condition. The bill prohibits a judge or magistrate from denying a motion for a protective custody order solely on the basis that the proposed patient was not emergency detained under statutory provisions for emergency detention at the time that an application for court-ordered mental health services was filed. The bill prohibits a judge from declining to appoint an attorney to represent a proposed patient for court-ordered mental health services because the judge perceives or knows that the patient is not indigent.

C.S.H.B. 3504 requires a court to allow competent medical or psychiatric testimony in a hearing for temporary inpatient or outpatient mental health services to be provided by closed-circuit video conferencing under the following conditions:

- closed-circuit video conferencing is available to the court for that purpose;
- the court has good cause to not conduct in-person testimony, including that conducting the testimony through closed-circuit video conferencing would minimize the disruption of care to the testifying person's other patients; and
- the closed-circuit video conferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the proceedings.

C.S.H.B. 3504 authorizes a physician who completed a certificate of medical examination for mental illness to determine a suitable mental health facility for a person who is ordered to be taken into protective custody and transported to a mental health facility. The bill includes an applicant for a protective custody order among the individuals required to have an opportunity to appear and present evidence at a probable cause hearing held for purposes of determining whether the proposed patient should remain in protective custody or be released. The bill requires an order for the release of a person under a protective custody order to include written findings of fact that no probable cause exists. The bill establishes that an order for the release of a person under a protective custody order is immediately appealable under standard post-commitment appeal procedures.

C.S.H.B. 3504 removes as a condition that triggers a facility administrator's duty to discharge a person held under a custody order that the facility administrator has not received notice that the person's continued detention is authorized after the hearing within 72 hours after the detention began, excluding certain days, a prescribed period, or extreme emergencies. The bill includes as a condition that triggers the facility administrator's duty to discharge such a person that the facility administrator receives an order for the release from which no appeal has been filed.

C.S.H.B. 3504 requires an order denying an application for court-ordered temporary or extended mental health services to include written findings of fact on which the order is based and establishes that the order is immediately appealable under standard post-commitment appeal procedures. The bill requires an appeal from an order denying court-ordered mental health services to be filed in the court of appeals for the county in which the order is entered. The bill

conditions a trial judge's authority pending the appeal of an order requiring or denying court-ordered mental health services to stay the order and release the patient from custody before the appeal or require an appearance bond on the entering of findings of fact based on evidence presented at the hearing.

C.S.H.B. 3504 applies only to an emergency detention that begins on or after the bill's effective date; an application for court-ordered mental health services submitted on or after that date; or a proceeding for court-ordered mental health services that occurs on or after that date, as applicable.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3504 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions absent in the introduced:

- a prohibition against a judge declining to appoint an attorney to represent a proposed patient for court-ordered mental health services because the judge perceives or knows that the patient is not indigent;
- a requirement for a local mental health authority in a county in which an application for court-ordered mental health services is filed who does not recommend that a proposed patient be committed to include specified information as part of the recommendation that must be filed with the court;
- a prohibition against a court considering a recommendation from a local mental health authority if the authority's recommendation fails to comply with statutory filing requirements and, to the extent applicable, the requirement for a local mental health authority who does not recommend that a proposed patient be committed as added by the substitute; and
- a provision establishing that a motion for an order of protective custody is not required to include a recommendation from a local mental health authority.

The substitute makes the following changes to statutory authorizations, which were not made in the introduced:

- the substitute replaces the authorization for a judge or designated magistrate to issue a protective custody order if the judge or magistrate makes certain determinations with a requirement for the judge or magistrate to do so; and
- the substitute replaces the authorization for such a judge or magistrate to take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only with a requirement for the judge or magistrate to set a hearing date and take additional evidence under the same condition.

The substitute includes the following provisions absent in the introduced:

- an authorization for a physician who completed a certificate of medical examination for mental illness to determine a suitable mental health facility for a person who is ordered to be taken into protective custody and transported to a mental health facility;
- a provision that includes an applicant for a protective custody order among the individuals who must have an opportunity to appear and present evidence at a probable cause hearing; and
- a requirement for an order issued by a magistrate or associate judge for the release of a person under a protective custody order to include written findings of fact that no probable cause exists.

The substitute makes the following changes, which were not made in the introduced:

- the substitute removes the statutory condition that triggers a facility administrator's duty to discharge a person held under a protective custody order that the facility administrator has not received notice that the person's continued detention is authorized after the hearing within 72 hours after the detention began, excluding certain days, a prescribed period, or extreme emergencies; and
- the substitute includes as a condition that triggers the facility administrator's duty to discharge such a person that the facility administrator receives an order for the release from which no appeal has been filed.

The substitute includes the following provisions absent in the introduced:

- a requirement for an order denying an application for court-ordered temporary or extended mental health services to include written findings of fact on which the order is based;
- a requirement for an appeal from an order denying court-ordered mental health services to be filed in the court of appeals for the county in which the order is entered; and
- a provision that conditions a trial judge's statutory authority, pending the appeal of such an order of denial, to stay the order and release the patient from custody before the appeal and require an appearance bond on the entering of findings of fact based on evidence presented at the hearing.

The substitute includes provisions that establish that an order for the release of a person under a protective custody order or denying an application for court-ordered temporary or extended mental health services is immediately appealable under standard post-commitment appeal procedures.