By:  Ortega H.B. No. 3904

A BILL TO BE ENTITLED

AN ACT

relating to emergency detention by a physician of certain persons with mental illness for preliminary examination at a facility.

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

SECTION 1.  Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Sections 573.006 and 573.007 to read as follows:

Sec. 573.006.  DETENTION FOR PRELIMINARY EXAMINATION BY PHYSICIAN. (a) A physician may detain a person for preliminary examination at a mental health facility if the physician:

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

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

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

(2)  believes that there is not sufficient time to obtain a warrant or for a peace officer to take the person into custody.

(b)  A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1)  the person's behavior; or

(2)  evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c)  The physician may form the belief that the person meets the criteria for detention under this section based on:

(1)  a representation made by a credible person; or

(2)  the conduct of the detained person or the circumstances under which the person is detained.

(d)  A physician who detains a person at a mental health facility under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1)  of the reason for the detention; and

(2)  that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to the facility, as provided by Section 573.025(b).

Sec. 573.007.  PHYSICIAN'S NOTIFICATION OF DETENTION. (a) A mental health facility at which a person is detained by a physician under Section 573.006 shall provide to the person and maintain in the facility's records a physician's notification of detention in the manner provided under this section.

(b)  The physician's notification of detention must contain:

(1)  a statement that the physician has reason to believe and does believe that the person evidences mental illness;

(2)  a statement that the physician has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3)  a specific description of the risk of harm;

(4)  a statement that the physician has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5)  a statement that the physician's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the physician;

(6)  a detailed description of the specific behavior, acts, attempts, or threats; and

(7)  the name and relationship to the detained person of any person who reported or observed the behavior, acts, attempts, or threats.

(c)  A physician's notification of detention must be provided to the person who is being detained within 12 hours of the commencement of the person's detention.

(d)  A physician's notification of detention is considered to be made under oath and must be provided on the following form:

NOTIFICATION OF EMERGENCY DETENTION

DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TIME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S NAME/TELEPHONE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I, the above applicant, physician, make this application for the emergency detention of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, D.O.B. \_\_\_\_\_\_\_\_\_\_\_\_, who can be found at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

EMERGENCY DETENTION IS SOUGHT FOR THE FOLLOWING REASONS:

1.  I have reason to believe and do believe that the person evidences mental illness.

2.  I have reason to believe and do believe that the person presents a substantial and imminent risk of harm to self or others unless the person is immediately restrained.

3.  My above stated beliefs are based on the following specific recent behavior, overt acts, attempts, or threats, or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(please continue on separate sheet if necessary),

which were personally observed by me \_\_\_\_\_\_\_\_\_\_\_\_\_ (PHYSICIAN OBSERVER) or which were reliably reported to me by another individual, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (REPORTER).

My relation to the detained is \_\_\_\_\_\_\_\_\_\_\_\_.

If applicable, the relation to the detained of the individual listed above as the reporter is \_\_\_\_\_\_\_\_\_\_\_\_.

Executed under penalty of perjury at \_\_\_\_\_\_\_\_ a.m./p.m. on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

FOR FACILITY USE ONLY--A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. A physician shall examine the person as soon as possible within 12 hours after the time the person is detained.

Accepted for Preliminary Examination for Emergency Detention (i.e., time Patient arrived at this facility) on this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_\_ a.m./p.m.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE OF FACILITY EMPLOYEE

Completed Preliminary Examination for Emergency Detention on this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_, at \_\_\_\_\_\_ a.m./p.m.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE OF FACILITY PHYSICIAN

SECTION 2.  Section 573.021(a), Health and Safety Code, is amended to read as follows:

(a)  A facility shall temporarily accept and detain a person:

(1)  for whom an application for detention is filed;

(2)  [~~or~~] for whom a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a); or

(3)  if a physician at the facility detains the person under Section 573.006, regardless of whether the physician has completed the physician's notification of detention required under Section 573.007.

SECTION 3.  The changes in law made by this Act apply only to an emergency detention that begins on or after the effective date of this Act. An emergency detention that begins before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2023.