

By: Leach

H.B. No. 3504

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an application for emergency detention, procedures
3 regarding court-ordered mental health services, and certain rights
4 of patients admitted to private mental hospitals and certain other
5 mental health facilities.

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

7 SECTION 1. Section 571.003, Health and Safety Code, is
8 amended by adding Subdivision (20-a) to read as follows:

9 (20-a) "Psychiatrist" means a physician who is:

10 (A) certified by the American Board of Psychiatry
11 and Neurology or the American Osteopathic Board of Neurology and
12 Psychiatry;

13 (B) eligible for board certification as a
14 psychiatrist; or

15 (C) enrolled in a graduate medical education
16 training program and is under the supervision of a psychiatrist who
17 is board certified or eligible for certification.

18 SECTION 2. 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 or location of the person, if
22 the officer:

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

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

1 and

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

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

7 SECTION 3. Section 573.012, Health and Safety Code, is
8 amended by amending Subsection (a), (e), and (h) and adding
9 Subsection (h-2) to read as follows:

10 (a) Except as provided by Subsection (h), an applicant for
11 emergency detention must present the application personally to a
12 judge or magistrate. The judge or magistrate shall examine the
13 application and may interview the applicant. Except as provided by
14 Subsections [Subsection] (g) and (h), the judge of a court with
15 probate jurisdiction by administrative order may provide that the
16 application must be:

17 (1) presented personally to the court; or

18 (2) retained by court staff and presented to another
19 judge or magistrate as soon as is practicable if the judge of the
20 court is not available at the time the application is presented.

21 (e) A person apprehended under this section who is not
22 physically located in a mental health facility at the time the
23 warrant is issued under Subsection (h-1) shall be transported for a
24 preliminary examination in accordance with Section 573.021 to:

25 (1) the nearest appropriate inpatient mental health
26 facility; or

27 (2) a mental health facility deemed suitable by the

1 local mental health authority, if an appropriate inpatient mental
2 health facility is not available.

3 (h) A judge or magistrate shall [~~may~~] permit an applicant
4 who is a physician to present an application by:

5 (1) e-mail with the application attached as a secure
6 document in a portable document format (PDF); or

7 (2) another secure electronic means, including:

8 (A) satellite transmission;

9 (B) closed-circuit television transmission; or

10 (C) any other method of two-way electronic
11 communication that:

12 (i) is secure;

13 (ii) is available to the judge or
14 magistrate; and

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

18 (h-2) A facility may detain a person who is physically
19 located in the facility to perform a preliminary examination in
20 accordance with Section 573.021 if:

21 (1) a judge or magistrate transmits a warrant to the
22 facility under Subsection (h-1) for the detention of the person;
23 and

24 (2) the person is not under an order under this chapter
25 or Chapter 574.

26 SECTION 4. Section 574.001, Health and Safety Code, is
27 amended by amending Subsection (b) and adding Subsections (g) and

1 (h) to read as follows:

2 (b) Except as provided by Subsection (f), the application
3 must be filed with the county clerk in the county in which the
4 proposed patient:

5 (1) resides;

6 (2) is located at the time the application is filed [~~is~~
7 ~~found~~]; [~~or~~]

8 (3) was apprehended under Chapter 573; or

9 (4) is receiving mental health services by court order
10 or under Subchapter A, Chapter 573.

11 (g) A judge or magistrate shall review an application filed
12 at any time that the judge or magistrate is on duty, regardless of
13 whether the application is filed after 5:00 p.m. on a weekday, on a
14 Saturday or Sunday, or on a state or national holiday.

15 (h) A court shall allow an application to be filed under
16 this section in the same manner as any other document filed with the
17 court, including through the use of an electronic filing system
18 established under Section 72.031, Government Code, if applicable.

19 SECTION 5. Subchapter A, Chapter 574, Health and Safety
20 Code, is amended by adding Section 574.0121 to read as follows:

21 Sec. 574.0121. CONFLICTING RECOMMENDATIONS REGARDING
22 COMMITMENT. If the local mental health authority in the county in
23 which an application is filed does not recommend that a proposed
24 patient be committed, the authority, as part of the recommendation
25 required under Section 574.012, must:

26 (1) include the information required by Sections
27 574.011(a) and (b); and

1 (2) identify the criteria for commitment that the
2 proposed patient does not satisfy and include the facts on which
3 that determination is based.

4 SECTION 6. Section 574.021, Health and Safety Code, is
5 amended by amending Subsection (d) and adding Subsections (d-1) and
6 (f) to read as follows:

7 (d) The motion must be accompanied by a certificate of
8 medical examination for mental illness prepared by a physician who
9 has examined the proposed patient not earlier than the third day
10 before the day the motion is filed. The motion is not required to
11 include a recommendation from a local mental health authority.

12 (d-1) A court may not consider a recommendation from a local
13 mental health authority if the authority's recommendation fails to
14 comply with the requirements of Section 574.012 and, to the extent
15 applicable, Section 574.0121.

16 (f) A court shall allow the motion to be filed under this
17 section in the same manner as any other document filed with the
18 court, including through the use of an electronic filing system
19 established under Section 72.031, Government Code, if applicable.

20 SECTION 7. Section 574.022, Health and Safety Code, is
21 amended by amending Subsections (a) and (d) and adding Subsection
22 (f) to read as follows:

23 (a) The judge or designated magistrate shall [~~may~~] issue a
24 protective custody order if the judge or magistrate determines:

25 (1) that a physician has stated the physician's
26 opinion and the detailed reasons for the physician's opinion that
27 the proposed patient is a person with mental illness; and

1 (2) the proposed patient presents a substantial risk
2 of serious harm to the proposed patient or others if not immediately
3 restrained pending the hearing.

4 (d) The judge or magistrate shall set a hearing date and
5 ~~may~~ take additional evidence if a fair determination of the
6 matter cannot be made from consideration of the application and
7 certificate only.

8 (f) The judge or magistrate may not deny a motion for a
9 protective custody order solely on the basis that the proposed
10 patient was not emergency detained under Chapter 573 at the time
11 that an application for court-ordered mental health services under
12 this chapter was filed.

13 SECTION 8. Section 574.023, Health and Safety Code, is
14 amended by amending Subsection (a) and adding Subsection (a-1) to
15 read as follows:

16 (a) A protective custody order shall direct a person
17 authorized to transport patients under Section 574.045 to take the
18 proposed patient into protective custody and transport the person
19 immediately to a mental health facility deemed suitable by:

20 (1) the local mental health authority for the area; or
21 (2) a physician who completed a certificate of medical
22 examination under Section 574.009.

23 (a-1) On request of the local mental health authority, the
24 judge may order that the proposed patient be detained in an
25 inpatient mental health facility operated by the department.

26 SECTION 9. Section 574.025(d), Health and Safety Code, is
27 amended to read as follows:

1 (d) The applicant, the proposed patient, and the proposed
2 patient's attorney shall have an opportunity at the hearing to
3 appear and present evidence to support or challenge the allegation
4 that the proposed patient presents a substantial risk of serious
5 harm to the proposed patient [~~himself~~] or others.

6 SECTION 10. Section 574.028, Health and Safety Code, is
7 amended by amending Subsection (a) and adding Subsection (a-1) to
8 read as follows:

9 (a) If [~~The magistrate or associate judge shall order the~~
10 ~~release of a person under a protective custody order if~~] the
11 magistrate or associate judge determines after the hearing under
12 Section 574.025 that no probable cause exists to believe that the
13 proposed patient presents a substantial risk of serious harm to the
14 proposed patient [~~himself~~] or others, the magistrate or associate
15 judge shall order the release of a person under a protective custody
16 order. The order must include written findings stating the
17 specific facts forming the basis for the determination by the
18 magistrate or associate judge that no probable cause exists.

19 (a-1) If the magistrate or associate judge after the hearing
20 under Section 574.025 denies the motion for protective custody on
21 any fact or conclusion of law other than a finding that no probable
22 cause exists to believe that the proposed patient presents a
23 substantial risk of serious harm to the proposed patient or others,
24 the order must include the findings of fact or conclusions of law on
25 which the denial is based.

26 SECTION 11. Section 574.031, Health and Safety Code, is
27 amended by adding Subsection (d-3) to read as follows:

1 (d-3) Notwithstanding Subchapter I and without regard to
2 the proposed patient's physical presence at the hearing, the court
3 shall allow the competent medical or psychiatric testimony under
4 Subsection (d-1) to be provided by closed-circuit video
5 teleconferencing if:

6 (1) closed-circuit video teleconferencing is
7 available to the court for that purpose;

8 (2) the court has good cause to not conduct in-person
9 testimony, including that conducting the testimony through
10 closed-circuit video teleconferencing would minimize the
11 disruption of care to the testifying person's other patients; and

12 (3) the closed-circuit video teleconferencing system
13 provides for a simultaneous, compressed full-motion video and
14 interactive communication of image and sound between all persons
15 involved in the proceedings.

16 SECTION 12. Section 574.033(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) The court shall enter an order denying an application
19 for court-ordered temporary or extended mental health services if
20 after a hearing the court or jury fails to find, from clear and
21 convincing evidence, that the proposed patient is a person with
22 mental illness and meets the applicable criteria for court-ordered
23 mental health services. The order must include written findings of
24 fact on which the court's order is based.

25 SECTION 13. Section 577.010, Health and Safety Code, is
26 amended by adding Subsections (b-1) and (b-2) to read as follows:

27 (b-1) The rules must specify the rights of patients admitted

1 for voluntary or involuntary commitment, including the rights
2 provided by Chapters 572, 573, 574, and 576.

3 (b-2) The rules must require each mental health facility
4 licensed under this chapter to:

5 (1) notify any patient admitted for voluntary or
6 involuntary commitment of the patient's rights under this subtitle
7 and under the rules; and

8 (2) display a poster or other written document of the
9 rights described by Subdivision (1).

10 SECTION 14. The changes in law made by this Act to Chapter
11 573, Health and Safety Code, apply to an emergency detention that
12 begins on or after the effective date of this Act. An emergency
13 detention that begins before the effective date of this Act is
14 governed by the law as it existed immediately before that date, and
15 that law is continued in effect for that purpose.

16 SECTION 15. The change in law made by this Act to Section
17 574.001, Health and Safety Code, applies only to an application for
18 court-ordered mental health services submitted on or after the
19 effective date of this Act.

20 SECTION 16. The changes in law made by this Act to Chapter
21 574, Health and Safety Code, apply only to a proceeding for
22 court-ordered mental health services that occurs on or after the
23 effective date of this Act, regardless of when an offense with which
24 the defendant is charged was committed.

25 SECTION 17. This Act takes effect September 1, 2023.