

By: Leach

H.B. No. 3504

Substitute the following for H.B. No. 3504:

By: Schofield

C.S.H.B. No. 3504

A BILL TO BE ENTITLED

1 AN ACT
2 relating to an application for emergency detention and procedures
3 regarding court-ordered mental health services.

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

5 SECTION 1. Section 573.012(h), Health and Safety Code, is
6 amended to read as follows:

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

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

11 (2) secure electronic means, including:

12 (A) satellite transmission;

13 (B) closed-circuit television transmission; or

14 (C) any other method of two-way electronic
15 communication that:

16 (i) is secure;

17 (ii) is available to the judge or
18 magistrate; and

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

22 SECTION 2. Section 574.001, Health and Safety Code, is
23 amended by amending Subsection (b) and adding Subsections (g) and
24 (h) to read as follows:

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

4 (1) resides;

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

7 (3) was apprehended under Chapter 573; or

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

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

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

18 SECTION 3. Section 574.003, Health and Safety Code, is
19 amended by adding Subsection (a-1) to read as follows:

20 (a-1) A judge may not decline to appoint an attorney to
21 represent a proposed patient because the judge perceives or knows
22 that the patient is not indigent.

23 SECTION 4. Subchapter A, Chapter 574, Health and Safety
24 Code, is amended by adding Section 574.0121 to read as follows:

25 Sec. 574.0121. CONFLICTING RECOMMENDATIONS REGARDING
26 COMMITMENT. If the local mental health authority in the county in
27 which an application is filed does not recommend that a proposed

1 patient be committed, the authority, as part of the recommendation
2 required under Section 574.012, must:

3 (1) include the information required by Sections
4 574.011(a) and (b); and

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

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

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

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

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

24 SECTION 6. Section 574.022, Health and Safety Code, is
25 amended by amending Subsections (a) and (d) and adding Subsection
26 (f) to read as follows:

27 (a) The judge or designated magistrate shall [~~may~~] issue a

1 protective custody order if the judge or magistrate determines:

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

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

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

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

17 SECTION 7. Section 574.023, Health and Safety Code, is
18 amended by amending Subsection (a) and adding Subsection (a-1) to
19 read as follows:

20 (a) A protective custody order shall direct a person
21 authorized to transport patients under Section 574.045 to take the
22 proposed patient into protective custody and transport the person
23 immediately to a mental health facility deemed suitable by:

24 (1) the local mental health authority for the area; or

25 (2) a physician who completed a certificate of medical
26 examination under Section 574.009.

27 (a-1) On request of the local mental health authority, the

1 judge may order that the proposed patient be detained in an
2 inpatient mental health facility operated by the department.

3 SECTION 8. Section 574.025(d), Health and Safety Code, is
4 amended to read as follows:

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

10 SECTION 9. Section 574.028, Health and Safety Code, is
11 amended by amending Subsections (a) and (c) and adding Subsection
12 (d) to read as follows:

13 (a) ~~[The magistrate or associate judge shall order the~~
14 ~~release of a person under a protective custody order if]~~ If the
15 magistrate or associate judge determines after the hearing under
16 Section 574.025 that no probable cause exists to believe that the
17 proposed patient presents a substantial risk of serious harm to the
18 proposed patient ~~[himself]~~ or others, the magistrate or associate
19 judge shall order the release of a person under a protective custody
20 order. The order must include written findings of fact that no
21 probable cause exists.

22 (c) A facility administrator shall discharge a person held
23 under a protective custody order if:

24 (1) the facility administrator receives an order
25 described by Subsection (a) from which no appeal has been filed
26 ~~[does not receive notice that the person's continued detention is~~
27 ~~authorized after a probable cause hearing held within 72 hours~~

1 ~~after the detention began, excluding Saturdays, Sundays, legal~~
2 ~~holidays, and the period prescribed by Section 574.025(b) for~~
3 ~~extreme emergencies];~~

4 (2) a final order for court-ordered mental health
5 services has not been entered within the time prescribed by Section
6 574.005; or

7 (3) the facility administrator or the administrator's
8 designee determines that the person no longer meets the criteria
9 for protective custody prescribed by Section 574.022.

10 (d) An order entered under Subsection (a) is immediately
11 appealable under Section 574.070.

12 SECTION 10. Section 574.031, Health and Safety Code, is
13 amended by adding Subsection (d-3) to read as follows:

14 (d-3) Notwithstanding Subchapter I, the court shall allow
15 the competent medical or psychiatric testimony under Subsection
16 (d-1) to be provided by closed-circuit video teleconferencing if:

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

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

23 (3) the closed-circuit video teleconferencing system
24 provides for a simultaneous, compressed full-motion video and
25 interactive communication of image and sound between all persons
26 involved in the proceedings.

27 SECTION 11. Section 574.033, Health and Safety Code, is

1 amended by amending Subsection (a) and adding Subsection (a-1) to
2 read as follows:

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

10 (a-1) An order entered under Subsection (a) is immediately
11 appealable under Section 574.070.

12 SECTION 12. Sections 574.070(a) and (d), Health and Safety
13 Code, are amended to read as follows:

14 (a) An appeal from an order requiring or denying
15 court-ordered mental health services, or from a renewal or
16 modification of an order, must be filed in the court of appeals for
17 the county in which the order is entered.

18 (d) Pending the appeal and after entering findings of fact
19 based on evidence presented at the hearing, the trial judge in whose
20 court the cause is pending may:

21 (1) stay the order and release the patient from
22 custody before the appeal if the judge is satisfied that the patient
23 does not meet the criteria for protective custody under Section
24 574.022; and

25 (2) if the proposed patient is at liberty, require an
26 appearance bond in an amount set by the court.

27 SECTION 13. The change in law made by this Act to Section

1 573.012, Health and Safety Code, applies to an emergency detention
2 that begins on or after the effective date of this Act. An emergency
3 detention that begins before the effective date of this Act is
4 governed by the law as it existed immediately before that date, and
5 that law is continued in effect for that purpose.

6 SECTION 14. The change in law made by this Act to Section
7 574.001, Health and Safety Code, applies only to an application for
8 court-ordered mental health services submitted on or after the
9 effective date of this Act.

10 SECTION 15. The changes in law made by this Act to Chapter
11 574, Health and Safety Code, apply only to a proceeding for
12 court-ordered mental health services that occurs on or after the
13 effective date of this Act, regardless of when an offense with which
14 the defendant is charged was committed.

15 SECTION 16. This Act takes effect September 1, 2023.