

By: Johnson

S.B. No. 1816

A BILL TO BE ENTITLED

AN ACT

relating to procedures regarding court-ordered mental health services.

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

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

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

SECTION 2. Subchapter A, Chapter 574, Health and Safety Code, is amended by adding Section 574.0121 to read as follows:

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

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

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

SECTION 3. Section 574.021, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

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

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

10 SECTION 4. Sections 574.022(a) and (d), Health and Safety  
11 Code, are amended to read as follows:

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

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

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

20 (d) The judge or magistrate shall set a hearing date and  
21 [~~may~~] take additional evidence if a fair determination of the  
22 matter cannot be made from consideration of the application and  
23 certificate only.

24 SECTION 5. Section 574.023, Health and Safety Code, is  
25 amended by amending Subsection (a) and adding Subsection (a-1) to  
26 read as follows:

27 (a) A protective custody order shall direct a person

1 authorized to transport patients under Section 574.045 to take the  
2 proposed patient into protective custody and transport the person  
3 immediately to a mental health facility deemed suitable by:

- 4           (1) the local mental health authority for the area; or  
5           (2) a physician who completed a certificate of medical  
6 examination under Section 574.009.

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

10           SECTION 6. Section 574.025(d), Health and Safety Code, is  
11 amended to read as follows:

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

17           SECTION 7. Section 574.028, Health and Safety Code, is  
18 amended by amending Subsections (a) and (c) and adding Subsection  
19 (d) to read as follows:

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

1 probable cause exists.

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

4 (1) the facility administrator receives an order  
5 described by Subsection (a) from which no appeal has been filed  
6 ~~[does not receive notice that the person's continued detention is~~  
7 ~~authorized after a probable cause hearing held within 72 hours~~  
8 ~~after the detention began, excluding Saturdays, Sundays, legal~~  
9 ~~holidays, and the period prescribed by Section 574.025(b) for~~  
10 ~~extreme emergencies];~~

11 (2) a final order for court-ordered mental health  
12 services has not been entered within the time prescribed by Section  
13 574.005; or

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

17 (d) An order entered under Subsection (a) is immediately  
18 appealable under Section 574.070.

19 SECTION 8. Section 574.033, Health and Safety Code, is  
20 amended by amending Subsection (a) and adding Subsection (a-1) to  
21 read as follows:

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

1 fact on which the court's order is based.

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

4 SECTION 9. Sections 574.070(a) and (d), Health and Safety  
5 Code, are amended to read as follows:

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

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

13 (1) stay the order and release the patient from  
14 custody before the appeal if the judge is satisfied that the patient  
15 does not meet the criteria for protective custody under Section  
16 574.022; and

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

19 SECTION 10. The changes in law made by this Act to Chapter  
20 574, Health and Safety Code, apply to a commitment proceeding under  
21 that chapter that occurs on or after the effective date of this Act,  
22 regardless of whether conduct of a proposed patient being evaluated  
23 for that purpose occurred before, on, or after the effective date of  
24 this Act.

25 SECTION 11. This Act takes effect September 1, 2023.