

## **BILL ANALYSIS**

S.B. 1164  
By: Zaffirini  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Judicial Commission on Mental Health (JCMH) works with judges, law enforcement, health care professionals, and policymakers to develop legislative solutions that improve Texas' mental health system. The bill sponsor has informed the committee that JCMH has proposed reforms to enhance emergency detention procedures, court-ordered mental health services, and law enforcement protocols to ensure better access to treatment and public safety.

Emergency detention, for instance, is a critical tool for diverting persons experiencing mental health crises from the criminal justice system, yet the bill sponsor has informed the committee that its application varies across the state. Currently, the emergency detention form required under the Texas Mental Health Code does not include certain prompts. The bill sponsor has informed the committee that this often leads to incomplete documentation regarding a person's mental illness, risk of harm, and need for temporary restraint. Furthermore, the bill sponsor has informed the committee that peace officers who transport persons under emergency detention without a warrant must remain at the facility, unlike those transporting persons under a judge's warrant, which creates inefficiencies in law enforcement resources. Lastly, the bill sponsor has informed the committee that persons suffering from anosognosia, a condition in which a person is unaware of their mental illness, often do not receive treatment until they pose an imminent danger, limiting opportunities for earlier intervention.

S.B. 1164 seeks to address these issues by making certain changes to the emergency detention form and by revising the conditions under which a person may be taken into custody without a warrant by a peace officer, a guardian may transport a ward to an inpatient facility for a preliminary examination without a peace officer, and inpatient mental health services may be ordered by a court for certain persons.

### **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**

S.B. 1164 amends the Health and Safety Code to revise provisions relating to emergency detention of certain persons evidencing mental illness and court-ordered inpatient and extended mental health services under the Texas Mental Health Code.

## **Apprehension by Peace Officer Without Warrant**

S.B. 1164 revises the conditions under which a peace officer, without a warrant, may take a person into custody, regardless of the age of the person, as follows:

- revises the condition that the officer has reason to believe and does believe that because of a person's mental illness, there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained by removing the specification that there is such substantial risk unless that person is immediately restrained;
- includes as an alternative to satisfying that condition that the officer has reason to believe and does believe that because of that mental illness the person evidences severe emotional distress and deterioration in the person's mental condition or evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and
- includes among the conditions that the officer has reason to believe and does believe that the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

The bill repeals the provision establishing that a substantial risk of serious harm to the person or others for such purposes may be demonstrated by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

## **Peace Officer's Notification of Emergency Detention**

S.B. 1164 clarifies that the notification of detention required to be completed by a peace officer who apprehends a person evidencing mental illness without a warrant under the Texas Mental Health Code is a notification of emergency detention. The bill makes the following changes to the form prescribed by statute for that notification:

- includes the date of birth, race, gender, phone number, and address of the person being detained among the information to be stated on the form;
- with respect to the peace officer's statement that the officer has reason to believe and does believe that the person named in the form evidences a substantial risk of serious harm, does the following:
  - removes the requirement that the officer provide a specific description of the risk of harm on which that reason and belief are based; and
  - revises the statement language to specify that the reason and belief are based on the person's behavior or evidence the person is experiencing severe emotional distress and deterioration to the extent the person cannot remain at liberty;
- adds a checkbox in front of the following statements of the peace officer's reasons to believe and beliefs that are currently in the form:
  - the officer has reason to believe and does believe that the person being detained evidences mental illness;
  - the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself/herself or others; and
  - the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately detained;
- expressly authorizes the peace officer to use attachments to report additional information regarding observations or reports of conduct on which the officer's beliefs are based and includes severe emotional distress and deterioration as conduct the officer may describe;
- includes spaces to list contact information for the parent or guardian of a child 17 years of age or younger;
- provides for the peace officer to indicate the following information regarding the person being detained and the circumstances of the detention:
  - whether the person is 65 years of age or older or is 17 years of age or younger and, if either of those questions is answered in the affirmative, that person's age;
  - for a child 17 years of age or younger, whether the officer provided to the child's parents or guardians notice of the intention to file a notification of emergency detention and, if not, the reason the officer was unable to provide notice;

- if the existing question of whether the person was physically restrained in any way is answered in the affirmative, whether the restraint was for the officer's safety, the person's safety, or another reason specified by the officer;
- the type of location where the call originated, including a public area, residence, school or university, group home, hospital, or another location specified by the officer;
- whether the person has been observed displaying or has a history of any of the following traits or behaviors relating to mental health, indicated by checking "yes," "no," or "unknown" for each category and providing additional information if answered in the affirmative:
  - harm to self or stating an intention to harm self;
  - previous suicide attempt;
  - harm to others or stating an intention to harm others;
  - previous serious harm or injury to others;
  - previous psychiatric hospital treatment;
  - reported mental health diagnosis;
  - prescribed psychiatric medications;
  - current psychiatric medications taken;
  - sleeping difficulty; and
  - substance use disorder; and
- the type of facility to which the person was transported, including a hospital or emergency room, a mental health facility, or another category specified by the officer;
- includes phone numbers among the contact information to be listed for anyone who reported or observed applicable conduct by the person;
- provides for the inclusion of the printed name of the peace officer and if applicable, of the emergency medical services personnel who transported the person to a facility; and
- with respect to the statement in the form establishing that a mental health facility or hospital emergency department may not require a peace officer or emergency services personnel to execute any other form as a predicate to accepting for temporary admission a person under specified circumstances, removes language establishing that the mental health facility or hospital emergency department may not do so with respect to a person who is transported by emergency medical services personnel in accordance with an applicable memorandum of understanding.

The bill replaces the requirement that the peace officer provide the notification on the form specified in statute with a requirement that the officer do so in substantially that form.

S.B. 1164 establishes that a peace officer who transports an apprehended person to the applicable mental health facility or emergency medical services personnel of an emergency medical services provider who transports such a person to an applicable mental health facility is not required to remain at the facility while the apprehended person is medically screened or treated or while the person's insurance coverage is verified. The bill authorizes the peace officer or emergency medical services personnel to leave the facility immediately after the person is taken into custody by appropriate facility staff and the notification of emergency detention is provided to the facility.

### **Transportation for Emergency Detention by Guardian**

S.B. 1164 revises the conditions under which a guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination, as follows:

- revises the condition that the guardian has reason to believe and does believe that because of a ward's mental illness there, is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained by removing the specification that there is such substantial risk unless the ward is immediately restrained;

- includes as an alternative to satisfying that condition that the guardian has reason to believe and does believe that because of that mental illness, the ward evidences severe emotional distress and deterioration in the ward's mental condition or evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and
- includes among the conditions that the guardian has reason to believe and does believe that the ward is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

The bill repeals the provision establishing that a substantial risk of serious harm to the ward or others for such purposes may be demonstrated by the ward's behavior or evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

### **Issuance of Warrant for Emergency Detention**

Under current law, a magistrate to whom an application for emergency detention is presented must deny the application unless the magistrate finds that there is reasonable cause to believe certain information. S.B. 1164 revises that information as follows:

- replaces the information that the person evidences mental illness and evidences a substantial risk of serious harm to the person or to others with information that the person evidences mental illness and because of that mental illness the person evidences:
  - such substantial risk;
  - severe emotional distress and deterioration in the person's mental condition; or
  - an inability to recognize symptoms or appreciate the risks and benefits of treatment; and
- includes among the information that the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

The bill repeals the provision establishing that a substantial risk of serious harm to the person or others for such purposes may be demonstrated by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

### **Emergency Admission and Detention**

S.B. 1164 revises the requirements relating to the written statement by a physician who conducted a preliminary examination of a person that is required for the admission of the person to a facility for emergency detention as follows:

- replaces the requirement to state that after the examination it is the physician's opinion that the person evidences mental illness and evidences a substantial risk of serious harm to the person or to others with a requirement to state after the examination it is the physician's opinion that the person evidences mental illness and because of that mental illness, the person evidences:
  - such substantial risk;
  - severe emotional distress and deterioration in the person's mental condition; or
  - an inability to recognize symptoms or appreciate the risks and benefits of treatment; and
- removes the provision establishing that the specific description of the risk of harm the person evidences may be demonstrated by the person's behavior or evidence of severe emotional distress and deterioration in the person's mental condition.

### **Application for Court-Ordered Mental Health Services**

S.B. 1164 does the following with respect to an application for court-ordered mental health services filed with a county clerk:

- clarifies that the application may be filed in the county in which the proposed patient is located at the time the application is filed; and

- authorizes the application to be filed in the county in which that person was apprehended for emergency detention.

### **Certificate of Medical Examination for Mental Illness**

S.B. 1164 revises the requisite content of a certificate of medical examination for mental illness that must be sworn to, dated, and signed by an examining physician. The bill replaces the requirement for the certificate to include the examining physician's opinion that as a result of mental illness, either the examined person is likely to cause serious harm to the person or to others or the examined person is suffering severe and abnormal mental, emotional, or physical distress, experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, and not able to make a rational and informed decision as to whether to submit to treatment with a requirement to include the examining physician's opinion that as a result of mental illness, the examined person meets any of the following conditions:

- is likely to cause serious harm to the person or to others;
- is suffering severe and abnormal mental, emotional, or physical distress;
- is experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently;
- is not able to make a rational and informed decision as to whether to submit to treatment;
- or
- is evidencing an inability to recognize symptoms or appreciate the risks and benefits of treatment.

The bill also requires the certificate to include the examining physician's opinion that in the absence of inpatient mental health treatment, there is reasonable cause to believe that the person is likely to suffer serious risk of harm or to inflict serious harm on another person and clarifies that the requirement for the physician to specify in the certificate which criterion forms the basis for that opinion applies to the criteria added by the bill.

### **Order for Temporary or Extended Inpatient Mental Health Services**

S.B. 1164, with respect to the requisite findings by clear and convincing evidence on which a judge may order a proposed patient with a mental illness to receive court-ordered temporary or extended inpatient mental health services, revises the requisite finding that certain outcomes are likely or certain circumstances currently exist as a result of the proposed patient's mental illness as follows:

- replaces the satisfactory criterion for the finding that as a result of that illness the proposed patient is suffering severe and abnormal mental, emotional, or physical distress, experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, and unable to make a rational and informed decision as to whether to submit to treatment with a requisite criterion that as a result of that illness any of those circumstances exist and includes among those circumstances that the person is evidencing an inability to recognize symptoms or to appreciate the risks and benefits of treatment;
- with respect to the finding's currently satisfactory criteria that the patient as a result of that illness is likely to either cause serious harm to the patient or to others, makes both criteria mandatory for purposes of the finding; and
- includes as a requisite criterion, for purposes of the requisite finding, that as a result of that mental illness the proposed patient, in the absence of court-ordered temporary or extended inpatient mental health services, as applicable, is likely to suffer serious risk of harm or to inflict serious harm on another person.

With respect to the requirement for evidence of requisite findings, unless waived in an order for temporary inpatient mental health services, to include evidence of a recent overt act or a continuing pattern of behavior that tends to confirm certain information for purposes of being clear and convincing evidence, the bill does the following:

- changes the information from either the likelihood of serious harm to the proposed patient or others or the proposed patient's distress and the deterioration of the proposed

patient's ability to function to both the likelihood of such serious harm and the proposed patient's distress and deterioration; and

- includes as an alternative to such information the proposed patient's inability to recognize symptoms or appreciate the risks and benefits of treatment qualifies.

### **Apprehension and Release Under Temporary Detention Order**

S.B. 1164 includes the following among the criteria a physician must evaluate with respect to a patient as soon as possible within 24 hours after the time detention begins for purposes of determining whether the patient cannot be at liberty pending a probable cause hearing, whether the patient, due to mental illness:

- evidences severe emotional distress and deterioration in the person's mental condition;
- evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and
- is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

The bill removes the provision establishing that the determination that the patient presents a substantial risk may be demonstrated by the patient's behavior or evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

### **Applicability**

S.B. 1164 provisions relating to emergency detention apply only to an emergency detention that begins on or after the bill's effective date. An emergency detention that begins before the bill's effective date is governed by the law as it existed immediately before the bill's effective date, and that law is continued in effect for that purpose.

S.B. 1164 provisions relating to court-ordered mental health services apply only to an application or proceeding for court-ordered mental health services submitted or that occurs on or after the bill's effective date, regardless of when an offense with which the defendant is charged was committed.

### **Repealed Provisions**

S.B. 1164 repeals the following provisions of the Health and Safety Code:

- Section 573.001(b);
- Section 573.003(b); and
- Section 573.012(c).

### **EFFECTIVE DATE**

September 1, 2025.