

SUBJECT: Hearing notice for court-ordered mental health services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Berlanga, Hirschi, Glaze, Maxey, McDonald, Rodriguez

0 nays

3 absent — Coleman, Delisi, Janek

WITNESSES: *(On original version)*

For — Patsy Cheyney, San Antonio Alliance for the Mentally Ill; Mary Wathen-White

Against — Deborah C. Hiser, Advocacy Incorporated

On — Karen Hale, Texas Department of Mental Health and Mental Retardation; Jacqueline Shannon, Texas Alliance for the Mentally Ill

BACKGROUND: Chpt. 574 of the Health and Safety Code describes the process of ordering a person to receive mental health services. Court-ordered mental health services can include protective custody of the potential patient, court-ordered treatment and commitment to inpatient hospital services.

The process requires the filing of an application by a county or district attorney or other adult, appointment of an attorney to represent the proposed patient (if the patient does not have an attorney) and a hearing held within 14 days of the application.

The proposed patient and the attorney are entitled to receive copy of the application and written notice of the hearing. A copy of the application and written notice is also delivered to the proposed patient's parent or guardian if the proposed patient is a minor or subject of a guardianship. A notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located.

**DIGEST:** CSHB 1495 would amend provisions relating to court-ordered mental health services to require notice of the time and place of any hearing and of the name, telephone number and address of any attorneys representing the state or the proposed patient be furnished to any person stating that they have evidence to present.

The notice would not include any other information, including the application, medical records, names or addresses of other potential witnesses.

Evidence that is offered at the trial and that surprises the adverse party would be grounds to continue the hearing under the Health and Safety Code 574.005, which allows one or more continuances to be held not later than the 30th day after the date on which the original application was filed. The person producing such evidence would be entitled to timely notice of the date and time of such continuance.

Officers, employees or agents of the Texas Department of Mental Health and Mental Retardation (TxMHMR) would be required to refer any inquiring person to the court authorized to provide the notice, or if the information is in the possession of the department, would provide the notice in a form most understandable to the person making the inquiry.

**SUPPORTERS SAY:** CSHB 1495 is needed to help families of proposed patients and other interested individuals participate in the hearing process when they have evidence to present. Some families or friends lose touch with a allegedly mentally ill person who moves away and terminates communications. The family or friend may have important evidence regarding the person's medical or social history that could help determine whether the person is a threat to himself or herself or to society.

Family members and friends also may have information or resources that would prevent commitment of a person to a state, public or private hospital, or that would better determine the mental health treatment the potential patient requires.

Constitutional rights to privacy are protected because the notice would only be released to persons requesting the information who would know the

potential patient's name and situation. The information would not be publically released now would the potential patient's name be released. Evidence presented at the hearing, if a surprise to the potential patient and attorney, would be grounds for a continuance of the hearing at a later date, allowing the patient and the attorney to prepare their case accordingly.

The committee substitute reduced the fiscal impact to the state by requiring Texas Department of Mental Health and Mental Retardation to provide notice about hearings only if the information is in their possession. Cost to local courts would be minimal and in line with other duties related to holding a hearing.

OPPONENTS  
SAY:

CSHB 1495 could jeopardies a person's right to privacy and would impose a duty and cost on county courts and TxMHMR to notify or refer people inquiring about hearings for court-ordered mental health services.

The procedures in current law adequately inform parents of minors and guardians of hearing dates and application allegations, and leave the choice of informing family members or other persons to the discretion of the adult patient or the patient's attorney. CSHB 1495 could be used to inform people who have no need to know about mental illness allegations against an individual or be used by family members to participate in a proceeding when they do not have the best interest of the potential patient at heart. Mental illness is a significant stigma in society and an individual's right to privacy should be protected.

Despite committee substitute changes, TxMHMR would still have the duty to refer inquiring people to the appropriate court, at a probable cost to the state of about \$200,000 in fiscal 1996-97.

NOTES:

The committee substitute would authorize the department to provide notice of the hearing in a form that is most understandable to the person making the inquiry if the information is in possession of the department.