

SUBJECT: Authority of emergency room physicians to detain mentally ill patients

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Rose, J. Davis, Eissler, Herrero, Hughes

1 nay — S. King

3 absent — Naishtat, Parker, Pierson

WITNESSES: For — Robert Greenberg, Texas College of Emergency Physicians;

Against — Lauren DeWitt, The Citizens Commission on Human Rights; Moira Dolan, Medical Accountability Network; Ken Evans, Round Rock Police Department, CLEAT; Merry Lynn Gerstenschlager, Texas Eagle Forum, Education Liaison; Aaryce Hayes, Advocacy, Inc., Judge Guy Herman; Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify*: Becky Baker; Betty Carlton; Russell Croman; Aaron Day, City of Fort Worth; Russ DeWitt; Alison Dieter; Vicki Griffin; Benny Hernandez, American Civil Liberties Union of Texas; Kitty Hicks, Travis County Sheriff Department - The Crisis Intervention; Kathryn Jackson; Jean LeFebvre; Scott May; Glenn McIntosh; Cathy Norman; Paul Schoenfield; Michael Sorenson, Williamson County Sheriffs Office; Wayne Weaver; Eric Whittier; Candace Zillweger)

On — (*Registered, but did not testify*: Joe Lovelace, Texas Council of Community MHMR Centers; Perry Young, Texas Department of State Health Services)

BACKGROUND: A police officer may detain a person without that individual's consent if the officer deems the person poses a substantial risk to harm himself or others. A physician wishing to detain someone on the grounds that that person carries a substantial risk to cause harm must obtain a warrant to detain that person. A police officer must sign an order of emergency detention for a doctor to evaluate the mental health of a patient.

DIGEST: CSHB 405 would allow an emergency room physician to detain a person for up to 24 hours if the physician believed the person was mentally ill and a danger to himself or others. The physician would have to release the

person immediately if the physician deemed the person as no longer posing a risk of serious harm. The physician would await a representative of a local mental health authority or a peace officer to transport the person to an inpatient mental health facility for a preliminary examination. The physician would keep the local mental health authority informed of when a patient was detained or released.

A person detained under this bill would be afforded the same protections already granted in the Health and Safety Code to those detained for emergency detention. A physician exercising the detention authority granted by this bill would not be subject to punishment for unlawful restraint.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 405 would give an emergency room doctors the authority to use their best judgment to detain a person in an emergency room if they felt that the person might harm himself or others. An emergency room doctor often is left with no good option when confronted with a person that the doctor believes could be a danger. If a police officer is not readily available to detain the person, then the doctor must decide whether to let the person leave and potentially endanger the public or to violate current statute and detain the person.

In deciding whether or not a knowledgeable professional should be able to detain a person, the law must balance the civil liberties of patients with the right to safety of the general public. An emergency room doctor is at least as qualified as any person other than a mental health practitioner to recognize when the threat of public harm outweighs a person's right to leave the emergency room. Emergency room doctors would be judicious in their decision-making because they would not risk their license to detain a person without good cause. A few extreme cases of abuse or mistakes in detaining a person should not dictate the law, because there are legal remedies for people who abuse the system.

In addition, a police officer who detained a person without consent would likely bring a person to an emergency room for psychological evaluation if a mental health facility were not accessible. It does not make sense that the same health care practitioner who could render an assessment of a

person's mental health for purposes of justifying ongoing detainment would not be afforded the right to make such determinations at his own initiation.

**OPPONENTS
SAY:**

CSHB 405 would risk the civil liberties of a person that visited an emergency room. Current law is the result of careful consideration of the balance between a person's civil liberties and safety concerns for the general public. Police officers were entrusted with the duty to assess if people posed an imminent risk of death or substantial harm to themselves or others, and an officer must make such decisions on a daily basis. This best equips police officers to make determinations as to whether or not a person in an emergency room should be detained. Doctors should not be provided these police powers without a check and balance. In most cases, the stay in an emergency room is long enough that a doctor could call a policeman to assess a person whose mental health was in question before the person left the facility.