

- SUBJECT:** Revisions to emergency detention and protective custody processes
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 8 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Naishtat, Parker, Pierson
- 0 nays
- 1 absent — Hughes
- WITNESSES:** For — Steve Bresnen, Federation of Texas Psychiatry; Patrick Ferchill; (*Registered, but did not testify:* Aaron Day, City of Fort Worth; Joe Lovelace, Texas Council of Community MHMR Centers; Ernie Schmid, Texas Hospital Association)
- Against — (Registered, but did not testify: Becky Baker; and 12 other individuals)
- On — Lee Spiller, Citizens Commission on Human Rights; (*Registered, but did not testify:* Perry Young, Texas Department of State Health Services)
- BACKGROUND:** Health and Safety Code, ch. 573 allows for the emergency detention of people who appear to be mentally ill and, as a result, present a substantial risk of serious harm to themselves or others. A judge may issue a warrant to have such a person apprehended and taken to nearest inpatient mental health facility or other appropriate mental health facility. In addition, a peace officer who believes a person to be mentally ill and dangerous may apprehend and deliver that person to a mental health facility without a warrant if the officer believes immediate action is required. The guardian of a ward of the state may deliver the ward to a mental health facility under similar circumstances. In either case, the officer and the guardian must submit an application for detention immediately after delivering the person to the facility.
- Under sec. 573.021, in the absence of a written order for “further detention” — protective custody — a person may be detained at a facility on an emergency basis for a maximum of 24 hours and must receive a preliminary examination from a physician as soon as possible within this

time period. The 24-hour period includes time spent waiting in the facility before receiving the exam but does not include time spent receiving emergency or medical care. If the 24-hour period ends on Saturday, Sunday, a legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day.

Under Health and Safety Code, sec. 574.021, a motion for a court order of protective custody must be accompanied by the certificate of medical examination for mental illness prepared by the physician who examined the patient. The motion must be filed within five days of when the physician performed the examination.

**DIGEST:**

CSHB 518 would amend Health and Safety Code, sec. 573.021 to limit the detention of a person delivered to a facility for a preliminary examination to 48 hours, rather than 24 hours, unless a written order for protective custody was obtained. A physician would be required to examine the person as soon as possible within 12 hours, rather than 24 hours, from the time when the person was apprehended or delivered to the facility.

The 48-hour period would include any time spent at the facility before receiving the exam, including time spent receiving medical or emergency care. If the 48-hour period ended on a weekend or holiday or before 4 p.m. on the first succeeding business day, the person could be detained until noon on the first succeeding business day. Otherwise, the person could be detained only until 4 p.m. on the day the 48-hour period ended.

CSHB 518 would amend sec. 574.021(d) to require that a motion for a court order of protective custody be accompanied by the physician's certificate of examination and be filed within three days, rather than five days, of when the physician performed the examination.

The Department of State Health Services (DSHS) would be required to study how effective the bill was in reducing the overall number of admissions to state mental health facilities and what effect the bill had on the number of admissions lasting less than 96 hours. DSHS would produce a report on the conclusions of the study that included data on admissions to state mental health facilities during the 24 months preceding the bill's effective date and the 12 months following the effective date. The report would be provided by December 31, 2008, to the governor, the lieutenant

governor, the speaker of the House, and the chairs of the Senate Health and Human Services Committee and the House Public Health Committee.

The bill would take effect September 1, 2007, and apply only to detentions and examinations on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 518 would create a sufficient period of emergency detention to allow for the comprehensive evaluation of a person experiencing a mental health crisis. As a practical matter, the community— including doctors, courts, police, and family members — needs more than 24 hours to decide how best to handle these situations.

Allowing 48 hours for an emergency detention would allow medical staff to better stabilize patients and perform more accurate psychiatric assessments. Because the bill would require the medical examination to take place as soon as possible within 12 hours, physicians would have the remainder of the detention period to properly evaluate the patient. The extra time, for example, would allow the effects of alcohol or drugs to wear off on a patient who was presented under the influence, thus giving the physician a clearer picture of that person's mental state. It also would give physicians time to observe the effects of any anti-psychotic medications administered to the patient.

Because the current detention period is so short, it places physicians under pressure to err on the side of applying for court-ordered protective custody. These orders frequently are unnecessary, and statistics show that many of these cases ultimately are dismissed. This results in the incorrect labeling of people as mentally ill when in fact they are not. This can create problems for people inappropriately caught in this process because job applications often require the disclosure of civil commitment hearings, even in cases that ultimately were dismissed. By providing more time for the initial evaluation, CSHB 518 would improve the quality of decision making and result in fewer unnecessary detentions and incarcerations.

A 48-hour emergency detention would strike a better balance between granting sufficient time for evaluation and protecting patients' rights. The bill would protect individuals against due process concerns and other abuses that might accompany a longer period of detention. For example, under current law, the person detained might spend the entire 24-hour period waiting to receive an examination, only to be detained for a further period once the physician began to administer medical treatment. CSHB

518 would assure a quicker time to examination and treatment, and all the time spent at the facility would accrue toward the 48-hour limit. In addition, when an order for protective custody was deemed necessary, the bill would require a shorter time — three days instead of five days — between when the examination took place and the motion was filed. Finally, DSHS would be required to study the effectiveness of the bill in reducing the number and length of admissions to state mental health facilities and to report the results to state policymakers in time for the 2009 legislative session.

Many of the proposals in the bill come from DSHS crisis redesign group recommendations. CSHB 518 was crafted to represent a consensus of opinion among parties interested in changes to mental health law — including consumers, family members, judges, law enforcement, physicians, agencies, and advocacy groups.

**OPPONENTS  
SAY:**

CSHB 518 would result in longer periods of emergency detention and might not achieve its goal of reducing commitments. Increasing the period to a maximum of 48 hours might harm people placed under emergency detention. For example, overmedication is a major problem among the mentally ill, and people detained over longer periods might be coerced by medical staff to take unnecessary medication. In addition, the longer a person spends in a state mental facility, the greater the risk that he or she might suffer physical injury or abuse at the hands of other people in detention, some of whom are seriously disturbed and/or violent.

The bill would exacerbate due process issues with regard to emergency detention. A “48-hour” detention that occurred over a weekend, for example, could easily turn into a period of confinement lasting 72 hours or even 96 hours if a holiday was involved. This would be particularly onerous in cases where a person was being detained without a warrant. In addition, private facilities have no incentive to release people earlier than the law allows because they are paid on a daily rate for patients in their care. Finally, many communities lack the funding and infrastructure to provide in-community care for mental health patients in a crisis. They are scarcely able to cope with patients who must be detained for 24 hours, let alone 48 hours.

OTHER  
OPPONENTS  
SAY:

While the required study and report would be helpful in determining whether the bill actually provided the expected benefits, CSHB 518 should include a Sunset provision to require the 81st Legislature to review the new law and decide whether it should be continued.

NOTES:

Unlike HB 518 as introduced, the committee substitute would require DSHS to study the effects of the bill on the number and length of admissions to mental health facilities and report this information to state officials by December 31, 2008.