

- SUBJECT:** Length of mental health detention period for certain mental health patients
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 10 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Hopson, Laubenberg, McReynolds, Truitt, Zerwas
- 0 nays
- 1 absent — S. King
- WITNESSES:** For — Guy Herman, Statutory Probate Judges of Texas; (*Registered, but did not testify*: Ed Berger, Seton Family of Hospitals; Merily Keller; Robin Peyson, National Alliance on Mental Illness Texas; Josette Saxton, Texans Care for Children; Gyl Wadge, Mental Health America of Texas; Matthew Wall, Texas Hospital Association; Christine Yanas, Teaching Hospitals of Texas)
- Against — None
- BACKGROUND:** A peace officer may take a person into custody without a warrant if the officer believes the person is mentally ill and because of that mental illness poses a substantial risk of serious harm to that person or to others. The peace officer immediately must transport the person to a mental health facility — or jail in an extreme emergency — and the person generally may be detained up to 48 hours for a preliminary examination.
- If the 48-hour period ends on the weekend, a legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 12 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained until 4 p.m. on the day the 48-hour period ends.
- A physician must examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer. The person must be released by the appropriate deadline unless a written order for protective custody — involuntary mental health services — is obtained.

DIGEST: HB 888 would extend from 12 p.m. to 4 p.m. the time until which a person could be detained on the first succeeding business day following a 48-hour detention period that ended on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day.

The bill would apply only to the detention and examination of a person admitted for a preliminary examination on or after the effective date.

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, 2009.

**SUPPORTERS
SAY:**

HB 888 would resolve a serious challenge to communities and the mental health system in their efforts to protect those with mental health issues or others who could be harmed by someone suffering from mental illness. The four additional hours that HB 888 would provide mental health facilities to obtain a protective custody order for certain mental health patients would give physicians time to perform a comprehensive evaluation of a person experiencing a mental health crisis as well as to complete the administrative procedures necessary to obtain a protective custody order.

If a person arrives at a mental health facility for evaluation in a timeframe close to a weekend or holiday, the physician likely will not have time to perform a complete and accurate psychiatric analysis before the weekend or holiday. In many cases, physicians must wait for the effects of alcohol or illegal drugs on a patient to wear off or must observe the effects of any anti-psychotic medications administered to a patient to come to the appropriate determination of whether or not to seek a protective order.

If this final determination cannot be made on a business day, the few business hours currently provided to obtain a protective order on the first succeeding business day are not enough for mental health facilities to file an application with the court clerk, get an attorney to file a motion for protective custody, have the motion processed and docketed, and get the protective custody order issued by the judge. The 12 p.m. deadline also causes confusion among people involved in the process because this deadline varies from the 4 p.m. deadline applied in other circumstances.

Health professionals should not have to decide whether to release people who may be a harm to themselves or others because an inappropriate

deadline could not be met or whether to take a legal risk in holding people past the deadline. Faced with these options, health professionals may make a less-informed decision and err on the side of applying for court-ordered protective custody before a holiday or weekend for fear of later processing issues. It would be better both for the patient and the time of the court system if physicians had time to make their best judgment about whether better options, such as diversion to voluntary outpatient services, would be more appropriate than involuntary commitment. The 48-hour standard detention period in Texas already is less than the 72-hour period in most states and far less than the week allowed in a few states.

**OPPONENTS
SAY:**

HB 888 would extend further the period of time during which a person who already involuntarily had been detained for more than 48 hours could be detained without warrant. It is in a person's best interest if involuntary detainment is shorter, particularly for those proven to be mentally stable, but also for those for whom a protective custody order should issued so they could begin receiving appropriate mental health services. The patient should take priority over the process to ensure ways are found to minimize a person's involuntary detainment. A person who was detained shortly after midnight on a Thursday already should not have to wait until 12 p.m. on a Monday to be released and certainly should not have to wait until 4 p.m., as would be allowed under HB 888.