

BILL ANALYSIS

Senate Research Center

S.B. 2287
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This is a bill that would amend certain sections of the Health and Safety Code regarding the authority of peace officers and mental health professionals to apprehend and temporarily detain individuals with mental illness.

Specifically, the bill expands the circumstances under which a peace officer may take a person into custody for emergency detention and allows certain non-physician mental health professionals to file an application for emergency detention without the assistance of a peace officer.

The bill also allows certain facilities to temporarily detain a person who voluntarily requested treatment from the facility or who lacks the capacity to consent to treatment if a physician at the facility has reason to believe that the person has a mental illness and poses a substantial risk of serious harm to themselves or others. The policy adopted by the facility must require the person's release within four hours unless an order of protective custody is issued.

Overall, the bill aims to provide more options for mental health professionals and facilities to intervene in situations where individuals with mental illness may be at risk of harm to themselves or others.

As proposed, S.B. 2287 amends current law relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities and professionals to temporarily detain a person with mental illness.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter A, Chapter 573, Health and Safety Code, to read as follows:

SUBCHAPTER A. APPREHENSION, TRANSPORTATION, OR DETENTION WITHOUT
JUDGE'S OR MAGISTRATE'S ORDER

SECTION 2. Amends Section 573.001, Health and Safety Code, by adding Subsection (i), as follows:

(i) Authorizes a peace officer to take a person who has been admitted to a facility into custody under Section 573.001 (Apprehension by Peace Officer Without Warrant). Defines "facility."

SECTION 3. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Sections 573.0015, 573.0016, and 573.006, as follows:

Sec. 573.0015. APPLICATION FOR EMERGENCY DETENTION BY MENTAL HEALTH PROFESSIONAL. (a) Authorizes a non-physician mental health professional specified in Section 571.003(15)(A) (relating to the definition of "non-physician mental health professional" including certain psychologists) or (B) (relating to the definition of "non-physician mental health professional" including certain registered nurses) to file an application for emergency detention with an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 (Preliminary Examination) without the assistance of a peace officer if the professional has reason to believe and does believe that:

(1) the person is a person with mental illness; and

(2) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained.

(b) Provides that a substantial risk of serious harm to the person or others under Subsection (a)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) Requires that the application for detention contain:

(1) a statement that the non-physician mental health professional has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the professional has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a specific description of the risk of harm;

(4) a statement that the professional has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the professional's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the professional; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

Sec. 573.0016. DETENTION AT A HOSPITAL OR EMERGENCY CUSTODY BY A PEACE OFFICER. Authorizes a person to be taken into custody by a peace officer and placed in a facility, or to be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of the hospital or a physician's assistant or advanced practice registered nurse practicing in the hospital has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, under no circumstances is the proposed patient authorized to be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

Sec. 573.006. TEMPORARY DETENTION IN CERTAIN FACILITIES. (a) Defines "facility."

(b) Authorizes the governing body of a facility to adopt and implement a written policy that provides for the facility or a physician at the facility to detain a person who voluntarily requested treatment from the facility or who lacks the capacity to consent to treatment, as provided by this section, if:

(1) the person expresses a desire to leave the facility or attempts to leave the facility before the examination or treatment is completed; and

(2) a physician at the facility:

(A) has reason to believe and does believe that:

(i) the person has a mental illness; and

(ii) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(B) believes that there is not sufficient time to file an application for emergency detention or for an order of protective custody.

(c) Prohibits a policy adopted and implemented by a facility under this section from allowing the facility or a physician at the facility to detain a person who has been transported to the facility for emergency detention under Chapter 573 (Emergency Detention).

(d) Requires that a policy adopted and implemented by a facility under this section require:

(1) the facility staff or the physician who intends to detain the person under the policy to notify the person of that intention;

(2) a physician to document a decision by the facility or the physician to detain a person under the policy and to place a notice of detention in the person's medical record that contains the same information as required in a peace officer's notification of detention under Section 573.002 (Peace Officer's Notification of Detention);

(3) the period of a person's detention under the policy to be less than four hours following the time the person first expressed a desire to leave, or attempted to leave, the facility; and

(4) the facility or physician to release the person not later than the end of the four-hour period unless the facility staff or physician arranges for a peace officer to take the person into custody under Section 573.001 or an order of protective custody is issued.

(e) Requires that the evidence supporting the claim of grave disability due to mental illness or imminent danger be presented to a duly authorized court within four hours from the time the individual was placed in custody or detained, whenever a person is taken into custody or detained under this section without court order.

(f) Provides that detention of a person under a policy adopted and implemented by a facility under this section is not considered involuntary psychiatric hospitalization for purposes of Section 411.172(e) (relating to providing that certain criteria constitute evidence that a person has a psychiatric disorder), Government Code.

(g) Provides that a physician, person, or facility that detains or does not detain a person under a policy adopted and implemented by a facility under this section and that acts in good faith and without malice is not civilly or criminally liable for that action.

(h) Provides that a facility is not civilly or criminally liable for its governing body's decision to adopt or not to adopt a policy under this section.

SECTION 4. Effective date: September 1, 2023.