

BILL ANALYSIS

Senate Research Center

S.B. 359
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, emergency departments and hospitals are not authorized to hold an individual who initially requests mental health services, then subsequently requests to leave. This provides hospital employees with few options other than calling law enforcement in the case of emergency.

S.B. 359 provides that a mental health facility, a hospital licensed under Chapter 241 (Hospitals) of the Health and Safety Code, or a freestanding emergency medical care facility licensed under Chapter 254 (Freestanding Emergency Medical Care Facilities) of the Health and Safety Code may detain a person who voluntarily requested treatment if a physician at the facility (1) believes the person has a mental illness and that due to that mental illness there is substantial risk of harm to the person or to others, and (2) believes there is not sufficient time to file an application for emergency detention or order of protective custody. That decision and the reasons for it must be documented by the physician and included in the person's medical record. The detention may not last longer than four hours.

S.B. 359 also clarifies that a police officer may enter a facility to initiate an emergency detention after the four-hour hold has run. Supporters of the bill indicate there have been instances where officers have declined to enter the facility to initiate detention because the subject is already in a safe place.

Finally, the bill specifies that a detention of this kind is not an involuntary commitment under Section 411.172(e) of the Government Code.

S.B. 359 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 physicians 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 this section. Provides that for purposes of this subsection, "facility" has the meaning assigned by Section 573.005.

SECTION 3. Amends Subchapter A, Chapter 573, Health and Safety Code, by adding Section 573.005, as follows:

Sec. 573.005. TEMPORARY DETENTION IN CERTAIN FACILITIES. (a) Defines in this section "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 has reason to believe and does believe that the person has a mental illness and 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 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 this chapter.

(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); and

(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 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 (Apprehension by Peace Officer Without Warrant) or an order of protective custody is issued.

(e) 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 evidence that a person has a certain psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability), Government Code.

(f) 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.

(g) 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, 2015.