

## **BILL ANALYSIS**

C.S.S.B. 359  
By: West  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have expressed concern that certain health care facilities are not authorized to hold a person who initially voluntarily requests services and who subsequently seeks to leave the facility, even if there is a substantial concern that the person poses a danger to himself or herself or to others. As a result, the parties contend, there is no other option in such situations but to call law enforcement or allow the person to leave. C.S.S.B. 359 seeks to address this situation.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 359 amends the Health and Safety Code to authorize the governing body of a licensed hospital, the emergency department of a licensed hospital, a licensed freestanding emergency medical care facility, or certain applicable facilities providing mental health services 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 if the person expresses a desire to leave the facility or attempts to leave the facility before the examination or treatment is completed and if 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 the physician believes that there is not sufficient time to file an application for emergency detention or for an order of protective custody.

C.S.S.B. 359 prohibits such a policy from allowing the facility or a physician at the facility to detain a person who has been transported to the facility for emergency detention. The bill requires such a policy to require the facility staff or the physician who intends to detain the person under the policy to notify the person of that intention, to require 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 required in a peace officer's notification of detention, to require 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 to require 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 or unless an order of protective custody is issued. The bill authorizes a peace officer to take a person who has been admitted to a facility into

custody under Texas Mental Health Code provisions authorizing apprehension of a person without warrant.

C.S.S.B. 359 establishes that the detention of a person under a policy adopted and implemented by a facility under the bill's provisions is not considered involuntary psychiatric hospitalization for purposes of determining eligibility for a concealed handgun license. The bill exempts a physician, person, or facility that detains or does not detain a person under such a policy and that acts in good faith and without malice from civil or criminal liability for that action. The bill exempts a facility from civil or criminal liability for its governing body's decision to adopt or not to adopt a policy under the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 359 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and house committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. The heading to Subchapter A, Chapter 573, Health and Safety Code, is amended.

SECTION 2. Section 573.001, Health and Safety Code, is amended.

SECTION 3. Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Section 573.005 to read as follows:

Sec. 573.005. TEMPORARY DETENTION BY CERTAIN FACILITIES.

(a) In this section, "facility" means:

(1) a mental health facility;

(2) a hospital, or the emergency department of a hospital, licensed under Chapter 241; and

(3) a freestanding emergency medical care facility licensed under Chapter 254.

(b) This section does not apply to a person who has been transported to a facility for

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Section 573.005 to read as follows:

Sec. 573.005. TEMPORARY DETENTION IN CERTAIN FACILITIES.

(a) In this section, "facility" means:

(1) an inpatient mental health facility other than a community center, a facility operated by or under contract with a community center, an entity that the department designates to provide mental health services, a local mental health authority, or a facility operated by or under contract with a local mental health authority, unless the facility is licensed under Chapter 577;

(2) a hospital, or the emergency department of a hospital, licensed under Chapter 241; and

(3) a freestanding emergency medical care facility licensed under Chapter 254.

(c) A policy adopted and implemented by a facility under this section may not allow the

emergency detention under this chapter.

(c) A facility may 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.

(d) The facility staff or physician shall notify the person if the facility intends to detain the person under this section.

(e) The physician shall document a decision to detain a person under this section and place that notice of detention in the person's medical record. The notice of detention must contain:

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

(2) a statement that the physician 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 physician 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 physician's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were

facility or a physician at the facility to detain a person who has been transported to the facility for emergency detention under this chapter.

(b) The governing body of a facility may 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.

(d) A policy adopted and implemented by a facility under this section must 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; and

observed by or reliably reported to the physician; and  
(6) a detailed description of the specific behavior, acts, attempts, or threats.

(f) The period of a person's detention authorized by this section may not exceed four hours following the time the person first expressed a desire to leave, or attempted to leave, the facility. The facility shall release the person not later than the end of the four-hour period unless the facility arranges for a peace officer to take the person into custody under Section 573.001 or an order of protective custody is issued.

(g) A physician, person, or facility that detains or fails to detain a person under this section and who acts in good faith and without malice is not civilly or criminally liable for that action.

(h) Detention of a person under this section is not considered involuntary psychiatric hospitalization for purposes of Section 411.172(e), Government Code.

No equivalent provision.

SECTION 4. This Act takes effect September 1, 2015.

(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 or an order of protective custody is issued.

(f) 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.

(e) 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), Government Code.

(g) 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. Same as engrossed version.