

BILL ANALYSIS

C.S.H.B. 1318
By: Moody
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The importance of improving children's access to mental health services is crucial to stemming the growing mental health crisis. Unfortunately, there are situations in which a parent, managing conservator, or guardian fails to seek adequate mental health services for a child. Giving a person with the actual care, control, and custody of a child the ability to petition a court for temporary authorization to consent to voluntary inpatient mental health services for a child would be beneficial. C.S.H.B. 1318 seeks to address these concerns by creating a process, including parental notice, for the child's caretaker to petition the court to allow for inpatient care for up to 10 days or for fewer days on the caretaker's request or when the child makes sufficient improvements.

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.H.B. 1318 amends the Family Code to authorize a person whose certain relationship to a child would make the person eligible to consent to medical, dental, psychological, or surgical treatment of the child to seek a court order for temporary authorization to consent to voluntary inpatient mental health services for the child by filing a petition in the district court in the county in which the person resides if the person has had actual care, custody, and control of the child for the six months preceding the filing of the petition.

C.S.H.B. 1318 sets out the required content of the petition and requires a court to set a hearing on receipt of the petition. The bill requires delivery of a copy of the petition and notice of the hearing to the parent, conservator, or guardian of the child by personal service or by certified mail, return receipt requested, at the person's last known address and requires proof of such service to be filed with the court at least three days before the date of the hearing.

C.S.H.B. 1318 authorizes the court to hear at the hearing on the petition evidence relating to the child's need for inpatient mental health services by the petitioner, any other matter raised in the petition, and any objection or other testimony of the child's parent, conservator, or guardian. The bill requires the court to dismiss the petition if an objection is made by the child's parent, conservator, or guardian. The bill conditions the court's authority to grant the petition on the court finding:

- by a preponderance of the evidence that the child does not have available a parent,

conservator, guardian, or other legal representative to give the necessary consent; and

- by clear and convincing evidence that the child is a person:
 - with mental illness or who demonstrates symptoms of a serious emotional disorder; and
 - who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

The bill sets the order to expire on the earliest of:

- the date the petitioner requests that the child be discharged from the inpatient mental health facility;
- the date a physician determines that the conditions relating to mental illness, serious emotional disorder, or risk of harm no longer apply to the child; or
- subject to certain conditions, the 10th day after the date the order for temporary authorization is issued.

The bill provides for the filing and distribution of a copy of the order.

C.S.H.B. 1318 amends the Health and Safety Code to authorize certain persons eligible to consent to authorized medical, dental, psychological, or surgical treatment of a child to request temporary authorization for the admission of the child to an inpatient mental health facility by petitioning in the district court in the county in which the person resides for an order to consent to voluntary mental health services as provided by the bill and authorizes the petitioner to be represented by the county attorney or district attorney. The bill specifies that the authority of the Department of Family and Protective Services (DFPS) to request the admission to an inpatient mental health facility of a minor also applies to a minor in the guardianship of DFPS and changes the condition under which DFPS may request such admission of a minor from a physician making a certain statement in the physician's opinion regarding the minor to a psychiatrist making that statement under oath in the psychiatrist's opinion.

C.S.H.B. 1318 clarifies that the authority a peace officer, without a warrant, has to take a person into custody if the officer has reason to believe and does believe that the person is a person with mental illness and that 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 obtain a warrant before taking the person into custody is authority regardless of the person's age.

C.S.H.B. 1318 repeals Section 572.001(c), Health and Safety Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1318 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision extending the authorization to request the admission of a person younger than 18 years of age to an inpatient mental health facility or for outpatient mental health services by filing a request with the facility's administrator to an adult who has had actual care, custody, and control of the person for the six months preceding the request. The substitute includes provisions instead regarding a process to petition for temporary authorization to consent to voluntary inpatient mental health services for a child by a certain person eligible to consent to medical, dental, psychological, or surgical treatment of a child and who has had actual

care, custody, and control of the person for the six months preceding filing the petition.

The substitute changes the authority of DFPS to request the admission to an inpatient mental health facility of a minor.