

SUBJECT: MHMR facility certificate to retrieve AWOL mental patient

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Gray, Coleman, Capelo, Glaze, Longoria, Maxey, Uresti, Wohlgemuth

0 nays

1 absent — Delisi

WITNESSES: For — Guy Herman, Statutory Probate Judges of Texas; *Registered but did not testify:* Hillary Gauthier, National Alliance for the Mentally Ill of Texas; Cyndie Schmitt, Texas Council of Community Mental Health and Mental Retardation Centers, Inc.

Against — None

On — *Registered but did not testify:* Chris Lopez, Texas Department of Mental Health and Mental Retardation

BACKGROUND: Health and Safety Code, sec. 574.083 describes how a mental health patient who is absent from court-ordered inpatient health care services may be returned to a health care facility. A facility administrator may have the patient taken into custody, detained, and returned to the facility by filing an affidavit with a magistrate requesting that the patient's return be ordered.

The magistrate may issue an order directing a peace or health officer to take the patient into custody from any part of the state and return him or her to the facility if the facility administrator files the proper affidavit.

The affidavit must set out facts establishing that the patient is receiving court-ordered inpatient mental health services and that the facility administrator reasonably believes that:

- ! the patient is absent without authority from the facility;
- ! the patient has violated the conditions of a pass or furlough; or

! the patient's condition has deteriorated to the point that continued absence from the facility under a pass or furlough is inappropriate.

A peace or health officer must take the patient into custody and return him or her to the facility if the return is authorized by the court order. The peace or health officer may take the patient into custody without having the court order in the officer's possession.

Health and Safety Code, sec. 593.012(a) similarly allows the superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment to have a client who is absent without authority taken into custody, detained, and returned to the facility by filing an affidavit with a magistrate as prescribed by sec. 574.083.

DIGEST:

CSHB 1072 would amend Health and Safety Code, secs. 574.083(a) and 593.012 (a) to allow the administrator of a facility or superintendent of a residential care facility to which a patient was admitted for court-ordered inpatient health care services to authorize — by issuing a certificate to a law enforcement agency of the municipality or county — a peace officer of the municipality or county in which the facility is located to take a patient absent without authority from court-ordered care and treatment into custody, detain the patient, and return the patient to the facility.

The facility administrator or superintendent would be allowed to file the proper affidavit with a magistrate and request an order for the patient's return if there was reason to believe the absent patient may be outside the municipality or county in which the facility is located.

CSHB 1072 would amend give a certificate issued by a facility administrator the same authority as a court order.

CSHB 1072 would take effect on September 1, 2001.

SUPPORTERS
SAY:

CSHB 1072 would relieve the burden on local mental health facilities to seek a court order to retrieve patients committed to the facilities who left without permission. Having to obtain a court order wastes time in getting the patient back to the facility for necessary care and prolongs the possible risk to public safety. Also, the longer the wait, the farther away from the facility

the patient can travel. Facility administrators often are forced to track down a magistrate in the middle of the night or at home to get a court order. The process of obtaining the order is particularly burdensome in rural areas because it can be difficult to get it in a timely manner.

CSHB 1072 would repair an unintended consequence of statutory changes made by the 76th Legislature. HB 2892 by Hartnett clarified the process of how peace officers should apprehend, detain, and return patients who were absent without authorization. In doing so, the bill removed facility administrators' authority to issue a certificate for return of the patient without a court order. CSHB 1072 would return that authority to the administrators. In addition, the bill would return authority to the superintendent of a residential care facility from which a mentally-retarded patient who was court-ordered to care was absent without permission to issue a certificate for apprehension of that patient. SB 358 by Madla, also enacted by the 76th Legislature, removed that authority.

CSHB 1072 would balance the needs of mental health facility administrators and law enforcement officials. The bill would allow administrators to issue a certificate without a court order when the absent patient was in the same county as the facility so that the patient could be apprehended quickly. It would help law enforcement officials have an enforceable document when they needed to pursue a patient outside the county of their jurisdiction by requiring a court order in those cases.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

HB 1072 as filed would have required the certificate mentioned in Health and Safety Code, secs. 574.083 and 593.012(a) to be "filed" rather than "issued." The substitute added to a peace officer's authority by allowing the office to take a mental patient into custody without having a certificate or a court order in his or her possession.