

**SUBJECT:** Allowing certain persons to consent to inpatient mental health services

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 10 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Guerra

**WITNESSES:** For — Steve Bresnen and Gabriella Reed, El Paso County; Guy Herman, Statutory Probate Courts of Texas; (*Registered, but did not testify:* Chase Bearden, Coalition of Texans with Disabilities; Aaryce Hayes, Disability Rights Texas; Andrew Cates, Texas Nurses Association; Julie Gilberg)

Against — (*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Nicole Hudgens, Texas Values Action)

On — Mason Prewitt, Texas Home School Coalition; (*Registered, but did not testify:* Courtney Seals, Health and Human Services Commission)

**BACKGROUND:** Family Code ch. 32.001 allows certain non-parents of a child to consent to medical, dental, psychological, and surgical treatment for the child when the person who has the right to consent cannot be contacted or has not given notice to the contrary.

Ch. 35 authorizes individuals in sec. 32.001 to seek a court order for temporary authorization for care of a child by filing a petition in the district court in the county in which the individual resides.

**DIGEST:** CSHB 1318 would allow grandparents, adult siblings, uncles, and aunts of a child who had actual care, custody, and control of a child for the preceding six months to seek a court order for temporary authorization to consent to voluntary inpatient mental health services for a child.

**Petition.** Under the bill, these individuals could seek the court order by filing a petition in the district court in the county in which the individual resided. The petition for a child would have to:

- be styled "ex parte" and be in the name of the child;
- be verified by the petitioner;
- state the name, date of birth, and current physical address of the child and the petitioner, and, if known, the current physical and mailing addresses of the child's parents, conservators, or guardians;
- describe any court proceeding involving the child;
- describe the petitioner's relationship to the child and the dates in the past six months that the child had resided with the petitioner;
- contain a certificate of medical examination for mental illness prepared by a psychiatrist; and
- state any reason that the petitioner was unable to obtain signed, written documentation from a parent, conservator, or guardian of the child.

These authorized individuals also could petition to admit a person who was at least 16 years old to an inpatient mental health facility. If the Department of Family and Protective Services was the guardian or managing conservator of a person younger than 18 years, the department could request the minor's admission to an inpatient mental health facility if a psychiatrist stated detailed reasons for that opinion under oath.

**Hearing.** On receipt of the petition, the court would have to set a hearing and provide a copy of the petition and notice to the parent, conservator, or guardian of the child.

At the hearing, the bill would allow the court to hear evidence regarding the child's need for inpatient mental health services by the petitioner and any objection or other testimony from the child's parent, conservator, or guardian. The bill would require the court to dismiss the petition if the child's parent, conservator, or guardian made an objection.

**Court order.** Under the bill, the court would have to grant the petition for

temporary authorization if the court found:

- by a preponderance of the evidence that the child did not have available a parent, conservator, guardian, or other legal representative to give consent for voluntary inpatient mental health services; and
- by clear and convincing evidence that the child was a person with mental illness or who demonstrated symptoms of a serious emotional disorder and who presented a risk of serious harm to themselves or others if not immediately restrained or hospitalized.

The bill would require a copy of an order granting temporary authorization to be:

- filed under the cause number in any court that had rendered a conservatorship or guardian order regarding a child; and
- sent to the last known address of the child's parent, conservator, or guardian.

The order granting temporary authorization would expire on the earliest of:

- the date the petitioner requested that the child be discharged from the inpatient mental health facility;
- the date a physician determined that the court's findings no longer applied to the child; or
- the 10th day after the date the order for temporary authorization was issued.

**Other provisions.** The bill would allow a peace officer, without a warrant, to take a person into custody, regardless of the age of the person, if the officer believed the person had a mental illness; believed the person posed a substantial risk of serious harm unless immediately restrained; and believed there was not sufficient time to obtain a warrant before taking the person into custody.

The bill would take effect September 1, 2019.