

CHAPTER 593

H.B. No. 1106

An Act relating to the commitment of drug-dependent persons; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. (a) Any person found to be a drug-dependent person in accordance with the provisions of this Act may be committed to a mental health facility as prescribed by this Act [hospital for such period of time as may be necessary to arrest the person's drug dependency].

(b) In this Act:

(1) "Certificate" means a sworn certificate of medical examination for drug dependency executed as prescribed by Section 2(b) of this Act.

(2) "Controlled substance" means a toxic inhalant or any substance designated as a controlled substance in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(3) [(2)] "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

(4) "Legal holiday" means a state holiday specified in Article 4591, Revised Statutes, or an officially declared county holiday.

(5) "Mental health authority" means the agency designated by the commissioner of the Texas Department of Mental Health and Mental Retardation to direct, operate, facilitate, or coordinate services to mentally ill or drug-dependent persons in a state service area.

(6) "Mental health facility" includes:

(A) an inpatient or outpatient mental health facility operated by the Texas Department of Mental Health and Mental Retardation, a political subdivision of the state, or any other legal entity;

(B) a community mental health and mental retardation center established under Section 3.01, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), that provides mental health services; and

(C) the identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill or drug-dependent persons.

(7) [(3)] "Toxic inhalant" means a gaseous substance inhaled by a person to produce a desired physical or psychological effect which may cause personal injury or illness to the inhaler.

SECTION 2. Section 2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) A county or district attorney or any other adult may file a [A] sworn written application [petition] for the extended [indefinite] commitment of a person to a mental health facility for a period not to exceed six months. The application must [hospital may] be filed in [with] the county court or statutory county court having probate jurisdiction in the county in which the proposed patient [having jurisdiction of commitments of the county in which he] resides or is found. The application [petition may be filed by any adult person, or by the county or district attorney and] shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF _____, A DRUG-DEPENDENT PERSON." The application [petition] shall be styled using the initials of the proposed patient and not the proposed patient's full name. The application [petition] shall contain the following information based on the applicant's [statements upon] information and belief:

(1) the name and address of the proposed patient;

(2) the proposed patient's county of residence [name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian];

(3) [name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient];

[(4)] a statement that the proposed patient is a drug-dependent person and requires hospitalization in a mental health facility [hospital] for his own welfare and protection or the protection of others; and

(4) a statement that the proposed patient is not currently charged with a criminal offense.

(b) The application [petition] shall be accompanied by the sworn certificate of at least one physician who has [statements of two physicians who have] examined the proposed patient within the five days immediately preceding the filing of the application. The examining physician shall date and sign the sworn certificate and shall state in the sworn certificate:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) the period of time, if any, during which the person has been under the examining physician's care;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinion and the detailed basis for that opinion concerning whether:

(A) the person is drug-dependent; and

(B) hospitalization in a mental health facility is necessary for the person's own welfare and protection or for the protection of others [petition, stating the opinion of the examining physician that the proposed patient is a drug-dependent person. The sworn statements shall include the physician's medical opinion as to whether hospitalization of the proposed patient because of drug dependency or immediate restraint of the proposed patient to prevent injury to himself or others, or both, are necessary].

(c) *If good cause is shown, the judge may, on the motion of the county or district attorney, approve the filing of an application without an accompanying physician's certificate. If the judge is absent, a magistrate designated by the judge may act for the judge. When the application is filed, the judge or designated magistrate shall immediately appoint the necessary physicians to examine the proposed patient and to file certificates with the court. If a psychiatrist is available in the county, at least one of the examining physicians must be a psychiatrist. The judge or designated magistrate may order the proposed patient to submit to the examinations and may issue a warrant for a peace officer to take the proposed patient into custody for the examinations.*

(d) ~~(e)~~ *When an application [a petition] and the required certificate [statement] by a physician are filed or when an application is filed as provided by Subsection (c) of this section, the [county] judge or designated magistrate shall set a date for the hearing to be held within 14 days of the filing of the application [petition], and shall appoint an attorney ad litem to represent the proposed patient, unless the proposed patient retains an attorney of his own choosing.*

(e) *The proposed patient's attorney shall be furnished with all the records and papers in the case and is entitled to access to all hospital and doctors' records relating to the proposed patient.*

SECTION 3. Sections 3-5, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3. (a) *Before a hearing on an application for extended commitment may be held, there must be on file with the court at least two certificates completed by physicians who have examined the proposed patient within 30 days immediately preceding the date of the hearing. If a psychiatrist is available in the county, at least one of the certificates must be completed by a psychiatrist. If the necessary certificates have not been filed, the court shall appoint the necessary physicians to examine the proposed patient and to file the necessary certificates. The judge or designated magistrate may order the proposed patient to submit to the examinations and may issue a warrant for a peace officer to take the proposed patient into custody for the examinations [The proposed patient shall not be denied the right to trial by jury. A jury shall determine the issues in the case if no waiver of jury trial is filed, or if jury trial is demanded by the proposed patient or his attorney at any time prior to the termination of the hearing, whether or not a waiver has been filed. Proof shall be required as in criminal cases. The jury shall be summoned and impaneled in the same manner as in similar cases in the county court].*

(b) *The hearing shall be held before a jury unless the proposed patient and his attorney waive the right to a jury. Waiver of trial by jury, if any, shall be in writing under oath and may be signed and filed at any time subsequent to service of the application [petition] and notice of hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient and by the attorney ad litem appointed to represent the proposed patient [or his next of kin,] or by the attorney retained by the proposed patient.*

(c) *The hearing shall be held on the record, and the state must prove each issue by clear and convincing evidence.*

(d) *The proposed patient and his attorney may waive the right to cross-examine witnesses at the hearing. If the proposed patient and his attorney waive the right to cross-examine witnesses, the court may admit as evidence the certificates filed with the court. A certificate admitted into evidence constitutes competent medical or psychiatric testimony relating to the information stated in the certificate and a court may make its findings solely on the basis of the certificates admitted as evidence.*

(e) *If the hearing is to be held in a county court and the judge of the county court is not a licensed attorney, the proposed patient or the patient's attorney may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. If a request for transfer is filed under this subsection, the county judge shall transfer the proceeding and the receiving court shall hear the proceeding as if the proceeding had been originally filed with that court.*

(f) *On a showing of good cause or on agreement of the parties, the court may grant one or more continuances. However, the hearing must be held not later than the 30th day after the date on which the original application was filed.*

Sec. 4. Pending the hearing on the application, [petition] the proposed patient may remain at liberty unless he is already a patient in a mental health facility [hospital] or is legally detained as prescribed by Sections 17-20 of this Act.

Sec. 5. No person shall be committed to a mental health facility [hospital] under the provisions of this Act except upon the basis of competent medical or psychiatric testimony.

SECTION 4. Sections 6(b) and (c), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The court or jury, as the case may be, shall include in its findings determinations as to whether the proposed patient requires hospitalization *in a mental health facility for his own welfare and protection or for the protection of others* [~~or restraint, or both~~].

(c) The court shall enter on its docket the findings of the court or jury on *these issues* [~~this issue~~].

SECTION 5. Sections 7 and 9-14, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 7. (a) If the court or the jury, as the case may be, finds that the proposed patient is not a drug-dependent person, the court shall enter an order denying the *application* [~~petition~~] and discharging the proposed patient.

(b) If the court or the jury, as the case may be, finds that the proposed patient is a drug-dependent person and should be hospitalized *for his own welfare and protection or for the protection of others* [~~and restrained~~], the court shall order that the drug-dependent person be committed as a patient to a *mental health facility* [~~hospital~~] for an *extended period not to exceed six months* [~~indefinite period~~] or until he is discharged by the head of the *mental health facility* [~~hospital~~].

(c) *If the court or jury, as the case may be, finds that the proposed patient is a drug-dependent person but should not be hospitalized, the court shall dismiss the jury, if any, and shall hear additional evidence relating to alternative settings for outpatient care or services. After hearing the evidence the judge may order the proposed patient to participate in appropriate outpatient care or services for a period not to exceed six months. The outpatient care or services may include community substance programs and services provided by a private psychiatrist or psychologist.*

(d) *An order issued under Subsection (c) of this section must identify the individual responsible for the outpatient care or services. That individual shall submit to the court not later than the 14th day after the date on which the order is issued a general program of treatment to be incorporated into the court's order. On application by the patient or the individual responsible for the care or services, the court may modify the order or waive the requirements before the end of the six-month period.*

(e) *If a patient fails to comply with an order issued under Subsection (c) of this section, the individual responsible for the care or treatment shall send the court written notification of that failure. On receipt of the notification, or on motion by the court, the court may issue to the patient a show cause order commanding the patient to appear before the court and show cause why the patient should not be held in contempt of court. Notice of the show cause order shall be served on the patient as provided by Rule 21a, Texas Rules of Civil Procedure, not later than the 10th day before the date of the hearing on the order.*

Sec. 9. (a) *An appeal of an order issued under this Act must be filed in the court of appeals having jurisdiction in the county in which the order was issued* [~~The person ordered committed may appeal the order of commitment by filing written notice thereof with the county court within 30 days after the order of commitment is entered.~~].

(b) *Notice of appeal must be filed not later than the 10th day after the date on which the order that is being appealed was signed.*

(c) *If notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the appropriate court of appeals* [~~district court of the county~~].

[~~(e) For good cause shown, the county judge may stay the order of commitment pending the appeal upon posting of a bond.~~]

(d) *If while the appeal is pending the hearing judge determines that the patient does not meet the criteria for protective custody prescribed by Section 17 of this Act, the judge may stay the order of commitment and release the patient from custody. The judge may require an appearance bond in an amount determined by the judge* [~~The appeal from the county court shall be by trial de novo in the district court in the same manner as cases appealed from the justice court to the county court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury; otherwise the trial shall be before the court without a jury.~~].

Sec. 10. In the order of commitment, the court shall commit the patient to a designated:

(1) state *mental health facility*; [~~hospital upon being advised by the head of the state mental hospital that space is available and that the patient will be admitted;~~]

(2) private *mental health facility*; [~~hospital~~]; or

(3) agency of the United States operating a *mental health facility* [~~hospital~~].

Sec. 11. The court may order a patient committed to a private *mental health facility* [~~hospital~~] at no expense to the state upon:

(1) application signed by the patient or by his guardian requesting that the patient be placed in a designated private *mental health facility* [~~hospital~~] at the expense of the patient or the applicant; [~~;~~] and

(2) a written statement by the head of the private mental *health facility* [hospital] that the facility [hospital] is equipped to accept responsibility for the patient in accordance with the provisions of this Act.

Sec. 12. (a) Upon receiving written notice from an agency of the United States operating a mental *health facility* [hospital] stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental *health facility* [hospital].

(b) Any patient admitted pursuant to order of a court to any *mental health facility* [hospital] operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

(c) The head of the *mental health facility* [hospital] operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental *health facility* [hospital].

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued *commitment* [hospitalization].

Sec. 13. *The court may authorize a relative or other responsible person with a proper interest in the patient's welfare to transport the patient to the designated mental health facility. If the head of the designated mental health facility* [hospital] advises the court that *facility* [hospital] personnel are available for the purpose, the court may authorize the head of the *facility* [hospital] to transport the patient to the designated mental *health facility* [hospital]. Otherwise, the court shall authorize the sheriff to transport the patient to the designated mental *health facility* [hospital].

Sec. 14. (a) The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental *health facility* [hospital].

(b) The clerk of the county court shall prepare *one* [two] certified *transcript* [transcripts] of the proceedings in the commitment hearing, and shall send the *transcript* [one to the Department of Mental Health and Mental Retardation and one] to the head of the *mental health facility* [hospital] to which the patient is committed. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

SECTION 6. Section 16, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. The head of the mental *health facility* [hospital], upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the *patient* [him] and shall file a copy of the statement with the clerk of the committing court.

SECTION 7. Sections 17(a), (b), and (c), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A motion for an order of protective custody may be filed only in the court in which *an application for extended* [a petition for indefinite] commitment is pending. The motion may be filed by the county or district attorney. The motion shall state that the county or district attorney has reason to believe and does believe on the representations of a credible individual, on the basis of the conduct of the person, or on the circumstances under which the person is found, that the person meets the criteria prescribed by Subsection (b) of this section. The motion shall be accompanied by *at least one certificate* [two certificates] of medical examination for drug dependency completed by *a physician who has* [physicians who have] examined the person within five days of the filing of the motion. *In addition to the information required by Section 2(b) of this Act, the certificate must include the physician's opinion and the detailed basis for that opinion concerning whether the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained.*

(b) The judge, *or if the judge is absent, a magistrate designated by the judge*, may issue an order of protective custody if the judge *or magistrate* determines:

(1) that *a physician has stated his* [the physicians have stated their] opinion and the detailed basis for *his* [their] opinion that the person is a drug-dependent person; and

(2) that the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

(c) The judge's *or designated magistrate's* determination may be made on the basis of the *application* [petition] and the *certificate* [certificates]. If the judge *or designated magistrate*

concludes that a fair determination of the matter cannot be made on this information, the judge or designated magistrate may take further evidence. If the determination is made on the basis of the application and the certificate [petition and the certificates], the judge or designated magistrate must determine that the conclusions of the applicant [petitioner] and of the certifying physician [physicians] are adequately supported by the information presented.

SECTION 8. Section 18(a), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) When an order for protective custody is signed, the presiding judge or designated magistrate shall simultaneously appoint an attorney ad litem if the proposed patient does not have an attorney.

SECTION 9. Section 19, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. (a) Except as prescribed by this subsection, a [A] probable cause hearing shall be held not later than the 72nd hour after the hour on which the detention begins under the order for protective custody. If the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. If extremely hazardous weather conditions exist, the presiding judge or magistrate may issue a written order declaring an emergency and delaying the probable cause hearing for not more than 24 hours. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney are entitled to an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing. The state may prove its case on the physician's certificate [physicians' certificates] filed in support of the initial detention.

(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others, the magistrate or master shall order the patient's release. Arrangements shall be made for the return of the patient to the location of his apprehension, his place of residence within the state, or some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered commitment, the patient's detention in protective custody shall continue as prescribed by Section 20 of this Act. If the protective custody is to continue, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place along with copies of the certificate [certificates], affidavits, and other material submitted as evidence and a notification of probable cause hearing which shall read substantially as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter [proposed patient])

referred to as "proposed patient"). The proposed patient [-----] [name of proposed patient]

was given the opportunity to challenge the allegations that he presents a substantial risk of serious harm to self or others.

The proposed patient [-----] and his attorney [proposed patient]

_____ have been given written notice that the proposed patient (attorney)

[-----] was placed under an order of protective custody and the [proposed patient]

reasons for such order on _____ (date of notice)

I have examined the certificate [certificates] of medical examination for drug dependency and _____ Based upon this evidence, I find that there is probable cause

(other evidence considered)

to believe that the proposed patient [-----] presents a substantial [(proposed patient)]

risk of serious harm to himself (yes _____ or no _____) or others (yes _____ or no _____) such that he cannot be at liberty pending final hearing because _____

(reasons for finding; type of risk found)

A copy of the Notification of Probable Cause Hearing and the supporting evidence shall also be filed with the county court which entered the original Order of Protective Custody.

SECTION 10. Sections 20(b) and (d), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The person detained in protective custody shall be detained in an appropriate inpatient mental health facility or other facility deemed suitable by the *mental health authority* [~~county health officer~~]. A person may not be detained in protective custody in a nonmedical facility used for the detention of a person charged with or convicted of a crime except because of and during an extreme emergency, and *except as prescribed by this subsection, a person may not be detained [in no case]* for a period of more than 72 hours. If the 72-hour period ends on a Saturday or Sunday or a legal holiday the person may be detained in the nonmedical facility until the first succeeding business day. *If extremely hazardous weather conditions exist, the facility shall detain the person for an additional 24-hour period if the presiding judge of the court in which the application for extended commitment is pending or the magistrate issues a written order declaring an emergency and delaying the probable cause hearing.*

(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held not later than the 72nd hour after the hour on which detention begins, excepting weekends and holidays, under the order of protective custody authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody *unless the presiding judge or magistrate has delayed the hearing as provided by Section 19(a) of this Act. A patient [Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending the hearing on court-ordered commitment]* shall be discharged by the head of the facility in which he has been detained if:

(1) a final order of court-ordered commitment has not been entered by the court before the expiration of 14 days or before the expiration of 30 [~~21~~] days if an order of continuance has been granted; or

(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody prescribed by Section 17 of this Act.

SECTION 11. Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes), is amended by adding Sections 21-25 to read as follows:

Sec. 21. (a) *A county that enters an order of commitment or detention under this Act is liable for payment of the costs of any proceedings related to that order, including:*

- (1) *court appointed attorney's fees;*
- (2) *physician examination fees;*
- (3) *compensation for language or sign interpreters;*
- (4) *compensation for masters; and*
- (5) *expenses of transporting the patient to a hearing or to a mental health facility.*

(b) *For any cost actually paid that relates to an order of commitment or detention, the county is entitled to reimbursement from the patient, the applicant, or any person or estate liable for the patient's support while in a state mental health facility. On motion by the county or district attorney, or on the court's own motion, the court may require an applicant to file a cost bond with the court.*

(c) *Unless the patient or a person responsible for the patient is able, the state shall pay the costs of transporting home a discharged patient, or of returning to a mental health facility a patient absent without permission.*

(d) *The county and the state may not pay any cost relating to an order of commitment or detention, including court costs, for a patient committed to a private mental health facility.*

Sec. 22. (a) *If a person acts in good faith, reasonably, and without malice in connection with the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of a patient or proposed patient or in connection with any act required or authorized by this Act, that person is not liable in civil or criminal damages for that act.*

(b) *A physician who performs a medical examination or provides information to a court in a court proceeding under this Act is an officer of the court and is not liable in civil or criminal damages for any act committed in connection with the examination or provision of information that was committed without malice.*

Sec. 23. (a) A person commits an offense if the person causes, conspires with another person to cause, or assists another person to cause a commitment that the person knows is not warranted of an individual to a mental health facility.

(b) An offense under this section is a Class A misdemeanor.

Sec. 24. (a) A person commits an offense if the person knowingly violates any provision of this Act.

(b) An offense under this section is a Class A misdemeanor.

Sec. 25. The appropriate district or county attorney shall prosecute violations of this Act.

SECTION 12. This Act takes effect September 1, 1985.

SECTION 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 18, 1985, by a non-record vote; passed by the Senate on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 13, 1985

Effective: September 1, 1985