

SUBJECT: Jail diversion programs for mentally ill or mentally retarded offenders

COMMITTEE: Public Health — favorable, without amendment

VOTE: 5 ayes — Capelo, Dawson, McReynolds, Taylor, Zedler

0 nays

4 absent — Laubenberg, Coleman, Naishtat, Truitt

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On companion bill, HB 1967 by Uresti:)*

For — Kristie Blust, Bexar County Commissioners Court; Leon Evans and Gilbert Gonzales, Center for Healthcare Services; Joe Lovelace, National Alliance for the Mentally Ill of Texas; Roger Morin, Collins Garden Neighborhood Association; Dan Vela, Bexar County

Against — None

On — Aaryce Hayes, Advocacy Inc.; Michael Maples, Texas Department of Mental Health and Mental Retardation

BACKGROUND: The Texas Department of Mental Health and Mental Retardation (MHMR) designates a local mental health authority in each service region, which is responsible for planning and delivery, including coordination with criminal justice entities, of mental health services in that area. The general appropriations act sets performance goals for state agencies, which MHMR allocates to each of the service areas.

In 2001, the 77th Legislature established both a jail diversion process and a pilot program to ensure that people in contact with the criminal justice system would receive appropriate services both before and after charges were filed or the person was detained in jail. Mechanisms were in place for diverting nonviolent offenders who were mentally ill or mentally retarded from jail, but judges and prosecutors often were uncertain about whether an offender should be diverted and to what type of facility or program the offender should be

sent. The new process made those determinations clear. The pilot project used technological solutions to coordinate services.

**DIGEST:**

SB 1145 would permit a local mental health authority or mental retardation authority to prioritize its funding for jail diversion. The diversion services could include screening and assessment or treatment such as crisis intervention, medication management, community treatment, short-term residential services or shelter, outpatient services, co-occurring substance abuse treatment, service coordination, and continuity of care. It also could include training of law enforcement. A jail diversion program would require approval from MHMR and collaboration with local resources, such as law enforcement and the judicial system.

The bill would direct MHMR to amend the rules governing local mental health authorities to require them to make recommendations about the most appropriate treatment for individuals who were in jail or juvenile detention or otherwise came into contact with the criminal justice system.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

SB 1145 would give local mental health authorities the flexibility in funding they need to focus on jail diversion. In Bexar County, for example, the mental health authority determined that on any given day, there were more mentally ill people in jail than in the San Antonio mental hospital and that it needed to focus its resources on preventing mentally ill people from becoming incarcerated when they really needed treatment instead. That local authority has implemented a jail diversion program that included training about 50 law enforcement officers and sheriffs to appropriately interact with mentally ill people, training for dispatch to recognize situations that might require the expertise of a specially trained officer, and the creation of a deputy mobile outreach team to offer assessment services. The rigidity of the funding stream through MHMR and the state prevents Bexar County from allocating the resources it needs toward jail diversion. This bill would fix that.

Last session, the state enacted important legislation to lay the groundwork for effective jail diversion. Mentally ill or mentally retarded offenders often are served best in a jail diversion program. These offenders often end up in jail because of “nuisance crimes” they commit while not taking necessary

medication. Typically, their stay in jail is longer because they do not have the resources to post a bond, and their sentences also can be longer because they rack up multiple offenses, though they may not be violent. If they had been diverted to a mental health agency that could have treated their illness, these offenders likely would not have committed the crimes.

The performance measures that local service areas must meet hinders jail diversion. The contract between a local service area and MHMR stipulates certain performance measures, some of which are imposed by the state, such as number of people served, and some by MHMR, such as assertive community treatment, supported housing, and supported employment. Local service areas spend a significant amount of their resources treating individuals to meet these goals, and have little funding left over for jail diversion programs.

While there is some flexibility in funding jail diversion, such as using direct service dollars for assessment, there is not enough funding to both meet the performance goals and pay for training of law enforcement or deputies to staff a mobile outreach team. The service delivery process would be improved if the local service areas could use limited funding for jail diversion and to transition clients with longer-term needs to other appropriate programs.

This bill would not compromise accountability — in fact, it could improve it. The performance measures today are oriented toward the number of people in a program, not the outcomes for those clients. The bill would require MHMR to approve any jail diversion plan, which could include meeting such outcome measures as community tenure, diversion from prison, or employment. These outcome measures are much more meaningful than the current system that counts the number of people served.

The bill would not starve other populations who need services. The proposal would require collaboration with other local resources, such as CareLink in Bexar County, the local indigent medical assistance program that has a behavioral health benefit. People whose services would be reduced by moving funding over to jail diversion would get those services from other programs.

Not all service areas would be interested in using the flexibility proposed in SB 1145. The problem of jail diversion and the resources that can be corralled to work on it largely exist in urban areas.

**OPPONENTS  
SAY:**

Bexar County, or other local mental health authorities, do not need additional funding flexibility because they already have significant leeway for jail diversion programs. Only about 10 percent of their services are directed by performance measures, and the rest is up to them. Jail diversion is important, and a focus on that function is entirely within the local authority's current capabilities.

Other counties have successful jail diversion programs without exemptions from the performance measures. Harris County has an extensive jail diversion program, which is funded with state and local resources. It includes an inpatient facility at a local hospital, a crisis intervention team, and an identification and assessment program.

Exempting some of the larger counties from performance measures could make it difficult for MHMR to meet its state performance measures. The agency is required to report certain measures to the Legislative Budget Board related to the agency's appropriations. If Bexar County, one of the larger local mental health authorities, were exempt, other local authorities would need to "over perform" to meet the same goal. Given that mental health services are likely to see a tight budget in fiscal 2004-05, it would be unfair to ask other areas to do more.

**OTHER  
OPPONENTS  
SAY:**

Because the bill primarily would solve a problem for Bexar County, it would be better to make it a pilot project with an expiration date. Bexar County has resources that other communities do not, including a university health center and an indigent care program with a behavioral health component. While this program is likely to work there, other areas with a smaller safety net might not be able simultaneously to serve people who need ongoing treatment and pursue a jail diversion program. It would be better to try the flexible funding first and measure the results before making it permanent in statute.

**NOTES:**

SB 1145 is identical to the House companion bill, HB 1967 by Uresti, which was reported favorably, without amendment, by the House Human Services Committee on May 1.

HB 2292 by Wohlgemuth, which would require each local mental health authority to incorporate jail diversion strategies into the disease management program proposed by the bill, passed the House on April 28 and is pending in the Senate Finance Committee.