

BILL ANALYSIS

Senate Research Center
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S.B. 44
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 44 is to keep persons with mental illnesses, who have not committed a crime, out of jail, and in the safest environment while facilitating rapid access to mental health treatment. Though persons with mental illness may be detained in a jail in an emergency, this bill explicitly states that time and convenience do not constitute an emergency.

Jails too often serve as holding facilities for persons with mental illness who have not committed a crime, but instead are detained while waiting for mental health treatment after a mental health crisis.

While these persons await transportation to a state hospital, they generally have limited access or no access to mental health services, allowing their conditions to deteriorate further. In addition, these persons are sometimes transported in restraints and in positions that compromise their physical safety.

Research shows that incarcerating a person with mental illness who has not been charged with a crime exacerbates the person's illness. More than 50 percent of suicides in jails are committed within the first 24 hours of incarceration, and 29 percent are committed within the first three hours. In order to address this occurrence, the state should take action to prevent persons with mental illness from being incarcerated for an extended period of time, if they have not been charged with a crime.

Furthermore, the transportation of those experiencing a mental health crisis raises safety concerns. Persons who are transported in a face down position, hog-tied, or placed in hobble restraints are at increased risk of positional asphyxiation, which often results in death.

Current Texas law requires that the local mental health authority ensure that 24-hour emergency screening services, rapid crisis stabilization services, community-based crisis residential services, or hospitalization services are available in each service area.

It also requires that local mental health authorities maintain short-term detention facilities as the proper alternative to incarcerating persons with a mental illness.

By appropriately restricting incarceration to those who have been arrested for crimes, this bill will encourage communities to find alternatives to the use of scarce jail and state hospital beds for persons with mental illness who could be treated more effectively in another setting.

This bill limits the detention of persons with a mental illness to a maximum of 12 hours, and only if an emergency room or other appropriate facility, as determined by a local mental health authority, is more than 75 miles away.

This bill also requires the maintenance of short-term detention facilities and prohibits the use of certain forms of restraint.

Additionally, this bill restricts the use of certain types of restraints, when necessary, to those that enable the person to sit in an upright position, thereby diminishing the risk of positional asphyxiation.

As proposed, S.B. 44 amends current law relating to the detention and transportation of a person with a mental illness.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 537.001(d), (e), and (f), Health and Safety Code, as follows:

(d) Requires a peace officer who takes a person into custody under Subsection (a) to immediately transport the apprehended person to:

- (1) the nearest appropriate inpatient mental health facility;
- (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or
- (3) a medical facility or other facility that the local mental health authority deems suitable, if a facility described in Subdivision (1) or (2) is not available.

(e) Deletes existing text providing that a jail or similar detention facility may not be deemed suitable except in an extreme emergency. Provides that a jail or similar detention facility used to detain persons charged with or convicted of a crime is not a facility suitable for detention of a person taken into custody under this section unless another facility described by Subsection (d)(1) or (2) is not available and the nearest facility described by Subsection (d)(3) is located more than 75 miles from the location where the peace officer has custody of the person. Authorizes a person to be detained in a jail or similar detention facility under this subsection for not longer than 12 hours. Requires the sheriff or other officeholder responsible for the facility to document:

- (1) the time the person's detention begins;
- (2) the duration of the detention;
- (3) the reason for the detention; and
- (4) the time a representative of the local mental health authority arrives at the facility.

(f) Requires the sheriff or officeholder responsible for a jail or a similar detention facility to ensure that a person detained in the jail or similar detention facility is kept separate from any person who is charged with or convicted of a crime, rather than requiring that a person detained in a jail or a nonmedical facility be kept separate from any person who is charged with or convicted of a crime.

SECTION 2. Amends Section 574.023, Health and Safety Code, by adding Subsection (e) to provide that a person taken into custody under this section may be detained only in the manner provided by Section 574.027.

SECTION 3. Amends Section 574.027, Health and Safety Code, by amending Subsections (c) and (d) and adding Subsection (c-1), as follows:

(c) Deletes existing text prohibiting a person under a protective custody order from being detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency, and setting forth the duration of that detention. Deletes existing text requiring that the person be isolated from any person who is charged with or convicted of a crime. Prohibits a person

under a protective custody order from being detained in a jail or nonmedical facility used to detain persons who are charged with or convicted of a crime unless another facility described by Subsection (a) (relating to detention in a mental health facility deemed suitable by the local mental health authority for the area) is not available and the nearest medical facility or other facility deemed suitable by the local mental health authority is located more than 75 miles from the location where the peace officer has custody of the person. Authorizes a person to be detained in a jail or nonmedical facility under this subsection for not longer than 12 hours. Requires the sheriff or other officeholder responsible for the facility to document:

- (1) the time the person's detention begins;
- (2) the duration of the detention;
- (3) the reason for the detention; and
- (4) the time a representative of the local mental health authority arrives at the facility.

(c-1) Requires the sheriff or officeholder responsible for a jail or a nonmedical facility described by Subsection (c) to ensure that a person detained in the jail or facility under Subsection (c) is kept separate from any person who is charged with or convicted of a crime.

(d) Requires the county health authority to ensure that proper care and medical attention are made available to a person who is detained in a jail or nonmedical facility under Subsection (c).

SECTION 4. Amends Section 574.045, Health and Safety Code, by adding Subsection (l) to authorize a patient restrained under Subsection (g) (relating to restraining the patient to protect the health and safety of the patient or of a person traveling with the patient) to be restrained only during the apprehension, detention, or transportation of the patient. Requires that the method of restraint permit the patient to sit in an upright position without undue difficulty.

SECTION 5. Effective date: upon passage or September 1, 2011.