MENTAL HEALTH

COMMITTEE REPORT & RECOMMENDATIONS

October 2016

Texas Judicial Council

205 West 14th Street, Suite 600 • Tom C. Clark Building
(512) 463-1625 • FAX (512) 463-1648
P. O. Box 12066 • Austin, Texas 78711-2066

CHAIR:
HON. NATHAN L. HECHT
Chief Justice, Supreme Court

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

EXECUTIVE DIRECTOR:
DAVID SLAYTON

In June 2016, the Texas Judicial Council established the Mental Health Committee to:

- Gather stakeholder input, and examine best practices in the administration of civil and criminal justice for those suffering from or affected by mental illness;
- Identify and review systemic approaches for diversion of individuals with mental illness from entering the criminal justice system;
- Make recommendations to the Judicial Council on (1) systemic approaches for improving the administration of justice in cases involving mental health issues; (2) strategies to foster meaningful multi-disciplinary collaboration, enhance judicial leadership, develop and implement technology solutions, and explore potential funding sources; and (3) whether a permanent judicial commission on mental health should be created; and
- Recommend legislative changes that will improve the administration of justice for those suffering from or affected by mental illness and recommendations for diversion from the justice system, for consideration by the 85th Texas Legislature commencing in January 2017.

The members of the committee are:

Honorable Bill Boyce, Chair
Honorable Gary Bellair
Ms. Ashley Johnson
Representative Andrew Murr
Honorable Valencia Nash
Honorable Polly Spencer
Senator Judith Zaffirini

An advisory committee was appointed to assist the committee members in their charge. The members of the advisory committee are:

Dr. Tony Fabelo
Honorable Barbara Hervey
Adrienne Kennedy
Beth Ann Lawson
Honorable Harriet O'Neill
Dr. William B. Schnapp

Introduction and Overview

The Texas Judicial Council's Mental Health Committee was created to study and make recommendations regarding improvements to the administration of justice for those suffering from or affected by mental illness. The initial recommendations are explained more fully below.

A discussion of the intersection between mental illness and the Texas court system will put these recommendations in context. Of the 27 million people who live in Texas, approximately 1 million adults experience serious mental illness; roughly half of these adults have serious and persistent mental illnesses including schizophrenia, bipolar disorder, major depression, and post-traumatic stress disorder.[1] Approximately 500,000 children aged 17 or younger have severe emotional disturbance.[2] Substance use disorders frequently accompany mental illness; an estimated 1.6 million adult Texans and 181,000 children aged 12 to 17 have substance use disorders.[3]

These Texans and the communities in which they live frequently find themselves navigating the challenges of mental illness in jails, hospital emergency departments, adult criminal and juvenile justice agencies, schools, and child protective services. These settings often are more expensive and less effective for treating mental illness.

According to the Meadows Mental Health Policy Institute, Texas spends $1.4 billion in emergency room costs and $650 million in local justice system costs annually to address mental illness and substance use disorders that are not otherwise being adequately treated. Some of these amounts are directed to approximately 36,000 "super utilizers" who live in poverty, suffer from mental illness, and frequently use jails, emergency rooms, crisis services, emergency medical services, hospitals, and other resources for short-term interventions. While the Legislature has provided additional funding in prior sessions to invest in the behavioral health system,

[1] Texas Statewide Behavioral Health Strategic Plan, Fiscal Years 2017-2021, at 10 (May 2016) (Tex. Health and Human Servs. Comm'n).
[2] *Id*.
[3] *Id.* at 11.

including funding to address waiting lists and increased outpatient treatment capacity, concerns remain about the capacity to adequately treat individuals with mental illnesses.

Although recognition of the need for outpatient treatment capacity has been growing, the Texas criminal justice system continues to serve as a default provider of mental health services for many individuals. Most inmates eventually return home, where the consequences of inadequate treatment capacity for mental illness play out in predictable and damaging ways for these individuals, their families, and their communities.

Approximately 20- to 24-percent of the inmate population in Texas has a mental health need; adults with untreated mental health conditions are eight times more likely to be incarcerated than the general population.[4] A 2010 study concluded that nearly eight adults with severe and persistent mental illness were in jail or prison in Texas for every adult in a state psychiatric hospital.[5] In fiscal year 2011, the Texas Department of Criminal Justice spent more than $130 million on services for mental health and substance use disorders.[6] As of 2014, the Texas Correctional Office on Offenders with Mental or Medical Impairments spent $21.9 million to support care coordination for offenders with special needs.[7]

These issues are felt at the local level. In Houston, approximately 2,200 inmates received psychotropic medications and mental health services at the Harris County jail in 2013 at a cost of $26 million.[8] Total jail costs related to mental illness in Harris County in 2013 were estimated at more than $49 million in 2013. These 2013 costs were more than $47 million in Dallas County.[9]

These issues affect children and juveniles. Up to 70 percent of youth in contact with the juvenile justice system meet the criteria for a mental health disorder; 60 percent of this group also has a concurrent substance use disorder.[10]

---

[4] Texas Behavioral Health Landscape at 3 (December 2014) (Meadows Mental Health Policy Institute).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id*. at 4.
[9] *Id*.
[10] *Id.*

The judiciary is one stakeholder in a highly fragmented system intended to meet the needs and facilitate the recovery of those suffering from or affected by mental illness. In some localities, mental health authorities and law enforcement have collaborated effectively to reduce fragmentation and create innovative programs. Texas has realized improvements in the administration of justice on other highly complex issues through long-term, judicially-led, interdisciplinary initiatives. Examples are the Texas Access to Justice Commission and the Permanent Judicial Commission for Children, Youth and Families ("Children's Commission"). These models may prove helpful to designing and implementing strategies that improve the administration of justice for those suffering from or affected by mental illness and co-occurring conditions. These models will be explored in future committee reports, along with additional recommendations.

The committee has focused on recommendations in anticipation of the 85th Legislature's opening on January 10, 2017.

Basic Assumptions

The committee's recommendations below are being made based upon the assumption that adequate funding and resources will be made available to allow the changes to be effective. In particular, additional resources will be necessary for:

- local mental health authorities, local intellectual and developmental disability authorities, or other qualified mental health or intellectual disability providers to timely complete mental health assessments;
- appropriate community-based mental health or intellectual disability services for defendants through the Department of State Health Services, the Health and Human Services Commission, or another mental health or intellectual disability services provider;
- outpatient treatment services for competency restoration;
- outpatient education services for competency restoration;
- inpatient mental health facilities other than those operated by the Department of State Health Services for purposes of competency restoration; and

- jail-based competency restoration programs, either state-funded or county-funded or both.

Competency restoration has long been a state-funded responsibility. The committee recognizes this funding responsibility and urges the Legislature to continue funding competency restoration services. As stated previously, the following recommendations are reliant upon adequate funding for the mental health services mentioned above, and failure to provide adequate funding for these services will jeopardize the ability to implement the recommendations.

Recommendations

1. **Screening Protocols**

The first step in identifying a need for mental health treatment often occurs as part of the intake process at local jails. Texas has had a statutory mechanism in place since 1993 requiring sheriffs to notify magistrates if there is cause to believe a defendant in custody is mentally ill.[11] Since 1993, Texas also has had statutory authorization for magistrates to release a nonviolent defendant with a mental illness on a personal bond and require treatment as a condition of release.[12] Violent offenses are excluded from this personal bond provision by statute. Local practices also affect the availability of personal bonds.

The Council should recommend the following steps:

- Improving transmission of screening information to magistrates under Code of Criminal Procedure Article 16.22.

- Evaluating the effectiveness of Article 16.22, compliance, timing requirements, the feasibility of standardized forms, the fiscal impact on smaller communities of screening requirements, and the effectiveness of statewide reporting.

- Evaluating amendments to Code of Criminal Procedure Article 17.032 to increase flexibility regarding bond availability and conditions for mentally ill, non-violent defendants. This evaluation should be

[11] Art. 16.22, Code of Criminal Procedure.
[12] Art. 17.032, Code of Criminal Procedure.

undertaken in consideration of pretrial release recommendations being made concurrently by the Council's Criminal Justice Committee.

2. **Competency Restoration**

The 2,400 beds available for inpatient psychiatric treatment in state mental health facilities do not meet the statewide need. This resource serves multiple purposes. One is to treat Texans with severe mental illness who are not involved in the criminal justice system. Another is competency restoration for mentally ill criminal defendants as authorized under Texas Code of Criminal Procedure Article 46B.071. Competency restoration generally includes two phases: (1) psychiatric stabilization, and (2) education about the criminal justice process to increase the defendant's ability to participate in presenting a legal defense. According to the Meadows Mental Health Policy Institute, the average length of stay at state mental health facilities has increased from 58 days in 2012 to 74 days in 2015. The waiting list for these beds has increased; 424 individuals were waiting in jail for a hospital bed as of January 2016.[13]

The capacity needed for ongoing intensive care outside of an inpatient hospital bed setting is lacking. This capacity must be expanded if reliance on inpatient psychiatric treatment is to be reduced for those Texans who can be treated effectively and safely in other settings.

The Council should recommend the following steps:

- Reevaluating whether persons charged with non-violent, misdemeanor offenses should be committed to a state mental health facility for competency restoration. Individuals charged with non-violent, Class B misdemeanors face a maximum sentence of 180 days in jail. Placing these individuals on a path to competency restoration at a state mental health facility delays treatment and causes them to languish in jail waiting for a bed. Placing these individuals in a state mental health facility to retain competency to stand trial often is a moot point once competency is restored because the maximum sentence has been exceeded. These individuals would be better served by being connected

[13] Texas Statewide Behavioral Health Strategic Plan, Fiscal Years 2017-2021, at 26 (May 2016) (Tex. Health and Human Servs. Comm'n).

to treatment in their communities or, if necessary, receiving treatment through a civil inpatient bed. This approach would reduce inpatient bed demand and free up capacity for those individuals who need treatment at a state mental health facility. Successful implementation of this approach will require creation and expansion of local treatment options sufficient to meet demand and the needs of these individuals and their communities.

- Clarifying existing law to provide local communities with the authority to offer competency restoration and maintenance in any safe and clinically appropriate setting that meets appropriate standards. These settings could include outpatient residential, community inpatient, and jail settings. The Council also should recommend broadening judicial discretion in choosing the best use of local competency restoration options, across appropriate settings, to help reduce backlogs in county jails and state hospitals.

- Simplifying the procedure for reimbursing counties for a restored inmate's medication and studying the resources necessary to address this population's medication needs adequately.

    - This could be accomplished through the restoration of budget rider 68 in the Texas Department of Criminal Justice budget from the 78th Legislature.[14]

[14] Rider 68, Texas Department of Criminal Justice (p. V-25): "Continuity of Care. Out of the funds appropriated above in Strategy B.1.1, Special Needs Projects, the Texas Council on Offenders with Mental Impairments shall coordinate with the Texas Department of Mental Health and Mental Retardation, county and municipal jails, and community mental health and mental retardation centers on establishing methods for the continuity of care for pre- and post-release activities of defendants who are returned to the county of conviction after the defendant's competency has been restored. The Council shall coordinate in the same manner it performs continuity of care activities for offenders with special needs. ***As part of the Continuity of Care Plan and out of funds appropriated above in Strategy B.1.1, Special Needs Projects, the Texas Council on Offenders with Mental Impairments shall provide a 90-day post-release supply of medication for a defendant who, after having been committed to a state mental health and mental retardation facility for restoration of competency under Chapter 46, Code of Criminal Procedure, is being returned to the committing court for trial. The 90-day supply of medication shall be the same as prescribed in the Continuity of Care Plan prepared by the state mental health and mental retardation facility."*** (emphasis added)

- Addressing the effects of trial delays after competency restoration has occurred.

- Shifting the legal education component of competency restoration to an appropriate non-medical environment after psychiatric stabilization has been achieved.

3. **Jail Diversion**

The 83rd and 84th Legislatures created and funded a $10 million pilot program to reduce recidivism and the frequency of arrests and incarceration among persons with mental illness in Harris County. This "SB 1185" jail diversion pilot program requires local matching funding from Harris County, local collaboration, and services coordination. Outcome measures focus on reducing recidivism, frequency of arrests, and incarceration. Authorization for the SB 1185 jail diversion pilot program expires in 2017; a report on its results will be issued by the end of 2016.

The Council should recommend the following steps:

- Continuing and expanding the SB 1185 jail diversion pilot program if it is shown to be effective based upon the upcoming evaluation. Any expansion should be tailored to local needs, resources, and conditions. As part of any expansion, the state should partner with communities that work collaboratively to eliminate forensic waitlists in their jails where all key local leaders (county, local mental health authorities, and, if present, the hospital district) agree on the plan. The goal should be to build sufficient treatment capacity for routine cases locally.

Areas of Future Study

The committee discussed many other issues that may have merit. The committee recommends that the Council continue studying the following issues for potential action:

- Expand judicial education on best practices for addressing needs of mentally ill individuals in the court system; promote use of appropriate terminology to avoid outmoded and disrespectful labels.

- Require contracts with Department of State Health Services to promote coordination among local mental health agencies, courts, and service providers; review effects of contract provisions on options for preventive mental health treatment; review contractual waivers to address payment if treatment is refused.

- Mandate consistent data collection across all specialty courts to allow measurement of key factors including outcomes and recidivism.

- Suspend rather than terminate housing and other benefits for mentally ill offenders during incarceration to reduce risk of recidivism upon release. Provide acceptable housing options after release.

- Explore availability of services for juveniles and screening mechanisms to diminish delays in addressing first onset of psychosis between ages 15-25; consider options for increasing parental participation in counseling under Family Code §§ 54.041(a)(3), 61.002(a)(8).

- Evaluate the availability of mental health programs in rural areas.

    - Funding; flexibility in requiring local funding matches.

    - Impediments to care based on factors including distance, lack of local mental health professionals.

- Coordinate with OCA's guardianship compliance pilot program and guardianship reforms recommended by the Judicial Council's Elders Committee.

- Expand the scope of the Mental Health Committee, or any future commission studying mental health issues, to focus on individuals with an intellectual disability and examine the intersection of the justice system with these individuals to promote effective practices in the administration of justice when individuals with an intellectual disability are justice-involved.

- Establish a permanent judicial commission on mental health, similar to the Children's Commission; the Texas Access to Justice Commission; and the Texas Indigent Defense Commission.