

SUBJECT: Identifying arrestees, jail diversion, jail safety, training, reporting

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 4 ayes — Moody, Hunter, Canales, Gervin-Hawkins

3 nays — Hefner, Lang, Wilson

SENATE VOTE: On final passage, May 11 — 31 - 0

WITNESSES: *On companion bill, HB 2702:*

For — Dominique Alexander, Next Generation Action Network; Yannis Banks, Texas NAACP; Kathryn Bedecarre, Martha Chang, Joao Paulo Connolly, and Chas Moore, Austin Justice Coalition; Kristina Brown, and Fatima Mann, Counter Balance: ATX; Patsy Gillham, Isensee Foundation for Safe Police Response; Greg Hansch, National Alliance on Mental Illness Texas; Kathy Mitchell, Texas Criminal Justice Coalition; Randy Petersen, Texas Public Policy Foundation; Reginald Smith, Communities for Recovery; Latosha Taylor, Grassroots Leadership; Nakia Winfield, NASW-TX; Geneva Reed Veal and 11 other individuals; (*Registered, but did not testify*): Rebecca Bernhardt, Texas Fair Defense Project; Margaret "Peggy" Cook, Joey Gidseg, Nicole Meitzen, Lauren Oertel, Alexandra Peek, and Lori Privitera, Austin Justice Coalition; Morgan Craven, Texas Appleseed; Stephen Ellsesser, and Rene Hurtado, Emergence Health Network; Will Francis, National Association of Social Workers - Texas Chapter; Kathryn Freeman, Christian Life Commission; Joseph Green, Travis County Commissioners Court; Darwin Hamilton, Reentry Advocacy Project; Joshua Houston, Texas Impact; Branden Johnson, East Texas Region of NAACP; Lee Johnson, Texas Council of Community Centers; Dallas Jones, Houston NAACP; Sukyi McMahan, Just Liberty; Jeff Miller, Disability Rights Texas; Celina Moreno, MALDEF (Mexican American Legal Defense and Educational Fund); Robert Morris, Next Generation Action Network; Michael Nachbar, Left Up to Us; Stacey Pogue, Center for Public Policy Priorities; Annette Price, Austin/Travis County Reentry Roundtable; Jaime Puente, Texas Graduate Student Diversity; Gwendolyn Quintana, National Alliance on

Mental Illness, Austin Affiliate Advocacy Committee; Deborah Rosales-Elkins, NAMI Texas; Rebecca Sanchez, Grassroots Leadership; Matt Simpson, ACLU of Texas; Chuck Smith, Equality Texas; Clifton Styles and Meme Styles, Black Pflugerville; Aidan Utzman, United Ways of Texas; and 24 individuals)

Against — Chris Jones, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify*: Ken Good, John McCluskey, Glenn Meeker, and Scott Walstad, Professional Bondsmen of Texas; Ray Hunt, Houston Police Officers Union; James Jones, San Antonio Police Department; Mitch Landry, Texas Municipal Police Association; Jimmy Rodriguez, San Antonio Police Officers Association; Andrew Romero, Austin Police Association; Charley Wilkison, Combined Law Enforcement Associations of Texas; Joseph Villarreal)

On — Micah Harmon, Sheriffs' Association of Texas; Lauren Lacefield Lewis, Health and Human Services Commission; Brandon Wood, Texas Commission on Jail Standards; Michele Deitch; (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Dr. Erin Foley, Health and Human Services Commission; John Helenberg, Texas Commission on Law Enforcement; AJ Louderback, Sheriffs' Association of Texas)

DIGEST: SB 1849 would revise laws on the identification and screening of an arrestee who might be a person with a mental illness or an intellectual disability and on diversion to treatment by law enforcement agencies of a person suffering a mental health crisis or suffering from the effects of substance abuse. It also would revise laws on grants to community collaboratives. The bill would require the Commission on Jail Standards to adopt rules and procedures addressing jail safety, establish requirements for reporting serious incidents in jails, revise training requirements for certain law enforcement authorities, and expand reporting of certain types of information about law enforcement activities.

Identification, screening of arrestees. The bill would shorten the time frame for sheriffs to provide notice to magistrates about having credible

information that may cause them to believe that someone in their custody had a mental illness or was a person with an intellectual disability. The notice would have to be given within 12 hours, rather than 72 hours, after receiving the information.

Diversion to treatment. Law enforcement agencies would be required to make a good faith effort to divert those suffering a mental health crisis or suffering from the effects of substance abuse to a treatment center in the agency's jurisdiction if:

- there was an available and appropriate treatment center in the agency's jurisdiction;
- it was reasonable to divert the person;
- the person was accused of a non-violent misdemeanor; and
- the mental health crisis or substance abuse issue was suspected to be the reason the person committed the alleged offense.

This diversion requirement would not apply to those accused of driving while intoxicated, driving while intoxicated with a child, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, intoxication assault, and intoxication manslaughter.

Community collaboratives. SB 1849 would revise the criteria that apply to certain grants that currently can be made to community collaboratives by the Department of State Health Services. Substance abuse issues would be added to the list of services that grants can support, and a requirement that grants be made in the most populous cities in large counties would be removed. The list of entities that can be given special consideration to receive grants would be expanded to include those establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000.

The bill would add local law enforcement agencies to the groups with which local entities receiving grants must coordinate. It also would require entities receiving grants to provide evidence of a local law

enforcement policy to divert appropriate persons from jails to an entity affiliated with the collaborative for services.

Counties would be required to develop a public plan detailing how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders could coordinate to establish or expand a community collaborative. The bill would establish other requirements for the plan, including those related to funding and potential services to divert arrestees to mental health care or substance abuse treatment.

Jail standards on prisoner safety. The Commission on Jail Standards would be required to adopt rules and procedures to ensure the safety of prisoners, including ones requiring county jails to:

- give prisoners the ability to access a mental health professional 24 hours a day at the jail through telemental health services;
- give prisoners the ability to access a health professional 24 hours a day at the jail or through telehealth services or provide transportation to a health professional; and
- if funding was available, install automated sensors or cameras to ensure accurate and timely in-person checks of cells with at-risk individuals.

The Commission on Jail Standards would have to adopt the rules by September 1, 2018. On or after September 1, 2020, county jails would have to comply with the rules and procedures.

The commission would be required to adopt rules and procedures establishing minimum standards for the continuity of prescription medications for prisoners by January 1, 2018.

SB 1849 would create the prisoner safety fund as a dedicated account in the general revenue fund. The fund could be appropriated only to the Commission on Jail Standards for capital improvements required by rules adopted by the commission to ensure prisoner safety. The commission could establish a program to provide grants to counties with jails of 96

beds or fewer for these capital improvements.

Serious incidents report, investigation. SB 1849 would require sheriffs to report monthly to the Commission on Jail Standards on the occurrence of several types of incidents involving jail prisoners in the preceding month. The sheriff would have to report on suicides, attempted suicides, deaths, serious bodily injury, assaults, escapes, sexual assaults, and uses of force resulting in bodily injury. The reported information would be public information but could not include the name or identifying information of a county jailer or jail employee.

If a prisoner died in a county jail, the commission would be required to appoint a law enforcement agency, other than the one that operated the jail, to investigate the death.

Officer, jailer training. The bill would set at 40 hours in length the currently required statewide education and training program for law enforcement officers on de-escalation and crisis intervention techniques for interactions with persons with mental impairments.

The Texas Commission on Law Enforcement would be required, as part of the minimum curriculum training, to mandate that peace officers complete a statewide education and training program on de-escalation techniques to facilitate interaction with the public, including techniques for limiting the use of force that results in bodily injury. The training programs would have to be modified by March 1, 2018, and the minimum curriculum requirements would apply to peace officers who first began to satisfy the requirements on or after April 1, 2018.

The continuing education program that certain local entities are required to provide for their peace officers would have to include training on the same topic. SB 1849 would require that the intermediate and advanced proficiency certificates offered by the Texas Commission on Law Enforcement include the education and training program on de-escalation techniques to facilitate interaction with the public that would be established by the bill.

Under the bill, the currently required training program for county jailers would have to include at least eight hours of mental health training approved by the Texas Commission on Law Enforcement and the Commission on Jail Standards. This section of the bill would take effect January 1, 2018, and a person serving as county jailer on September 1, 2017, would have to comply with requirement by August 31, 2021.

The Texas Commission on Law Enforcement would be required to develop an exam for a person assigned to be a jail administrator in a county jail. The Commission on Jail Standards would have to approve the exam. No one, except for a sheriff, could serve as a jail administrator of a county jail unless that person had passed the exam.

The Commission on Jail Standards would have to adopt rules requiring those, other than sheriffs, assigned as county jail administrators to pass the exam within 180 days of being assigned to the position. The rules would have to require that a person who failed the exam would be immediately removed from the position and could not be reinstated until he or she passed the exam. Sheriffs would be required to perform the duties of jail administrators when there was no one available who had passed the exam. The exam would have to be developed and approved by March 1, 2018.

Racial profiling policies. The bill would amend the requirements for the currently mandated racial profiling policy that is required of law enforcement agencies. The current requirement to collect information about motor vehicle stops in which citations were issued or arrests made would be expanded to include information on tickets and warnings. The bill would require the collection of information from motor vehicle stops about whether a peace officer used physical force that resulted in bodily injury, the location of the stop, and the reason for the stop. Agencies would be required to review the data collected about these stops to identify improvements the agency could make in its practices and policies.

The current requirement that a racial profiling policy provide public education about an agency's complaint process would be amended to

require that information about the agency's compliment process be included and that public education include providing the telephone number, mailing address, and email address to make a compliment or complaint. This would be done for each ticket, citation, or warning issued by a peace officer.

Under racial profiling policy, law enforcement agencies would be required to examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body-worn camera.

Reports required for motor vehicle stops. The bill would add to the information that would have to be reported by peace officers who stop motor vehicles for alleged law violations. The current requirement to report on whether a written warning or citation was issued would be expanded to require reporting on tickets and on verbal warnings. The bill would establish a new requirement to report whether the officer used physical force that resulted in bodily injury. A current partial exemption from reporting for certain agencies using video and audio equipment would be repealed.

The chief administrator of a law enforcement agency would be made responsible for auditing these reports to ensure that the current requirement to report race or ethnicity of the person operating the vehicle was followed.

The currently required annual report of this information would be subject to a new requirement to evaluate and compare the number of searches resulting from motor vehicle stops and whether contraband or other evidence was discovered in the searches. The current civil penalty for chief administrators of local law enforcement agencies who intentionally fail to submit the data as required would be changed from a penalty of \$1,000 to one not to exceed \$5,000.

The Texas Commission on Law Enforcement would have until September 1, 2018, to evaluate and change its guidelines for reporting on motor vehicle stops so that the guidelines better withstood academic scrutiny and

to make certain information accessible online.

Other provisions. SB 1849 contains other provisions, including:

- requiring court clerks to notify those who were indicted for misdemeanors and those on bail at the time of an indictment; and
- expanding current law relating to the Department of Public Safety aiding law enforcement agencies in obtaining funds for video and audio equipment to include body worn cameras, as well as other revisions to the program.

The bill would prevail over another act of the 85th Legislature, regular session, relating to nonsubstantive additions and corrections to codes.

SB 1849 would take effect September 1, 2017.

SUPPORTERS
SAY:

SB 1849 would improve the state's criminal justice system by expanding options for handling those suffering mental health or substance abuse issues, improving safety in county jails, expanding training of law enforcement officers, and increasing and improving the collection of data. The act would be named in honor of Sandra Bland who died in a county jail after an arrest that followed a traffic stop.

The bill is focused on improving the criminal justice system. It is designed to better protect those involved in the system, improve their outcomes, and help prevent future tragedies.

Identification, screening of arrestees. SB 1849 would diminish delays in the early identification of arrestees with potential mental illness or intellectual disability. The bill would accelerate the deadline for passing along initial information that there was cause to believe an arrestee was a person with mental illness or an intellectual disability to make sure that magistrates had all available information at the hearing held within 48 hours of an arrest. Armed with this notice, magistrates could begin the process of gathering further information and make informed decisions about handling the arrestee.

Jail officials would be able to meet the timeline in the bill. To meet the requirements, officials merely would have to pass along any information they had to magistrates, not perform any new duties. The early identification and appropriate handling of inmates with mental illness or intellectual disabilities would end up saving resources and help lead to the appropriate resolution of cases.

Diversion to treatment. Requiring law enforcement to make good faith efforts at diverting certain persons suffering a mental health crisis or suffering from the effects of substance abuse to treatment would result in better outcomes for those diverted, while allowing the criminal justice system to focus on other offenders. The bill would limit required efforts at diversion to an appropriate group whose alleged offenses were non-violent and did not include certain intoxication offenses. Diversions would be prefaced on available and appropriate treatment, which could help address underlying issues that without treatment can result in a person cycling through the criminal justice system.

Community collaboratives. SB 1849 could expand local options to divert those with mental health or substance abuse needs from the criminal justice system. The bill would allow state grants to community cooperatives to support services to those with substance abuse issues and would include law enforcement agencies in the groups with which the collaboratives would coordinate. These programs could reduce the number of people in jails with mental illness and substance abuse issues.

Jail standards on prisoner safety. The bill would help create safer jails by requiring the Commission on Jail Standards to adopt uniform, statewide rules relating to the safety of inmates. The bill would require rules about mental health services and health care to help ensure those in jails had access to treatment and would allow telemental health and telehealth services so that jails had the flexibility to meet this requirement in several ways.

SB 1849 would require rules concerning the installation of automated

sensors or cameras to make sure those in jails who were at risk, perhaps of harming themselves, were adequately monitored. This could help prevent jail suicides and other incidents. Monitors and sensors would be required only if funding were available, ensuring the requirement would not be a burden.

Serious incidents reports, investigations. By requiring reporting on serious incidents and investigations of jail deaths, the bill would help the state track, address, and prevent these issues. Reports would focus on the data collection, not on the names of jailers or jail employees.

Officer, jailer training. The bill would promote and improve training of law enforcement authorities. It would set the currently required training for law enforcement officers in de-escalation and crisis intervention techniques at 40 hours to make sure the training was comprehensive. Other requirements for peace officers to receive training in de-escalation could improve interactions between officers and the public and could prevent future tragedies. Mental health training for county jailers would help ensure that those who interacted with prisoners were adequately prepared. The training requirements in the bill would not be burdensome because its deadlines would give state agencies developing training, as well as those taking it, enough time to meet the requirements.

SB 1849 would fill a gap in the current law by establishing an exam for jail administrators. The bill would help ensure that those responsible for day-to-day jail operations were knowledgeable about jail commission rules and that everyone statewide met this qualification. The requirement that jail administrators pass the exam would not be a burden on counties because sheriffs could serve as jail administrators.

Racial profiling policies. The bill would expand and improve data collection under law enforcement agencies' racial profiling policies. Collecting additional information about each stop would aid in identifying and addressing problems, which would help ensure Texans were treated fairly. The bill would facilitate accountability and communications between the public and law enforcement agencies by requiring all tickets,

citations, and warnings to include contact information for compliments or complaints.

Reports required for motor vehicle stops. SB 1849 would improve the collection of information about motor vehicle stops by expanding reporting and requiring additional information. Improved data collection would help entities know where to focus improvement efforts, which could lead to better interactions between law enforcement officers and the public.

OPPONENTS
SAY:

SB 1849 would not adequately address many of the issues that were discussed following the death of Sandra Bland in a Texas jail. Other reforms are needed, including those revising the state's bail system, prohibiting arrests for fine-only offenses, addressing racial profiling, and revising the rules governing certain types of searches and stops by law enforcement officers.

OTHER
OPPONENTS
SAY:

SB 1849 could require additional resources from counties and local law enforcement agencies that already may be financially strained.

NOTES:

In its fiscal note, the Legislative Budget Board estimates a cost from the general revenue fund of \$166,464 for fiscal 2018-19.

A companion bill, HB 2702 by Coleman, was left pending following a public hearing in the House Homeland Security and Public Safety Committee on April 11.