

BILL ANALYSIS

Senate Research Center
83R668 AJZ-D

S.B. 36
By: Zaffirini
Health & Human Services
2/21/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill is to keep persons with mental illnesses who have not committed a crime out of jail and in the safest environment possible while facilitating rapid access to mental health treatment.

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. What's more, these persons are sometimes transported in restraints and in positions that compromise their physical safety.

The mental health code stipulates the required provision of crisis services for persons with mental illness in the community. This is too often interpreted as transportation to a state hospital. The location of open state hospital beds and limited local staff resources present barriers to timely transportation. Frequently law enforcement officials delay the transportation of detained persons with mental illness until the trip is deemed cost effective, thereby limiting their access to appropriate and timely care. Persons with mental illness who are detained in jail frequently endure violence, exploitation, and extortion at the hands of other inmates, and jail staff often are not trained to handle persons with mental illness.

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 the mentally ill.

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. This bill limits the detention of persons with a mental illness for 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.

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.

By restricting incarceration appropriately 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.

As proposed, S.B. 36 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 573.001(e) and (f), Health and Safety Code, as follows:

(e) Prohibits a jail or similar detention facility from being deemed suitable for detention of a person taken into custody under this section except in an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or person transporting the proposed patient. Authorizes a person, in the event of an extreme emergency, to be detained in a jail or similar detention facility under this subsection during the extreme emergency and for not longer than 12 hours after the emergency ends. Requires the sheriff or other officeholder responsible for the facility to document and report to the Texas Commission on Jail Standards (TCJS) on a monthly basis for each person detained in a jail or similar detention facility the time the person's detention begins, the duration of the detention, the reason for the detention, and the time a representative of the local mental health authority is notified and 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 require 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 authorize a person taken into custody under this section to 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) 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 except because of and during an extreme emergency that exists because of hazardous weather or the occurrence of a disaster that threatens the safety of the proposed patient or the person transporting the proposed patient. Authorizes a person, in the event of an extreme emergency, to be detained in a jail or nonmedical facility under this subsection during the extreme emergency and for not longer than 12 hours after the extreme emergency ends. Requires the sheriff or other officeholder responsible for the facility to document and report to TCJS on a monthly basis for each person detained in the jail or nonmedical facility the time the person's detention begins, the duration of the detention, the reason for the detention, and the time a representative of the local mental health authority is notified and arrives at the facility. 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 in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) (relating to when a hearing takes place for the proposed patient who was detained under a protective custody order) for an extreme emergency. Deletes existing text requiring the person to be isolated from any person who is charged with or convicted of a crime.

(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) Includes a person who is detained in a jail facility under Subsection (c), in addition to a person who is detained in a nonmedical facility under Subsection (c), as a person to whom the county health authority is required to ensure that proper care and medical attention are made available.

SECTION 4. Amends Section 574.045, Health and Safety Code, by adding Subsection (l), as follows:

(l) Authorizes a patient restrained under Subsection (g) (relating to the restraint of a patient during transport of 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, 2013.