THE SUPREME COURT OF TEXAS

THE TEXAS COURT OF CRIMINAL APPEALS

Legislative Recommendations and Reports

September 2020

Judicial Commission on Mental Health

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I.
Introduction

The Supreme Court of Texas and the Texas Court of Criminal Appeals created the Judicial Commission on Mental Health to examine court practices and the administration of justice in our state courts and the ways they relate to behavioral and mental health challenges in Texas. In the Fall of 2019, the Courts convened two JCMH task forces, composed of stakeholders in the courts and the mental health providers that intersect with the courts, to study and make recommendations to improve or refine laws and rules relating to mental health and intellectual and developmental disabilities.

The first task force examined current mental health statutes and procedures as the Legislature directed in Senate Bill 362.[1] Senate Bill 362 directed the Supreme Court of Texas to adopt rules to streamline and promote efficiency in court processes under Chapter 573 of the Texas Health and Safety Code (emergency detention) and to implement measures relating to mental health and intellectual and developmental disabilities to create consistency and access to the judicial branch.[2] The second task force focused on legislative research to recommend potential legislative changes to the Texas Judicial Council.[3]

The 362 Task Force met on December 2, 2019 and divided its work into three subcommittees: (i) Legislative Recommendations; (ii) Technology Solutions for Emergency Detention Warrants; and (iii) Forms. The Forms committee's work is still underway and not included in this report.

On December 5, 2019, the Legislative Research Task Force convened and divided its work into three areas: (i) Competency Restoration; (ii) Diversion; and (iii) Services. The Services committee, and the corresponding attached report, shares the judiciary's insight on mental health services aimed at improving the state judiciary's ability to fairly administer justice.

These working groups continued to meet and work throughout 2020 to develop these proposals and reports. The JCMH recognizes that, in the course of becoming a law, a proposal may go through many changes. These proposals reflect suggestions by leading practitioners in Texas in the mental health and intellectual and developmental disability fields. Both Courts are grateful for the hard work of JCMH's commissioners, task force volunteers, and staff, who finished this report while navigating the COVID-19 pandemic.

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[1] Order of the Supreme Court of Texas Creating Task Force for Procedures Related to Mental Health at 1 (Misc. Docket No. 19-9094) (2019).

[2] *See* Act of May 15, 2019, 86th Leg., R.S. ch.582 §26 (S.B. 362).

[3] Order of the Supreme Court of Texas and The Texas Court of Criminal Appeals Establishing the Legislative Research Committee of the Judicial Commission on Mental Health (Supreme Court Misc. Docket No. 19-9095) (Court of Criminal Appeals Misc. Docket No. 19-010) (2019).

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V.
Legislative Recommendations of the Legislative Research Task Force

1) Defendant with Lack of Capacity in Justice and Municipal Courts

Subject to procedural requirements, section 8.08 of the Texas Penal Code allows justices of the peace and municipal judges to dismiss complaints alleging Class C misdemeanors in juvenile cases when the justice or judge finds probable cause exists to believe the child is unfit to proceed. Currently, there is no corollary to section 8.08 for adults who are charged with Class C misdemeanors. The JCMH recommends amending chapter 45 of the Texas Code of Criminal Procedure by adding article 45.0214. Article 45.0214 is a corollary to section 8.08 and provides justices of the peace and municipal judges a comparable procedure for adults charged with Class C misdemeanors. On a motion by the state, the defendant, or person standing in parental relation, or on the court's own motion, a justice or judge is authorized to determine if probable cause exists to believe that the defendant, including a defendant with a mental illness or developmental disability, lacks the capacity to understand criminal proceedings or to assist in the defendant's own defense and is unfit to proceed. The proposed statutory change is shown in appendix A.

2) Acceptance of a Plea in Justice and Municipal Courts

Article 26.13(b) of the Texas Code of Criminal Procedure directs county and district judges in criminal cases to accept pleas only from defendants who appear mentally competent and whose plea is given freely and voluntarily. Article 26.13(b) is a codification of U.S. Supreme Court and Texas case law applicable to criminal cases. There is currently no corresponding statutory requirement for municipal judges and justices of the peace in cases involving Class C misdemeanors. JCMH recommends amending chapter 45 of the Texas Code of Criminal Procedure by adding article 45.0241 to direct municipal judges and justices of the peace to proceed in the same manner as article 26.13(b). The suggested language is shown in appendix B.

3) Time Periods for Competency Orders

The JCMH recommends amending article 46B.055 of the Texas Code of Criminal Procedure to clarify when competency restoration orders technically begin. This will promote consistency and assist in determining the period of competency restoration, with the triggering event being the latter of either the date the order is signed or when competency restoration services begin. The proposed statutory change is shown in appendix C.

4) Jail-Based Competency Restoration Pilot Program and County Programs

The Legislature has created two possible paths under chapter 46B of the Texas Code of Criminal

Procedure for establishing jail-based competency restoration (JBCR) programs: 46B.090, Jail-Based Restoration of Competency Pilot Program to be operated by the Texas Health and Human Services Commission (HHSC), and 46B.091, Jail-Based Competency Restoration Program Implemented by a County. HHSC has awarded a contract for a Pilot Program, as such, the statutory mechanism in 46B.090 for doing so should be continued. This proposal would also amend 46B.090 to better align it with the program requirements later enacted in 46B.091, which created a path to Jail-Based Competency Restoration through Implementation by County. The proposal aligns the two statutes and sunset article 46B.090 as of September 1, 2022. After that time, any pilot program authorized under 46B.090 would thereafter be governed by 46B.091. The proposed statutory change is shown in appendix D.

5) Deadlines for Competency Evaluations and Timelines in Jail Based Competency Restoration Programs

The JCMH proposes to amend article 46B.091 of the Texas Code of Criminal Procedure regarding deadlines for evaluations and addressing the current law's limitation of 60 days for JBCR. As currently written, this statute can result in stopping the 120-day commitment period clock at the end of the 60-day period for jail-based services and resuming only when the defendant reaches an inpatient facility. The proposed change mandates the continuation of jail-based services while the defendant waits for an inpatient bed. The proposed change also revises the deadline for competency evaluations in JBCR programs to match article 46B.079. Additionally, the proposal would provide authority to the trial court to modify an order for JBCR by ordering outpatient competency restoration, when appropriate. The proposed changes are shown in appendix E.

6) Good Time Credit for Defendants Released to Outpatient Competency Restoration Programs

The JCMH recommends an amendment to article 46B.009 of the Texas Code of Criminal Procedure to credit a defendant with good time for attending or participating in an outpatient competency restoration program. Similar time credit is currently required for periods of inpatient competency restoration. The proposed statutory change is shown in appendix F.

7) Possibility of a Step Down from Court-Ordered Inpatient to Outpatient Mental Health Services under 46B.105

This proposal adds article 46B.1055 to the Texas Code of Criminal Procedure. This new section permits a court to consider a possible further step down in the placement of a defendant under an order of civil commitment with a finding of violence. Article 46B.105 allows HHSC to transfer a civilly committed defendant from a maximum-security facility to a facility other than a maximum-security unit. The addition of article 46B.1055 would then allow a court to hold a hearing and determine if a step down to outpatient mental health services is appropriate in modifying the defendant's civil commitment order. The proposal also includes language to require consultation with the local mental health authority or local behavioral health authority before any court hearing.

This proposal also amends the title of article 46B.105 for specificity and clarification purposes. The proposed statutory change is shown in appendix G.

8) Expert Qualifications in Competency/Insanity Evaluations

This proposal amends article 46C.102 of the Texas Code of Criminal Procedure to align the expert qualifications in article 46C.102 (insanity) with article 46B.022 (incompetency). The proposal mirrors changes to article 46B.022 enacted in 2011. The proposed statutory change is shown in appendix H.

9) Oath and Promise to Appear for Persons with MI/IDD

An anomaly exists with respect to article 17.04 of the Texas Code of Criminal Procedure, Requisites of a Personal Bond. Included in the requisites is the requirement in subsection (3) that the defendant swear under oath that he or she will appear. A failure to appear can result in a contempt finding and other consequences. Individuals released under articles 17.032, 16.22(c)(5), and chapter 46B with treatment conditions or competency restoration may not comprehend the significance of the oath. The proposed amendment to article 17.04 removes the oath requirement for a defendant released on personal bond under article 17.032, 16.22(c)(5), and chapter 46B. The proposed statutory change is shown in appendix I.

10) 16.22 Interview for a Defendant No Longer in Custody

The proposed amendment to subsection (a)(2) of article 16.22 of the Texas Code of Criminal Procedure removes the requirement of ordering an interview and collection of 16.22 information when the defendant is no longer in custody. The interview and collection of information from an out-of-custody defendant is a beneficial idea in theory; however, in practice, searching for an out-of-custody defendant with a possible mental illness creates a further backlog on the already over-scheduled local mental health provider. The proposed statutory change is shown in appendix J.

11) Psychiatric Stabilization at the Jail

The proposed amendment to section 511.009(d) of the Texas Government Code requires the Texas Commission on Jail Standards (TCJS) to adopt reasonable rules requiring inmate access to prescription medication that is determined necessary by a mental health professional or other health professional, for the care, treatment, or stabilization of an inmate with mental illness. The lack of continuity of medication in the jails produces ripple effects throughout the judicial system. If a patient is stabilized and restored to competency on medication in the state hospital system, but upon returning to jail is not provided medication, the defendant may decompensate. Not only does this cause strain on the courts, jails, and state hospitals, but it does not provide the inmate with medically necessary care and treatment for their illness. The proposed statutory change is shown in appendix K.

VI.
Legislative Recommendations of the Task Force for Procedures Related to Mental Health

1) Clarification of Officer's Duties Upon Presenting a Person for Emergency Mental Health Services

The proposed amendment to section 573.012 of the Texas Health and Safety Code clarifies that a peace officer has no duty to remain at a facility or emergency room after the officer has delivered a person for emergency mental health services with the proper completed documentation. Proposed statutory changes are shown in appendix L.

2) Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

This proposal expands section 573.012 of the Texas Health and Safety Code by adding a new subsection (h). In addition to physicians, other licensed or credentialed professionals would be allowed to make an electronic application for an emergency detention warrant. These additional professionals include physician's assistants, nurse practitioners, psychologists, and certain licensed master's-level mental health professional counselors or social workers who are currently authorized to make clinical assessments.

With judicial approval, the law currently authorizes physicians to request a warrant for emergency detention electronically. According to members of the Task Force, throughout Texas there are circumstances, particularly in less populated areas, where a physician is not available to make an electronic request at the time an emergency detention warrant is needed. The expanded categories include licensed professionals versed in mental health matters who possess advanced mental health training and education. Additionally, application for emergency detention warrants by those other than physicians would be limited to situations where the subject of the application is currently receiving care at a hospital or facility operated by a local mental health authority. The proposed statutory change is shown in appendix M.

3) Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

The proposed amendment to section 573.012 of the Texas Health and Safety Code, Issuance of Warrant, adds a new subsection (d-1). This amendment authorizes a peace officer to seize a firearm found in possession of a person who is apprehended under the authority of a warrant for an emergency detention issued by a magistrate. A comparable provision is found in section 573.001(h), Apprehension by Peace Officer Without Warrant, which allows a peace officer to seize

a weapon from a person apprehended by an officer without a warrant. This amendment will grant the peace officer the same authority in both situations. Additionally, the amendment allows for an orderly disposition of a seized firearm under article 18.191 of the Texas Code of Criminal Procedure, Disposition of a Firearm from Certain Persons with Mental Illness. Proposed statutory changes shown in appendix N.

4) Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders

The proposed amendment to section 574.106 of the Texas Health and Safety Code would allow mandatory blood draws for patients admitted to the state hospitals for involuntary psychoactive medication administration purposes. This practice is medically necessary to ensure treating physicians have the ability to monitor medication levels in an effort to determine whether the medications are having their desired effect or need adjustment. Proposed statutory changes are shown in appendix O.

5) Statutory Authority to Delay the Arrest of a Mental Health Patient, Detained under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or Other Low-level Offense, until the Patient's Mental Health Condition has been Stabilized

This proposal was brought forward to address the unique—but all too common—situation created by the following scenario:

- A person needs emergency mental health services because the person presents a substantial risk of harm to themselves or others based on the person's behavior or evidence of severe emotional distress or deterioration;
- The person is apprehended by authority of an Emergency Detention (chapter 573 of the Texas Health and Safety Code) or an Order of Protective Custody (chapter 574 of the Texas Health and Safety Code);
- At the time of apprehension, because of an untreated mental health condition, the person is resistant and combative;
- At some point, after arrival at a hospital or facility for treatment for the severe mental health crisis, the person commits an act in conformity with the person's combative or resistant state that results in harm to another person or destruction of facility property;
- The act would amount to probable cause to believe the person has committed at least a low-level criminal offense;
- Law enforcement becomes involved; and

- The person is arrested and removed from the hospital or mental health facility, before the mental health condition has been resolved or the patient has been stabilized, and transported to jail, where mental health services are unavailable, insufficient, or delayed.

The result: a combative patient suffering from a severe mental health crisis, and possibly no prior criminal record, is charged with third-degree felony assault against a public servant or emergency services personnel. The jail may not have the resources or expertise to resolve the emergency mental health crisis.

But for the accusation of a criminal offense, the law generally prohibits the use of a jail as an appropriate place of confinement for a mental health patient apprehended by virtue of an emergency detention or order of protective custody in section 573.001(e), Apprehension by Peace Officer Without Warrant, or section 574.027(c), Order of Protective Custody.

Under the Emergency Medical Treatment and Labor Act (EMTALA) (42 U.S.C. § 1395dd), to be certified for emergency care, a hospital must accept mental health as well as physical health emergencies. The hospital is required to treat and stabilize emergency conditions prior to transferring the patient to another facility. Mental health facilities may also be designated by local mental health authorities as an appropriate place to provide crisis mental health services.

Crafting an appropriate solution is challenging, and the JCMH takes no official position. Below are three suggestions.

1. **Amend Chapter 15, Code of Criminal Procedure, by adding new section 15A** to create statutory authority to delay the arrest of a mental health patient, in the foregoing situation, until the patient's mental health condition has been stabilized. Proposed statutory changes shown in appendix P.

2. **Amend Section 22.01 of the Texas Penal Code, Assault,** to make an exception to the provisions of subsections (b)(1) [public servant] and (b)(5) [emergency service provider] that elevates the offense to a felony where the harm inflicted is limited to bodily injury in the case of a person who is under an emergency detention or order of protective custody. This would maintain the offense as a class A misdemeanor. Similar exceptions would also be required of other statutes, such as terroristic threat.

3. **Allow an exception, a defense, an affirmative defense, or a mitigation instruction** in favor of a defendant, charged with a felony assault or a similar offense, who was at the time of the offense under an emergency detention or order of protective custody.

VII.
Services to Improve the Judicial Response to Mental Illness and Intellectual and Developmental Disabilities

The following report of the Services committee explains the essential need for services to a functioning judiciary and identifies gaps in these services.

Community Services and Judicial Function

A robust network of community services available to judges to assist those persons with mental illness and intellectual and developmental disabilities is an important part of the administration of justice in Texas. Individuals with untreated mental health and substance use disorders are eight times more likely to be incarcerated.[4] Additionally, in 2015, an estimated 30 percent of inmates were diagnosed with one or more serious mental illnesses, equating to nearly 20,000 people in Texas county jails; this number has likely increased over the past five years.[5] Between 2010 and 2017, the population in Texas grew by 12.6 percent, which was more than double the national growth average.[6] Additionally, in July 2018, 73 percent of Texas counties (186 out of 254) were designated as Mental Health Professional Shortage Areas.[7]

As the number of Texans with mental illness and intellectual or developmental disabilities who intersect with the criminal justice system increases, the judiciary faces constraints on its ability to justly serve people who come before the court faced with those challenges. Judges also struggle to balance these needs with public safety concerns. Absent a network of services, judges lack desirable options for achieving this balance.

The Legislative Research Task Force examined:

a. service gaps affecting the judiciary's ability to address mental health challenges in the court system;
b. opportunities for collaboration on legislative efforts with mental health and IDD service providers aimed at filling gaps in services that affect the court system; and
c. legislative proposals to improve services.

Service Gaps

A lack of services available to persons with mental illness or intellectual and developmental disabilities (IDD) affects the judiciary's ability to address mental health challenges in the court system. JCMH members and experts in the field came together to identify gaps in services to look

[4] TEX. HEALTH & HUM. SERVS. COMM'N, TEXAS STATEWIDE BEHAVIORAL HEALTH STRATEGIC PLAN, FISCAL YEARS 2017-2021 10 (May 2016), https://hhs.texas.gov/sites/default/files/050216-statewide-behavioral-health-strategic-plan.pdf.
[5] HOUSE SELECT COMM. ON MENTAL HEALTH, INTERIM REP., *H. Rep. 85*, *at* 11 (Tex. 2016), http://www.houstontx.gov/txlege/static/documents/hb1486/12-2016-Mental-Health-Select-Committee-Interim-Report.pdf.
[6] HOGG FOUNDATION ON MENTAL HEALTH, PUBLIC BEHAVIORAL HEALTH SERVICES IN TEXAS: A GUIDE TO UNDERSTANDING MENTAL HEALTH SYSTEMS AND SERVICES IN TEXAS 77 (2018), https://hogg.utexas.edu/wp-content/uploads/2018/11/Public-Behavioral-Health-Services-in-Texas.pdf.
[7] *Id.*

for opportunities to strengthen the justice system as a whole. To that end, the committee identified several gaps that can lead to challenges for judges and others in the court system.

1. Crisis-related Services

Crisis services include the continuum of community-based resources available to individuals who are experiencing a mental health crisis. This can include crisis hotlines, mobile crisis outreach, community-based crisis facilities, including crisis stabilization units, and crisis residential and respite units. A strong presence of supportive resources at this stage can reduce the number of law enforcement contacts with individuals who have mental health issues. It is important that stakeholders and the public know about these services and that they are affordable and accessible.

In Texas, crisis services are available 24 hours a day, 7 days a week and include prompt face-to-face crisis assessment (one hour for emergent response and eight hours for urgent response based on clinical determination), crisis intervention services, and crisis follow-up and relapse prevention services. Local mental health authorities (LMHAs) and local behavioral health authorities (LBHAs) have various crisis programs that may consist of crisis hotlines, mobile crisis outreach teams (MCOTs), mental health deputies (MHDs), various community-based crisis facilities, and inpatient psychiatric beds.

The 80th Legislature appropriated $82 million to the Department of State Health Services (DSHS), now the Health and Human Services Commission (HHSC), for the 2008-2009 biennium to redesign the community mental health crisis system. The desired impact of the crisis redesign initiative was to improve responses to behavioral health crises. Crisis hotlines were initially funded through this appropriation, as well as state-wide funding of MCOT services. The 81st Legislature required DSHS, now HHSC, to implement MHDs in specific counties, and HHSC began funding several other MHD programs as part of the crisis expansion of the 84th Legislature, Regular Session, for the 2016-2017 biennium.

HHSC funds five different types of crisis facilities through local LMHAs and LBHAs under the Psychiatric Emergency Service Center (PESC) contract. The five types of facilities are as follows:

- **Rapid Crisis Stabilization Beds** (RCSBs) provide brief stays in licensed psychiatric hospitals to relieve acute symptoms and restore an individual's ability to function in a less restrictive setting.

- **Crisis Stabilization Units** (CSUs) are licensed, short-term residential services designed to reduce acute symptoms of mental illness provided in a secure and protected clinically staffed, psychiatrically supervised treatment environment. "Although it is slightly less intensive than a full psychiatric hospitalization, this is one of the most intensive facility-based crisis options."[8]

- **Extended Observation Units** (EOUs) are designed to provide emergency stabilization (and transition to higher or lower intensity crisis options) to individuals in behavioral health crisis for up to 48 hours. "Services are provided in a secure and protected, clinically staffed, psychiatrically supervised environment with immediate access to urgent or emergent

[8] TEX. COURT OF CRIMINAL APPEALS, TEXAS MENTAL HEALTH RESOURCE GUIDE 13 (1st ed. 2019).

medical and psychiatric evaluation and treatment. Individuals seeking treatment in an EOU may pose a moderate to high-risk of harm to themselves or others."[9]

- **Crisis Residential Units** provide short-term, community-based residential crisis treatment to individuals who may pose a low to moderate risk of harm to self or others, and who may have moderately severe functional impairment.

- **Crisis Respite Units** provide short-term care to individuals who have low risk of harm to self or others and may have some functional impairment who require direct supervision and care, but do not require hospitalization and consent to receive voluntary services. "This is the least intensive, facility-based crisis option."[10]

Texas has also implemented a number of non-traditional psychiatric service center programs. The 84th Legislature, Regular Session, appropriated approximately $30 million to further enhance or expand community-based crisis alternatives in underserved communities. The following are non-traditional programs:

- **Continuity of Care**

Continuity of care refers to the process of developing a plan to meet a patient's individual needs, and then coordinating the treatment, care, and services for that individual so that their services such as treatment or medications, are not disrupted after leaving the facility. The Burke Center[11] is an example of a program in Texas successfully planning and coordinating patient care to successfully implement continuity of care for its patients. Continuity of care is provided from local hospitals, state hospitals, mental health emergency centers, and the mobile crisis outreach team for individuals at a higher level of risk for recidivism during the first 30 days of discharge.

- **Substance Use Treatment within a Crisis Residential Facility**

The substance use treatment within a crisis residential facility provides an intensive day program focused on substance use treatment for those patients with co-occurring psychiatric and substance disorders to divert individuals from the criminal justice system. Examples of these facilities include Helen Farabee Centers[12] and Texana Center.[13] The Texana Crisis Center has an Extended Observation Unit that provides up to 48 hours of emergency services to individuals experiencing a mental health crisis. Services include daily visits with the psychiatrist and treatment team to provide medication stabilization, crisis resolution, and discharge planning. The Texana Crisis Residential Unit is for adults who are low income, uninsured, or have Medicaid. This is an appropriate setting for individuals who have a low risk of harm to themselves or others, and who might have severe functional impairment whose symptoms cannot be stabilized in a less intensive setting. Voluntary admissions can be made directly to the Crisis Residential Unit after receiving a community or clinic screening. Residential services can include individual, group, and family therapy, skills training, case

[9] *Id.*
[10] *Id.*
[11] BURKE CENTER, www.myburke.org (last visited May 29, 2020).
[12] HELEN FARABEE CENTERS, www.helenfarabee.org (last visited May 29, 2020).
[13] TEXANA CENTER, www.texanacenter.com (last visited May 29, 2020).

management, medication management, and relapse prevention. It is a recovery-focused community, and residents are expected to participate in groups and community activities.[14]

- **Crisis Intervention Response Team**

The Crisis Intervention Response Team program assists law enforcement officers with behavioral health calls, evaluates persons in behavioral health crises in their ordinary environment, and makes appropriate referrals for mental health services, thereby reducing the numbers of individuals that inappropriately end up in the jails or emergency rooms. Tri-County Behavioral Healthcare[15] is an example of a program that has a successful CIRT team that operates in east Texas.

- **LMHA and Court Partnership to Create a Mental Health Docket**

Mental Health Dockets service individuals with serious mental illness who have frequent interaction with the criminal justice system. "Mental health courts promote accountability by helping individuals understand their public responsibilities and connecting them with services in their communities."[16] Potter County's Mental Health Docket has been recognized for its best practices, including partnering with a local mental health authority, The Texas Panhandle MHMR.[17]

Judicial and public access to training on the facilities and programs available in each area are crucial for the judicial system to effectively use the resources already in place. The Court of Criminal Appeals has created the Texas Mental Health Resource Guide,[18] which is a valuable asset when searching for assistance. The Judicial Commission on Mental Health (JCMH) is currently developing training on available resources. The Office of Court Administration has created online training videos on Jail Screening and Mental Health Procedures.[19] These resources are a good start to making training more readily available.

Community crisis services aimed at providing individuals with the treatment and services they need *before* they intersect with the courts is a valuable tool in de-escalating the crisis. The JCMH recommends that these services be made known to stakeholders and the public, and that they continue to be made affordable and accessible to the community.

2. Early Identification Interviews and Services

A gap was identified in early identification procedures under 16.22. Individuals who are arrested and held in jail do not always get the required interview. Additionally, there is currently no statewide reporting on the number of mental health screenings, 16.22 notifications to magistrates,

[14] *Id.*
[15] TRI-COUNTY BEHAVIORAL HEALTHCARE, www.tcmhmrs.org (last visited May 29, 2020).
[16] TEX. COURT OF CRIMINAL APPEALS, TEXAS MENTAL HEALTH RESOURCE GUIDE 17 (1st ed. 2019) ("Services [for a mental health docket] can include but are not limited to case manager screening and assessment, recovery plan development, medication management, psychosocial rehabilitation, skills training, case management, peer support, supported housing, supported employment, and counseling.").
[17] TEXAS PANHANDLE MHMR, www.tpmhmr.org (last visited May 29, 2020).
[18] TEX. COURT OF CRIMINAL APPEALS, TEXAS MENTAL HEALTH RESOURCE GUIDE 17 (1st ed. 2019).
[19] *Texas Courts Jail Screening and Mental Health Procedures*, YOUTUBE.COM, https://www.youtube.com/watch?v=IonV8n_cgto (last visited May 29, 2020).

or 16.22 assessments conducted either inside or outside of jails.[20] In a report by Dr. Tony Fabelo, JCMH Commissioner and Fellow with the Meadows Mental Health Policy Institute, *The Challenge of Identifying, Diverting, and Treating Justice-Involved People with Mental Illness,* he explains that "Texas has been a national leader in creating a legal and policy framework for addressing the needs of people with mental illnesses who are admitted to jail and allow for their diversion into community treatment[,]" however, the lack of basic reporting in this area makes it difficult to track and understand the law's effectiveness, monitor the implementation of the law, and estimate policy and fiscal impacts as needed for statewide policy making.[21]

One proposed solution to the lack of data is for the Texas Commission on Jail Standards (TCJS) to collect specific data points. The TCJS collects monthly statistical reports of population counts, and additional data points specifically tailored to reflect mental health interviews and services in jails could be added to those reports.[22] Currently, the National Association of Counties, The Council of State Governments Justice Center, and the American Psychiatric Association Foundation are working on the Stepping Up Initiative, a national initiative to reduce the number of people with mental illnesses in jail. So far, thirteen Texas counties have committed to participating in this program. The commitment includes a dedication to continuing and improving the collection of data on individuals with mental illness; developing a plan for improvement where needed; implementing any identified recommended changes; and creating a process to track ongoing progress.

3. Multisystemic Therapy for Youth

Multisystemic Therapy (MST) is a family- and community-based treatment for at-risk youth with intensive needs and their families.[23] It has proven most effective for treating youth who have committed violent offenses, have serious mental health or substance abuse concerns, are at risk of out-of-home placement, or who have experienced abuse and neglect.[24]

The goal of MST is to keep adolescents who have exhibited serious clinical problems (e.g., drug use, violence, severe criminal behavior) at home, in school, and out of trouble. Through intense involvement and contact with the family, MST aims to uncover and assess the functional origins of adolescent behavioral problems. It works to alter the youth's ecology in a manner that promotes prosocial conduct while decreasing problem and delinquent behavior.[25]

MST has been proven to reduce violent crimes by 75%, compared to routine congregate and other

[20] TONY FABELO, THE CHALLENGE OF IDENTIFYING, DIVERTING, AND TREATING JUSTICE-INVOLVED PEOPLE WITH MENTAL ILLNESS: REVIEW OF TEXAS POLICIES AND RECOMMENDATIONS FOR IMPROVEMENTS 43, 49 (2018).
[21] *Id.* at 1, 43, 49.
[22] *Id.* at 43.
[23] Scott W. Hengeller & Sonja K. Shoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies that Support Them*, 25 SOCIAL POLICY REPORT 1, 1–20 (2011).
[24] MST SERVICES, MST RESEARCH AT A GLANCE (2020), https://cdn2.hubspot.net/hubfs/295885/MST%20Redesign/Marketing%20Collateral/Case%20Study%20and%20Reports/R@@G%20Long%202020.pdf.
[25] YOUTH.GOV, https://youth.gov/content/multisystemic-therapy-mst (last visited May 22, 2020).

care.[26] The reduction is long term, lasting two decades posttreatment.[27] MST is one of only three proven programs[28] that addresses family functioning and association with deviant peers, key risk factors for reducing violence, other antisocial behaviors, and juvenile justice involvement.[29]
In Texas, there are an estimated 20,000 children and youth (ages 6–17) either currently or at high risk for out-of-home or out-of-school placement because of their mental health needs. Using the statewide roll-out of MST in Louisiana and other states as benchmarks, it is estimated that of these 20,000, approximately 7,000 Texas youth and their families who are eligible for Medicaid would benefit from MST services.

> *Given that MST services typically last between three to six months, and MST teams should serve at least 50 youth per year, Texas would need approximately 140 teams to meet statewide need. Texas currently has three MST programs (Harris County, El Paso County, and Nueces County) with a total of four teams that operate primarily through juvenile justice dollars. The current teams are meeting less than 3% of the estimated need on an annual basis.*[30]

The JCMH concluded that MST would give judges a proven tool to increase positive outcomes in cases that come before their courts.

4. Diversion Options / Mental Health Resources and Providers for Criminal Judges

Throughout the entire criminal justice system, diversion options are needed from initial intake to final disposition. Once in custody, diversion options may vary from jail based (i.e., pre-trial supervision and treatment outside of jail) to court based (i.e., establish outpatient treatment plan and enter deferred adjudication).[31]

There are a number of innovative diversion projects in Texas that provide crisis services to persons with mental illness or IDD. For example, in Houston, the Harris County Mental Health Jail Diversion Program is designed to screen inmates, before being booked into the Harris County Joint Processing Center, with the goal of identifying those low-level misdemeanants who have serious mental health issues, co-occurring disorders, or appear to be in need of psycho-social services, and redirecting them to the Judge Ed Emmett Mental Health Diversion Center (the Diversion Center) or another appropriate treatment program.[32] The Diversion Center provides a pre-charge diversion

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[26] *See* MEADOWS MENTAL HEALTH POLICY INST., MULTISYSTEMIC THERAPY FOR TEXAS YOUTH 1 (Feb. 2020), https://www.texasstateofmind.org/uploads/whitepapers/MSTinTexas.pdf.
[27] *Id.*
[28] *Id.* (citing MST SERVICES, MULTISYSTEMIC THERAPY RESEARCH AT A GLANCE, PUBLISHED MST OUTCOME, IMPLEMENTATION, AND BENCHMARKING STUDIES (2020), https://cdn2.hubspot.net/hubfs/295885/MST%20Redesign/Marketing%20Collateral/Case%20Study%20and%20Reports/R@aG%20Long%202020.pdf (explaining the efficacy of MST has been established through 28 highly rigorous random control trials carried out over the last thirty years)).
[29] *Id.* (citing Hengeller, *supra* note 23, at 1).
[30] *See id.*
[31] NAT'L CTR. FOR STATE COURTS, http://apps.ncsc.org/MHBB/ (last visited May 25, 2020).
[32] THE HARRIS CTR. FOR MENTAL HEALTH & IDD, HARRIS COUNTY MENTAL HEALTH JAIL DIVERSION PROGRAM 2 (2018), https://www.theharriscenter.org/Portals/0/Service%20Page%20Docs/Jail%20Diversion/Jail_Diverson_Brochure.pdf

alternative to arrest and incarceration.[33] Once at the Diversion Center, individuals are connected with resources for both immediate care and long-term treatment and services. Some of these services include: a RN on staff, respite beds, and housing services.[34] In the first year of operations, the Diversion Center provided a therapeutic alternative to arrest for 1,795 people who had been detained for low-level misdemeanors.[35]

Bexar County has also implemented numerous pretrial diversion strategies, with components at every stage of the sequential intercept model, including mental health and substance use treatment services and supportive housing to address housing insecurity.[36] The National Association of Counties highlighted Bexar County's Jail Diversion program and included a policy report on the program.[37] This policy report describes the criminal justice costs that are avoided because of the Bexar County Jail Diversion program.[38] The diversion program relies on a multi-pronged approach, including pre- and post-booking interventions.[39] Costs were estimated using state data as well as case-level costs from similar programs. Studies of cost-effectiveness and other outcomes can help build and sustain support for a strategy that involves multiple stakeholders.

HHSC operates the Home and Community-Based Services Adult Mental Health (HCBS-AMH) program throughout Texas. The program provides home- and community-based services to adults with extended tenure in psychiatric hospitals (or persons at high risk for recurring inpatient hospitalizations) in lieu of remaining as long-term residents in those facilities. This program also diverts appropriate individuals from emergency rooms and jails into community-based care.[40]

Another service gap noted by the JCMH, was the lack of respite facilities for non-incompetent individuals with mental illness or IDD who are convicted of felony and misdemeanor offenses. Texas funds only 156 Crisis Respite Unit beds statewide in a state with a population of nearly 29 million.[41] From a practical perspective, several committee members expressed experiences that many respite facilities are reluctant to accept patients with criminal convictions and do not take patients who are involuntary.[42]

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[33] Kim Ogg, Harris Cty. Dist. Att'y., Denise Oncken, Harris Cty. Dist. Att'y's Office Mental Health Bureau Chief, Wayne Young, CEO of The Harris Ctr., Mental Health Jail Diversion: Policies and Best Practices presentation at the JCMH Summit (Nov. 19, 2019).
[34] *Id.*
[35] *Id.*
[36] THE UNIV. OF TEX. CIVIL RIGHTS CLINIC, PREVENTABLE TRAGEDIES: HOW TO REDUCE MENTAL HEALTH-RELATED DEATHS IN TEXAS JAILS 39 (2016), https://law.utexas.edu/wp-content/uploads/sites/11/2016/11/2016-11-CVRC-Preventable-Tragedies.pdf (citing MEADOWS MENTAL HEALTH POLICY INSTITUTE & COUNCIL OF STATE GOVERNMENTS JUSTICE CTR., BEXAR COUNTY SMART JUSTICE 1 (2015), https://csgjusticecenter.org/wp-content/uploads/2015/07/Bexar-County-Smart-Justice-Handout.pdf; LEON EVANS, BLUEPRINT FOR SUCCESS: THE BEXAR COUNTY MODEL HOW TO SET UP A JAIL DIVERSION PROGRAM IN YOUR COMMUNITY (2007), http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/jail-diversion-toolkit.pdf).
[37] *See* MICHAEL JOHNSRUD, ET. AL, THE BEXAR COUNTY JAIL DIVERSION PROGRAM: MEASURING THE POTENTIAL ECONOMIC AND SOCIETAL BENEFITS POLICY REPORT (2004), https://www.naco.org/sites/default/files/documents/Bexar%20County%20Jail%20Diversion%20Program%20Benefits%20Policy%20Report_0.pdf.
[38] *Id.*
[39] *See Pretrial Services*, BEXAR CTY., http://home.bexar.org/pretrial/ (last visited May 26, 2020).
[40] JUDICIAL COMM'N ON MENTAL HEALTH, TEXAS MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES LAW BENCH BOOK 5 (2nd ed. 2019).
[41] U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/TX (last visited May 25, 2020).
[42] *See* Tex. Health and Hum. Servs., *Information Item V, Crisis Service Standards*, HHS.TEXAS.GOV (2020), https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/crisis-service-

Some Texas counties have found innovative ways to better meet their community's mental health needs. In Comal County, a county court at law judge convened a quarterly meeting to collaborate with the many systems involved in providing appropriate treatment for persons with mental illness. Specifically, these meetings helped create systems solutions between hospitals, LMHAs, and the courts, which eventually led to a public-private partnership with a local foundation. The Comal County Data Sharing Project connects the criminal justice, mental health, and substance abuse treatment systems, as well as service organizations. The program's goal is to improve access to effective treatment for people with mental illnesses involved with the justice system. The project includes the purchase of software that supports the many systems to keep track of an individual's social determinants of health, community referrals, and healthcare services by accessing and sharing information. This software enables multiple agencies to communicate in real time by providing referrals, feedback, updates, and preventative supports to reduce readmission into hospitals, crisis episodes, criminal activity/exposure to crime, and incarceration. This allows an individual to move through several systems, promoting resiliency, community integration, and recovery for people experiencing more than one area of need.

The JCMH recommends the creation of a resource that lists the appropriate facilities for a law enforcement officer to transport a person under an emergency detention without a warrant, as defined by section 573.001(d) of the Texas Health and Safety Code. This guidance could be an addition to the Court of Criminal Appeals Mental Health Resource Guide. Additionally, further collaboration is recommended with HHSC, the Court of Criminal Appeals, the Texas Council of Community Centers, law enforcement representatives, and other stakeholders to create a plan for developing a statewide educational component regarding this resource. This component would include a list of facilities in Texas, as well as the benefits of diversion options, and the procedural mechanisms for judges to develop, use, or order these diversion options.

5. Outpatient Competency Restoration Services and Jail-Based Restoration Services

Competency restoration is a legal process to ensure that a defendant is competent to participate in his or her criminal trial. In Texas, competency restoration is defined in article 46B.001(3) of the Texas Code of Criminal Procedure: "the treatment or education process for restoring a person's ability to consult with the person's attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person."

HHSC contracts with entities to provide competency restoration services in non-state hospital or state supported living center settings. Outpatient Competency Restoration (OCR) and Jail-Based Competency Restoration (JBCR) services are a valuable tool for judges because they serve as an alternative to state hospitalization, which has long waitlists[43] for competency restoration services.

providers/crisis-units (stating Crisis respite services units are not designed to prevent elopement and shall not use locks, mechanical restraints or other mechanical mechanisms to prevent elopement from the facility).

[43]TEX. HEALTH & HUM. SERVS. COMM'N, SEMI-ANNUAL REPORTING OF WAITING LISTS FOR MENTAL HEALTH SERVICES 17 (2020), https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2020/hb1-semi-annual-waiting-lists-mhs-april-2020.pdf (As of the end of the second quarter of FY 20, the waitlist for all forensic beds totaled 900, with 449 individuals on the waitlist for maximum security beds. The average number of days spent on the waiting list was 76 days for non-maximum security and 289 days for maximum security beds.).

OCR programs provide competency restoration services to individuals found incompetent to stand trial (IST). The purpose of the programs is to divert individuals from the criminal justice system and provide competency restoration, mental health treatment, and promote community reintegration. OCR programs were established by the 80th Legislature in 2007 and expanded in 2011 and 2018. These programs have served over 2,342 individuals since inception. The average length of stay for an individual receiving OCR services is 179 days.[44]

JBCR programs provide competency restoration services in a jail setting to individuals who are determined IST by the court. Participants are screened for eligibility for OCR services and must be determined ineligible for OCR prior to being admitted into a JBCR program. Eligibility determination also includes assessments and testing of the participants' psychological functioning. JBCR allows for individuals to be treated locally.

While valuable, the use of these programs in Texas is limited because they are only available in certain communities. In fiscal year 2019, a total of 310 defendants in Texas were served by OCR programs, and 130 of those defendants were restored to competency. JBCR programs in fiscal year 2019 served 346 defendants and restored 115 of those defendants to competency.[45]

There are thirteen OCR programs in Texas, and each of these programs is different depending on the needs and demographics of the county in which it is located. The thirteen OCR programs are funded at $4.7 million each fiscal year with general-revenue funds.

The Mental Health Grant Program for Justice-Involved Individuals established by Senate Bill 292, 85th Texas Legislature, Regular Session, 2017 awarded $1.9 million to four JBCR programs in Dallas, Lubbock, Midland, and Tarrant Counties.[46] Additionally, the Nueces Center for Mental Health and Intellectual Disabilities operates a JBCR program that is not funded by HHSC.

Senate Bill (S.B.) 1326, 85th Legislature, Regular Session, 2017 extends the legislative directive requiring HHSC to implement a JBCR Pilot Program, as originally required by S.B. 1475, 83rd Legislature, Regular Session, 2013. In fiscal year 2020, Harris Center was awarded $871,500 through competitive solicitation to implement the pilot program.

The JCMH recognizes that additional funding and development of these programs in more Texas counties would assist in reducing the wait times for restoration services, which cause many defendants with mental health and IDD issues to languish in local jails. It will also allow courts to more efficiently move cases through their dockets.

6. Continuity of Psychoactive Medication: Availability and Formulation

The JCMH agreed that the lack of continuity in the availability and distribution of psychoactive medications is a service gap seen throughout the state, and one that produces ripple effects felt in almost every aspect of the courts and justice system.

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[44] Lucrece Pierre-Carr, Manager, Crisis Servs. Unit, Med. and Soc. Servs. Div., Tex. Health and Human Servs. Comm'n, La Quinta Swan, Program Specialist, Crisis Servs. Unit, Med. and Soc. Servs. Div., Tex. Health and Human Servs. Comm'n, Presentation at the Second Annual Statewide Judicial Summit on Mental Health: Texas Competency Restoration: Outpatient and Jail Based (Nov. 18, 2019).
[45] *Id.*
[46] *Id.*

In addition to the proposal that the Texas Commission on Jail Standards require jails to provide inmates access to necessary prescription medication (proposal number eleven of the Legislative Research Task Force and Appendix K), one solution suggested by several members was to ensure that the availability and distribution of psychoactive medications is standardized statewide between the state hospitals, LMHAs, and the jail and prison systems. When formularies differ by county, either because some counties charge the patients in the jail for the medication, or because some jails and counties have formularies that exclude certain medications, the system of care for mentally ill defendants is untenable. The JCMH recommends that a medical provider develop a standard formulary list that the state facilities, counties, jails, and LMHAs must all follow.[47] Additionally, the State of Texas can negotiate medication rates on a statewide basis, which could save the State and counties money in the long run, rather than having counties select what medications they will fund.[48]

Rider 39–Post Discharge Medications for Competency Restoration, was passed in 2017, and funded for the 2020-2021 biennium. Rider 39 allows HHSC to reimburse LMHAs/LBHAs, for up to 90 days post release, for medications for individuals coming from a state mental health facility who have recently been restored.

> Pursuant to Senate Bill 1, General Appropriations Act, 85th Legislature, Regular Session, 2017, the Health and Human Services Commission (HHSC) ***may*** reimburse a Local Mental Health Authority (LMHA) or Local Behavioral Health Authority (LBHA) for up to 90 days of post-release medications. HHSC ***shall*** provide a 90-day post-release supply of medication to defendants who, after having been committed to a state mental health facility (SMHF) for restoration of competency under Code of Criminal Procedure, Chapter 46B are returning to the committing court for trial.[49]

This funding supplements, but does not supplant, funding used by a correctional facility to provide health services to inmates, pursuant to title 37, chapter 273 of the Texas Administrative Code relating to health services. LMHAs and LBHAs must submit the medication authorization requests for reimbursement to HHSC before supplying the medications or reimbursing the jail for medication costs. Reimbursement is received on a first come, first served basis.

Rider 39 also dictates that the 90-day supply of medication shall be as prescribed in the Continuity of Care Plan prepared by the SMHF, and it must be verified by the LMHA or LBHA that the medication received by the participant is what was prescribed by the SMHF. If diligently used by LMHAs and LBHAs, this may help ease the availability and distributions of medications for individuals whose competency has been restored as they return to the counties to await trial, and

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[47] *See* TEX. HEALTH & HUM. SERVS. COMM'N., PSYCHIATRIC DRUG FORMULARY (2020), https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/facilities-regulation/psychiatric/psychiatric-drug-formulary.pdf (HHSC already has a Psychiatric Drug Formulary, created by The HHSC Psychiatric Executive Formulary Committee, for use by State Hospitals, SSLCs, and Community Mental Health Centers.).

[48] *See,* Tex. Health & Hum. Servs. Comm'n, *Vendor Drug Program*, https://www.txvendordrug.com/formulary (containing an example of this suggestion).

[49] TEX. HEALTH AND HUM. SERVS. COMM'N, RIDER 39 - POST DISCHARGE MEDICATIONS FOR COMPETENCY RESTORATION ONE PAGER 1 (2020) (emphasis added). *See*, S.B. 1, 86th Leg., R.S., Art. V, TDCJ, Rider 39 (2019); GEN. APPROPRIATIONS ACT FOR 2020-21 BIENNIUM, TEXT OF CONF. COMM. REP. H.B. 1, 86th Leg., R.S., at V-14 (Tex. 2019), https://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2020_2021.pdf.

thus prevent decompensation of those individuals. An interesting dynamic, which must be closely monitored, is that this rider states that funding can be used only for the medication prescribed by the SMHF in the individual's Continuity of Care Plan. Some jails do not provide certain medications. Any medications that do not strictly adhere to the SMHF prescription will not be covered by this rider.

An additional issue that may come to light with the use of this rider, is that jails often lack onsite medical personnel to administer certain psychoactive medications or conduct the required blood draws and lab work associated with certain medications. This rider incentivizes jails to provide the specific medications in adherence with the SMHF along with the necessary medical personnel to appropriately administer those medications to receive funding. If jails continue to provide only the medications that are accessible by their formularies and with the personnel currently available, they will forego the funding.

7. Peer Support Services

Peer specialists provide strengths-based, person-centered services to promote recovery and resiliency for those reentering a community. Sharing information based upon lived experience in recovery is vital to navigate challenges and build wellness. Peer support groups provide a sense of belonging and values to reinforce resilience.

Moreover, peer support groups provide insight to identify potential triggers and relapses.[50] There was unanimous consensus that the lack of peer support services available throughout the state represents a service gap. Additionally, even in areas where peer support services may be available, courts are sometimes hesitant to use them because of a lack of information and education about how to fund these services and integrate them into court programs.

In Harris County, the Judge Ed Emmett Mental Health Diversion Center uses peer support to assist in engaging the client in the program and making them feel comfortable.[51] The goal of the program is to have a peer support person be the first person with which an incoming patient has contact.[52]

Another barrier to the use of peer support in jail or courtroom settings is the common prohibition against allowing individuals who have a criminal history to visit inmates in the jail. Additionally, state regulations and/or individual policies of employers or institutions frequently prohibit individuals with criminal convictions from gaining employment at Texas Department of Criminal Justice (TDCJ), county jails, mental health facilities, and mental health rehabilitative services (including private provider services).[53]

Peer support programs are recovery oriented with demonstrated success, and a cost-efficient way to improve outcomes in cases in which a justice-involved person has mental health challenges.[54]

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[50] NAT'L CTR. FOR STATE COURTS, http://apps.ncsc.org/MHBB/ (last visited May 25, 2020).
[51] Kim Ogg, JCMH Summit Presentation, *supra* note 33.
[52] *Id.*
[53] CTR. FOR PUB. POLICY PRIORITIES, FROM RECIDIVISM TO RECOVERY: THE CASE FOR PEER SUPPORT IN TEXAS CORRECTIONAL FACILITIES 22 (2014).
[54] Substance Abuse & Mental Health Serv. Admin., *Peer Support and Social Inclusion*, SAMHSA (2016), http://www.samhsa.gov/recovery/peer-support-social-inclusion ("Research has shown that peer support facilitates recovery and reduces health care costs."); THE UNIV. OF TEX. CIVIL RIGHTS CLINIC, *supra* note 36 at 68-69; CTR. FOR PUB. POLICY PRIORITIES, FROM RECIDIVISM TO RECOVERY: THE CASE FOR PEER SUPPORT IN TEXAS

The Mental Health Program for Veterans is successfully using peer support programming,[55] and The National Alliance on Mental Illness (NAMI) offers an educational recovery course for individuals with mental health conditions focusing on peer-to-peer support.[56] Successful veteran and substance abuse peer support programs have created publicly available tools for training and support of peer programs.[57] These models may be a useful tool for mental health peer support programs.

According to HHSC, Texas has a total of 495 Certified Mental Health Peer Specialists, 241 Certified Recovery Support Peer Specialists, and 212 Certified Peer Specialist Supervisors. These peer specialists provide services in adult mental health home and community-based service programs, youth empowerment services, and mental health rehabilitative services. They are funded by General Revenue, Medicaid Waivers, Medicaid benefits, and through a sub-grant in the HHSC Recovery Support Services grant.

The JCMH recommends that guidance be made available to Texas judges regarding the benefits and discretionary use of peer specialists in their courts.

Finally, the JCMH also recommends promoting partnerships or collaboratives between LMHAs and courts on the use of peer specialists to support people with mental illness and/or substance use disorders and help them to navigate the criminal justice system.

8. Re-Entry Services with Life Skills

Prosocial activities challenge some individuals with mental and behavioral issues. However, research has found that prosocial activities can mitigate negative effects of stress.[58] Parole and probation offer opportunities to develop prosocial activities in a community setting prior to release from supervision.[59]

In Texas, the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) monitors, coordinates, and implements a continuity of care system for offenders with special needs through collaborative efforts with all 39 LMHAs throughout the state.[60] The Re-entry and Integration Division (RID) provides pre-release screening and referral to aftercare treatment services for special needs offenders referred from the Correctional Institutions Division (CID), SAFPF, local jails, and other referral sources. Two key elements of their case management

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CORRECTIONAL FACILITIES 2 (2014) ("A ten-year study on peer support by the SAMHSA found demonstrable increases in well-being and personal empowerment alongside improvements in clinical symptoms and reduced hospitalizations.").

[55] TEX. HEALTH & HUM. SERVS. COMM'N, REPORT ON THE MENTAL HEALTH PROGRAM FOR VETERANS 1 (2019), https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/hb1-mental-health-veterans-fy2019-dec-2019.pdf.

[56] *NAMI Peer-to-Peer*, NAMI.ORG, https://www.nami.org/Support-Education/Mental-Health-Education/NAMI-Peer-to-Peer (last visited May 26, 2020).

[57] Substance and Mental Health Services Administration, *Bring Recovery Supports to Scale Technical Assistance Center Strategy*, SAMHSA, https://www.samhsa.gov/brss-tacs (last visited May 28, 2020).

[58] Elizabeth Raposa, Holly B. Laws, & Emily B. Ansell, *Prosocial Behavior Mitigates the Negative Effects of Stress in Everyday Life*, 4 CLINICAL PSYCHOL. SCI. 691, 691-98 (2016).

[59] NAT'L CTR. FOR STATE COURTS, *supra* note 31.

[60] JUDICIAL COMM'N ON MENTAL HEALTH, TEXAS MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES LAW BENCH BOOK 120 (2nd ed. 2019).

process are psychosocial rehabilitation services and intensive outreach and engagement with the client.

Data collected by TCOOMMI demonstrates that social reintegration lowers recidivism rates in this population of offenders. In Fiscal Year 2012, the recidivism rate for offenders on parole was 22.8%, and was 25.3% for those offenders on probation. By Fiscal Year 2017, those recidivism rates dropped to 12.2% and 11.9% respectively.[61]

The JCMH agreed that continued funding and increased development and access to programs that help defendants re-integrate into society is key to preventing individuals from cycling repeatedly through the justice system.

9. Mental Health Services Focused for Individuals with IDD

Individuals with IDD who enter the criminal justice and the juvenile justice systems, typically do not receive the behavioral health, trauma, and competency services they need. HHSC Statewide Behavioral Health Strategic Plan, developed as a result of legislative direction, identified lack of access to services for this population as a major gap in our state systems.[62] This lack of access is amplified in the criminal justice system where there is little understanding of mental health and co-occurring IDD. Individuals with IDD will likely not present in a manner typically identified by MH screening techniques, and individuals with IDD are also more likely to deny IDD or feign competence to avoid being noticed or labeled. Without the ability to successfully assess individuals with IDD, these individuals may not receive services and may be shuffled throughout the judicial system without their needs being addressed.

Increased specialized training or awareness, standards of care, and the capacity to provide appropriate assessments and specifically tailored services for individuals with IDD are all needed. In the last legislative session (86th), HHSC requested approximately $46 million to begin addressing the mental health needs of individuals with IDD but received $7 million. Funds and legislative direction are necessary. Collaboration between the LMHAs, Local IDD Authorities (LIDDAs), HHSC, and the criminal justice system will also be necessary to meet the service and support needs of individuals with IDD who are charged or convicted of a crime.[63]

10. Housing

The JCMH expressed a need for supportive housing for individuals who are returning to the community. According to a study in Ohio, there were "significant relationships between [housing]

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[61] *See* April Zamora, Dir., Tex. Dep't. of Criminal Justice Reentry and Integration Div. Tex. Corr. Office on Offenders with Med. or Mental Impairments, Presentation at the Texas Judicial Comm'n on Mental Health Comm'n Meeting (Aug. 16, 2019) *available at* http://texasjcmh.gov/media/1639/aug-16-2019-jcmh-meeting-notebook-online.pdf.

[62] TEX. HEALTH & HUM. SERVS. COMM'N, TEXAS STATEWIDE BEHAVIORAL HEALTH STRATEGIC PLAN, FISCAL YEARS 2017-2021 10 (May 2016), https://hhs.texas.gov/sites/default/files/050216-statewide-behavioral-health-strategic-plan.pdf.

[63] TEX. COMM'N ON JAIL STANDARDS, 2019 SELF EVALUATION REPORT 85 (2019), https://www.sunset.texas.gov/public/uploads/files/reports/Texas%20Commission%20on%20Jail%20Standards%20SER.pdf.

participation and service use and recidivism outcomes at one year following prison release."[64] Supported housing provides a key layer of stability for individuals with mental health issues. Individuals may seek different housing types: from group housing (supervised and unsupervised) to rental housing and home ownership.

There is a continuum of housing options that can be made available for individuals re-integrating back into the community. This continuum includes:

- Short Term Residential Services – as discussed above in other sections of this report, there are some diversion centers that offer temporary housing and services for individuals who are experiencing behavioral distress, but are not considered in crisis and therefore cannot be diverted to a crisis center. A diversion center allows for individuals to access services without having to go to a jail or emergency room. The Judge Ed Emmett Center for Mental Health Diversion Center in Harris County successfully implements this service as part of its diversion program.

- Supervised/Partially Supervised Group Housing[65] – Supervised Group Housing provides the most support for residents. Trained staff is on site 24/7 to provide support services such as meals, medication, transportation, treatment management, or supervision. Partially Supervised Group Housing provides support, but residents are more independent, and staff is not on site 24/7. Individuals in partially supervised group housing are left alone for several hours but are able to call for help if needed. The following examples of supervised housing can be either fully or partially supervised, depending on the program.

    - Residential Re-entry Centers (Halfway Houses) – Halfway houses are the most common dwelling for individuals reentering the community after incarceration. These centers have strict rules, which if broken may constitute a violation of parole conditions and may result in revocation of parole. A criticism of this housing option is that it effectively serves as an extension of the prison facility for individuals on parole.

    - Recovery Housing or Sober Homes – This housing option is a common one for individuals with justice involvement or substance use history and is commonly designed to help individuals recover from addiction.

- Permanent Supportive Housing – "Permanent supportive housing is affordable community-based housing that provides full rights of tenancy and is linked with voluntary and flexible health and human services designed to meet residents'

[64] JOCELYN FONTAINE ET AL., URBAN INST. JUSTICE POLICY CTR., SUPPORTIVE HOUSING FOR RETURNING PRISONERS: OUTCOMES AND IMPACTS OF THE RETURNING HOME—OHIO PILOT PROJECT (2012), https://www.urban.org/sites/default/files/publication/25716/412632-Supportive-Housing-for-Returning-Prisoners-Outcomes-and-Impacts-of-the-Returning-Home-Ohio-Pilot-Project.PDF.

[65] *NAMI Finding Stable Housing*, NAMI.ORG, https://www.nami.org/Your-Journey/Individuals-with-Mental-Illness/Finding-Stable-Housing (last visited June 16, 2020).

> needs."[66] This model has been shown to reduce justice involvement of its residents and has positive effects on housing stability, employment, mental and physical health, and school attendance. Cost studies from across the country have found that supportive housing results in tenants' decreased use of homeless shelters, hospitals, emergency rooms, jails, and prisons.[67]

There is a need for more Supportive Housing in Texas. Supportive housing is a middle ground option that features independent living with the potential for support and intervention as needed. For those individuals on parole or probation, they may transition from progressively less restrictive housing as their treatment and re-entry progresses (e.g., from step-down housing to supervised or unsupervised group homes to supportive rental housing). The goal is to avoid releasing someone into an unstructured or homeless setting where decompensation is likely.[68]

In Texas, HHSC's Office of Mental Health Coordination, upon the recommendation of the Behavioral Health Advisory Committee, is developing a Housing Choice Plan that will outline the existing landscape of housing options for persons with mental health conditions, substance use history, and/or intellectual and developmental disabilities. The plan will also identify gaps in the current housing continuum (for example: affordable housing, housing for individuals with certain criminal offenses, and recovery focused housing environments), barriers to increasing the availability of affordable and accessible housing (such as federal, state, and private housing tenant policies), and recommendations for improving housing options for the target population.[69]

In conclusion, the JCMH identified ten areas of services that would benefit the judiciary in assisting those with mental illness or IDD. The gaps are in techniques, methods, or resources that are shown to positively affect individuals, communities, and court systems, both in Texas and in other jurisdictions. Texas has some form of each of these listed services; however, the need for the continuation and expansion of these types of services and supports significantly exceeds the current availability. The JCMH views these gaps in services as opportunities to strengthen the justice system's ability to address mental health challenges. This report also sheds light on many available resources that require further development of education, tools, and resources to ensure the information is shared with the judiciary. The JCMH will continue to monitor opportunities for collaboration on legislative efforts with mental health and IDD service providers aimed at filling gaps in services that affect the court system and will examine legislative proposals to improve services.

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[66] HOGG FOUND. FOR MENTAL HEALTH, POLICY RECOMMENDATION: HOUSING FOR PEOPLE WITH SERIOUS MENTAL ILLNESS 1 (2012), https://hogg.utexas.edu/project/housing-for-people-with-serious-mental-illness.
[67] *Id.* at 3.
[68] NAT'L CTR. FOR STATE COURTS, *supra* note 31.
[69] TEX. HEALTH & HUM. SERVS. COMM'N, OFFICE OF MENTAL HEALTH COORDINATION, HOUSING CHOICE PLAN, HOUSING FOR PEOPLE WITH JUSTICE INVOLVEMENT, (working paper, publication forthcoming 2021).

VIII.
Exploring Technology Solutions for Emergency Detention Warrants

The Task Force for Procedures Related to Mental Health discussed how to improve the process of obtaining emergency detention warrants for individuals in hospital emergency rooms. Texas hospitals, like other hospital emergency rooms throughout the nation, are seeing increasing numbers of psychiatric patients seeking emergency mental health evaluations.[1] Most hospitals, however, are not well-equipped to handle mental health crises. The Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to stabilize patients in need of care before discharging them. In Texas, hospitals lack the authority to initiate emergency detentions without a warrant or to hold patients for further treatment and observation. This lack of authority to hold patients creates potential liability and regulatory risks for hospitals and inhibits the delivery of the best care for patients. For the emergency department to remain a safe and effective care setting for all patients, individuals experiencing a psychiatric crisis should be redirected to a more clinically appropriate and therapeutic environment. This task force endorses (ten members voting to approve and two dissenting opinions) the concept of exploring the possibility of adding technology solutions for physician-requested emergency detention warrants to augment existing statutory authority. This report outlines the development of technology solutions for emergency detention warrants.

In August 2018, the Texas Hospital Association (THA) convened a forum of interested stakeholders to discuss the issues and challenges related to the management of patients with behavioral health conditions in the general hospital emergency department setting and to explore potential solutions related to those challenges.[2] Below are some key points from the THA report of that forum.

Patients Brought to the Emergency Room by Friends, Family, or Self

- One of the problematic situations arises when a patient comes into the hospital emergency room (with family or friends or by themselves) for a voluntary admission, and later wants to leave, but it has become apparent to the hospital that the patient is at risk to harm his or herself or others. The hospital has a duty to provide care under EMTALA but no authority to hold a person in that situation. Hospitals can call law enforcement to initiate an emergency detention, but it has been reported that law enforcement is not always available to report to a hospital in a timely manner.

- Lacking the legal authority to initiate even a short-term hold or detention leaves physicians and hospital personnel in the difficult position of either releasing a patient they believe to be a danger to themselves or others—in the process putting

[1] ACEP EMERGENCY MED. PRACTICE COMM., CARE OF THE PSYCHIATRIC PATIENT IN THE EMERGENCY DEPARTMENT – A REVIEW OF THE LITERATURE (2014), https://www.acep.org/globalassets/uploads/uploaded-files/acep/clinical-and-practice-management/resources/mental-health-and-substance-abuse/psychiatric-patient-care-in-the-ed-2014.pdf.

[2] *See* TEX. HOSP. ASS'N, CHALLENGES AND POTENTIAL SOLUTIONS FOR MANAGING PATIENTS IN PSYCHIATRIC CRISIS IN HOSPITAL EMERGENCY DEPARTMENTS: RESULTS FROM THE TEXAS HOSPITAL ASSOCIATION MEMBER FORUM (2018) (on file with the Texas Hospital Association).

themselves at legal risk for liability or disciplinary action by their licensing agency if harm occurs—or violating the law by holding a patient illegally and risking civil liability, disciplinary action, or even criminal prosecution for an unlawful detention.

Law Enforcement

- In 2018, THA conducted a survey of its hospital members and found the following related to law enforcement:
    - 76% of the respondents reported they did not have peace officers at their facilities.
    - Of the facilities that did have peace officers, 64% of them reported that those peace officers would not initiate emergency detentions on patients in the hospital when requested by a physician or healthcare provider.
    - Of the facilities that did not have a peace officer, 46%—almost half of these facilities—reported that local law enforcement would not come to the facility to initiate an emergency detention.
    - Of the facilities that reported that law enforcement would come to the facility, 79% reported that law enforcement takes too long to arrive at the facility.[3]
- Other problems discussed by THA at the 362 Task Force meeting included instances of peace officers inadvertently failing to provide a Notice of Emergency Detention when delivering someone in an acute care mental health crisis, which leaves a hospital without legal authority to detain the person. Task Force members also reported that some law enforcement agencies will not issue emergency detentions for patients already in the emergency department or who already are under an expiring emergency detention. In smaller jurisdictions with limited law enforcement resources, law enforcement may be occupied with other calls or be far away from the hospital when the need for intervention arises.[4]

Courts

- Another difficulty cited by THA is the gap between regular business hours for a hospital and a court. The Texas Health and Safety Code allows for either warrantless emergency detention by law enforcement or emergency detention with a warrant. When an emergency detention warrant is issued, the law allows an emergency detention to extend until regular court hours are resumed. However, hospitals report that problems arise when a patient is at the hospital, there is a need for an emergency detention warrant outside of regular court hours, and a judge or law enforcement is not available. In these instances, the hospital is required to stabilize the patient under EMTALA without the authority to hold the patient.

[3] *Tex. Hosp. Ass'n, Member Survey* (August 2018) (unpublished manuscript) (on file with the Judicial Commission on Mental Health).
[4] *Id.*

An Existing Model of an Electronic Warrant Process

The 362 Task Force received information regarding an example of existing technology that exists for obtaining warrants in another area of the law. Mr. Jerard Collins, a former law enforcement officer who now works with Law Enforcement Advanced DWI Reporting System (LEADRS), presented at the first meeting of the task force. Mr. Collins shared the following information about this electronic warrant process that could serve as a model system to develop a similar system for hospitals to obtain warrants for emergency detention.[5]

This system was created in 2003 with funding from Texas Department of Transportation (TXDOT) as an internet-based system that allows law enforcement to more quickly seek warrants for blood draws in DWI cases. LEADRS works by having officers answer a series of questions in text boxes, drop menus, and check boxes. Once completed, all information is used to complete a DWI case report and all forms associated with a DWI arrest, which are then electronically sent to the judge with the warrant. The average time to get a DWI warrant with this technology is 15-20 minutes. All transmissions are encrypted, and no information is stored on personal devices. In the DWI model, this system collects data for the National Highway Traffic Safety Administration and TXDOT. When developing the software, a steering team helped determine the requirements to meet the law and any confidentiality concerns. The software can also be created to communicate with other systems. For example, one Texas county is exploring the idea of creating with LEADRS an electronic emergency detention system that would include a mechanism to inform officers which facility has an available bed for a patient.

In jurisdictions that have the LEADRS DWI system, the training and roll-out began by identifying the officers who made frequent DWI arrests and training those officers first to use the system. Next, training was provided to all participants before going live in the community. Local jurisdictions often help develop training topics and requirements. It was reported that currently about 1,100 Texas law enforcement agencies use this technology for DWI warrants, including some agencies in the following counties: Dallas, Tarrant, Denton, parts of Bexar and Harris, and Potter. The Austin Police Department (APD) was one of the first pilot sites in 2004; however, they ultimately decided to create their own version of the system. Because the LEADRS software was developed with state funding, it is free for users. However, new jurisdictions might need to acquire equipment.

Concerns with Electronic Warrants for Emergency Detention

Several members expressed concerns that the information would be sent over personal devices and that the information that would be stored by a private company or person. Mental health information is particularly sensitive. An electronic mental health warrant program would need to adequately protect the privacy of individuals with mental health issues or IDD.

It is important to designate who will be able to use the system so that they can receive training. While there is an exception for physicians to the statutory "in-person" requirement, the concern is that if the exception were expanded legislatively to allow others to use the system, this may invite

[5] Jerard Collins, Assistant Program Manager and Lead Specialist, LEADRS, Presentation at the 362 Task Force meeting (Dec. 5, 2019).

abuse in situations, such as family law cases. At this time, the 362 Task Force is not recommending an expansion of existing statutory authority for submitting warrant applications electronically.

Two task force members would prefer to see any problems resolved only through education, collaboration, and enforcement of existing law that allows for warrantless emergency detentions in one of three ways: (i) a peace officer conducts a warrantless emergency detention by bringing a person into a hospital emergency department under an emergency detention and filing a notice of detention with the facility; (ii) a peace officer providing security at the hospital does a warrantless emergency detention when the person attempts to leave against medical advice; or (iii) a peace officer is contacted by the facility to effectuate a warrantless emergency detention.[6]

Additional Recommendations

Guidelines

- As the electronic application process may apply in jurisdictions with varying populations, an appropriate judicial agency should create policy and procedures, or guidelines, for this process. These should include:
    - An explanation of appropriate circumstances for the issuance of a warrant for emergency detention;
    - The level of security required for the transmission and receipt of information;
    - A step-by-step outline of the electronic warrant process; and
    - Instructions on how to collect and file legally required documentation of this process.

Confidentiality

- The design of any technology or process must ensure compliance with the general provisions regarding records of mental health proceedings found in Section 571.015 the Texas Health and Safety Code. Any policies or procedures regarding an electronic warrant system must address: (i) the security of the application and warrant issuance process, (ii) where records of the application will reside, and (iii) who has access to the records.

Conclusion

Most of the 362 Task Force favored further exploration of technology solutions for emergency detention warrants to improve the ability of hospitals to obtain emergency detentions when needed. Two members opposed a technology solution, stating that current law is sufficient and that resources should be directed toward education and enforcement of the current law.

[6] Hon. Guy Herman, Response to Exploring Technology Solutions for Emergency Detention Warrants 3 (April 2020) (unpublished manuscript) (on file with the Judicial Commission on Mental Health).

IX.
Appendices

Appendix A

Defendant with Lack of Capacity in Justice and Municipal Courts

Amendment to Chapter 45, Code of Criminal Procedure, by adding Article 45.0214, as follows:

Art. 45.0214. DEFENDANT WITH MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, LACK OF CAPACITY

(a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a justice or judge shall determine whether probable cause exists to believe that a defendant, including a defendant with a mental illness or developmental disability lacks the capacity to understand the proceedings in criminal court or to assist in the defendant's own defense and is unfit to proceed.

(b) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

(d) In this section, a "defendant" includes a child as defined by Article 45.058(h), Code of Criminal Procedure.

Appendix B

Acceptance of a Plea in Justice and Municipal Courts

Amendment to Chapter 45, Code of Criminal Procedure, Article 45.0241, as follows:

Art. 45.0241. ACCEPTANCE OF PLEA.

No plea of guilty or nolo contendere under Article 45.022 or Article 45.023(a) shall be accepted by a justice or judge unless it appears that the defendant is mentally competent and the plea is free and voluntary.

Appendix C

Time periods for competency orders, Tex. Code of Criminal Procedure Article 46B.055

Amendment to Article 46B.055, Code of Criminal Procedure, as follows:

(a) If the defendant is found incompetent to stand trial, the court shall proceed under Subchapter D.

(b) For the purpose of determining any period of competency restoration authorized by this Chapter, orders relating to competency restoration shall begin on the date the order is signed, or competency restoration services begin, whichever is later.

Appendix D

Pilot Program and County Programs

Amendment to 46B.090, Code of Criminal Procedure, as follows:

BY: _____ _____B. No.

A BILL TO BE ENTITLED

AN ACT

relating to a jail-based competency restoration pilot program.

SECTION 1. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by striking Article 46B.090:

Art. 46B.090. JAIL-BASED RESTORATION OF COMPETENCY PILOT PROGRAM. (a) In this article[~~,~~]:

(1) [~~"department"~~] "Commission" means the [~~Department of State Health Services~~] Health and Human Services Commission[~~.~~];

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(a-1) If the legislature appropriates to the [~~department~~] commission the funding necessary for the [~~department~~] commission to operate a jail-based restoration of competency pilot program as described by this article, the [~~department~~] commission shall develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. In developing the pilot program, the [~~department~~] commission shall coordinate and allow for input from each participating county.

(b) The [~~department~~] commission shall contract with a provider of jail-based competency restoration services to provide services under the pilot program if the [~~department~~] commission develops a pilot program under this article.

(c) ~~Not later than November 1, 2013, the commissioner of the department shall adopt rules as necessary to implement the pilot program. In adopting rules under this article, the commissioner shall specify the types of information the department must collect~~

~~during the operation of the pilot program for use in evaluating the outcome of the pilot program.~~]

[(d)] Repealed by Acts 2015, 84th Leg., R.S., Ch. 946, Sec. 1.15(d), eff. September 1, 2015.

[(e)] Repealed by Acts 2015, 84th Leg., R.S., Ch. 946, Sec. 1.15(d), eff. September 1, 2015.

(f) To contract with the [~~department~~] commission under Subsection (b), a provider of jail-based competency restoration services [~~must demonstrate to the department that~~] shall:

(1) [~~the provider:~~]

[~~(A) has previously provided jail-based competency restoration services for one or more years; or~~

[~~(B) is a local mental health authority that has previously provided competency restoration services;~~] be a local mental health authority or local behavioral health authority that is in good standing with the commission, which may include an authority that is in good standing with the commission and subcontracts with a provider of jail-based competency restoration services;

(2) [~~the provider's jail-based competency restoration program:~~] contract with a county or counties to develop and implement a jail-based competency restoration program;

[~~(A) uses a multidisciplinary treatment team to provide clinical treatment that is:~~] (3) provide jail-based competency restoration services through the use of a multidisciplinary treatment team that are:

(i) directed toward the specific objective of restoring the defendant's competency to stand trial; and

(ii) similar to [~~the clinical treatment provided as part of a~~] other competency restoration ~~program~~ programs [~~at an inpatient mental health facility~~];

[~~(B)~~] (iii) employ[~~s~~] or contract[~~s~~] for the services of at least one psychiatrist; [~~and~~]

[~~(C)~~] (iv) provide jail-based competency restoration services through licensed or qualified mental health professionals;

(v) provide[~~s~~] weekly competency restoration hours [~~treatment hours~~] commensurate to the [~~treatment~~] hours provided as part of a competency restoration program at an inpatient mental health facility;

(vi) operate in the jail in a designated space that is separate from the space used for the general population of the jail;

(vii) ensure coordination of general health care;

(viii) provide mental health treatment and substance use disorder treatment to defendants, as necessary, for competency restoration; and

(ix) supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication to defendants as applicable and in accordance with Article 46B.086 of this code or Section 574.106, Health and Safety Code.

[~~(3) the provider is certified by a nationwide nonprofit organization that accredits health care organizations and programs, such as the Joint Commission on Health Care Staffing Services, or the provider is a local mental health authority in good standing with the department; and~~]

[~~(4) the provider has a demonstrated history of successful jail-based competency restoration outcomes or, if the provider is a local mental health authority, a demonstrated history of successful competency restoration outcomes.~~]

(g) A contract under Subsection (b) must require the designated provider to collect and submit to the commission the information specified by rules adopted ~~under Subsection (c)~~ by the Commission.

[~~(h) The designated provider shall enter into a contract with the participating county or counties. The contract must require the participating county or counties to:~~

~~(1) ensure the safety of defendants who participate in the jail-based restoration of competency pilot program;~~

~~(2) designate a separate space in the jail for the provider to conduct the pilot program;~~

~~(3) provide the same basic care to the participants as is provided to other inmates of a jail; and~~

~~(4) supply clinically appropriate psychoactive medications to the mental health service provider for purposes of administering court-ordered medication to the participants in accordance with Article 46B.086 of this code and Section 574.106, Health and Safety Code.~~]

~~(i)~~ (h) The psychiatrist or psychologist for the provider, qualified under Art. 46B.022, shall conduct evaluations of the defendant's competency, and report to the court, in the same manner as otherwise required under Art. 46B.079. ~~at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the pilot program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.~~

~~(j)~~ (i) If at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist or psychologist for the provider determines that the defendant has attained competency to stand trial:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall consider that report as the report of an expert stating an opinion that the defendant has been restored to competency for purposes of Article 46B.0755(a) or (b).

~~(k)~~ (j) If at any time during a defendant's participation in the jail-based restoration of competency pilot program the psychiatrist or psychologist for the provider determines that the defendant's competency to stand trial is unlikely to be restored in the foreseeable future:

(1) the psychiatrist or psychologist for the provider shall promptly issue and send to the court a report demonstrating that fact; and

(2) the court shall:

(A) proceed under Subchapter E or F and order the transfer of the defendant, without unnecessary delay, to the first available facility that is appropriate for that defendant, as provided under Subchapter E or F, as applicable; or

(B) release the defendant on bail as permitted under Chapter 17.

~~(l)~~ (k) If the psychiatrist or psychologist for the provider determines that a defendant ordered to participate in the pilot program has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the pilot program~~:~~, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this Subchapter, including the possibility of an extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and (1) for a defendant charged with a felony, not less than 45 days are remaining of the initial period permitted by this Subchapter for competency restoration services, or (2) for a defendant charged with either a felony or a misdemeanor, if an extension has been ordered under Article 46B.080, not less than 45 days are remaining under the extension order. After receipt of such notice,

[~~(1) for a defendant charged with a felony, the defendant shall be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and~~

~~(2) for a defendant charged with a misdemeanor, the court may:~~

~~(A) order a single extension under Article 46B.080 and the transfer of~~] the

defendant shall be transferred without unnecessary delay to the appropriate mental health facility, [~~or~~] residential care facility, or outpatient services program as provided by [~~Article 46B.073(d)~~] this Subchapter for the remainder of the period otherwise permitted by this Subchapter, including the possibility of an extension ordered under Article 46B.080 if an extension has not previously been ordered. If no such transfer occurs, and the psychiatrist or psychologist for the provider determines that a defendant has not been restored to competency by the end of the period authorized by this Subchapter, including an extension under Article 46B.080 if so ordered, the defendant shall be returned to the court for further proceedings under this Subchapter including those specified by Article 46B.084. [~~under the extension;~~] For a defendant charged with a misdemeanor, the court may, as appropriate:

~~(B)~~ (A) proceed under Subchapter E or F;

~~(C)~~ (B) release the defendant on bail as permitted under Chapter 17; or

~~(D)~~ (C) dismiss the charges in accordance with Article 46B.010.

(l) The court retains authority to order the transfer of a defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if the court determines that the defendant is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and the other requirements of this Subchapter for an order of outpatient competency restoration services are met.

(m) Unless otherwise provided by this article, the provisions of this chapter, including the maximum periods prescribed by Article 46B.0095, apply to a defendant receiving competency restoration services, including competency restoration education services, under the pilot program in the same manner as those provisions apply to any other defendant who is subject to proceedings under this chapter.

(n) If the [~~department~~] commission develops and implements a jail-based restoration of competency pilot program under this

article, not later than December 1, [~~2018~~] 2021, the executive commissioner of the commission shall submit a report concerning the pilot program to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues and over criminal justice issues. The report must include the information collected by the [~~department~~] commission during the pilot program and the executive commissioner's evaluation of the outcome of the program as of the date the report is submitted.

SECTION 2. The pilot program established under this article concludes and this article expires September 1, 2022. The pilot program established under this article may continue subject to Article 46B.091 Jail-Based Competency Restoration Program Implemented by County.

SECTION [~~2~~] 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, [~~2019~~] 2021.

Appendix E

Deadlines for competency evals in Art. 46B.091/Timelines JBCR

Amendment to 46B.091, Code of Criminal Procedure, as follows:

AN ACT

relating to jail-based competency restoration services

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Art. 46B.091(g), Code of Criminal Procedure, is amended to read:

(g) A psychiatrist or psychologist for the provider, qualified under Art. 46B.022, shall conduct evaluations of the defendant's competency, and report to the court, in the same manner as otherwise required under Art. 46B.079. ~~at least two full psychiatric or psychological evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist or psychologist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant is committed to the program. The psychiatrist or psychologist shall submit to the court a report concerning each evaluation required under this subsection.~~

SECTION 2. Art. 46B.091(j), Code of Criminal Procedure, is amended to read as follows:

(j) If the psychiatrist or psychologist for the provider determines that a defendant committed to a program implemented under this article has not been restored to competency by the end of the 60th day after the date the defendant began to receive services in the program~~:~~, the jail-based competency restoration program shall continue to provide competency restoration services to the defendant for the period authorized by this Subchapter, including the possibility of an extension ordered under Article 46B.080, unless the jail-based competency restoration program is notified that space at a facility or outpatient competency restoration program appropriate for the defendant is available and

(1) for a defendant charged with a felony, not less than 45 days are remaining of the initial period permitted by this Subchapter for competency restoration services, or (2) for a defendant charged with either a felony or a misdemeanor, if an extension has been ordered under Article 46B.080, not less than 45 days are remaining under the extension order. After receipt of such notice,

~~(1) for a defendant charged with a felony, the defendant shall be transferred, without unnecessary delay and for the remainder of the period prescribed by Article 46B.073(b), to the first available facility that is appropriate for that defendant as provided by Article 46B.073(c) or (d); and~~

~~(2) for a defendant charged with a misdemeanor, the court may:~~

~~(A) order a single extension under Article 46B.080 and, notwithstanding Articles 46B.073(c) and (f), the transfer of the~~ the defendant shall be transferred without unnecessary delay to the appropriate mental health facility, ~~or~~ residential care facility, or outpatient services program as provided by this Subchapter for the remainder of the period otherwise permitted by this Subchapter, including the possibility of an extension ordered under Article 46B.080 if an extension has not previously been ordered. If no such transfer occurs, and the psychiatrist or psychologist for the provider determines that a defendant has not been restored to competency by the end of the period authorized by this Subchapter, including an extension under Article 46B.080 if so ordered, the defendant shall be returned to the court for further proceedings under this Subchapter including those specified by Article 46B.084. ~~under the extension~~. For a defendant charged with a misdemeanor, the court may, as appropriate:

(A) ~~(B)~~ proceed under Subchapter E or F;

(B) ~~(C)~~ release the defendant on bail as permitted under Chapter 17; or

(C) ~~(D)~~ dismiss the charges in accordance with Article 46B.010.

SECTION 3. Art. 46B.091, Code of Criminal Procedure is amended by adding subsection (m), to read as follows:

(m) The court retains authority to order the transfer of a

defendant who is subject to an order for jail-based competency restoration services to an outpatient competency restoration program if the court determines that the defendant is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial, and the other requirements of this Subchapter for an order of outpatient competency restoration services are met.

Appendix F

Good time credit for defendants released to outpatient competency restoration programs

Amendment to 46B.009, Code of Criminal Procedure, as follows:

(a) A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence each of the following periods for which the person may be confined in a mental health facility, residential care facility, or jail:

(1) Any period of confinement that occurs pending a determination under Subchapter C as to the defendant's competency to stand trial; and

(2) Any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

(b) A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence any period that the person either was ordered to and participated in, or was committed to and attended, an outpatient competency restoration program.

Appendix G

Possibility of a step down from court-ordered inpatient to outpatient mental health services under 46B.105

Amendment to the title to Article 46B.105, Code of Criminal Procedure, as follows:

TRANSFER FOLLOWING CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE.

Amendment to add Article 46B.1055 to the Code of Criminal Procedure, as follows:

Art. 46B.1055. MODIFICATION OF ORDER FOLLOWING INPATIENT CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE

This article applies to a defendant who has been transferred under Article 46B.105 from a maximum security unit to a facility other than a maximum security unit.

(1) The defendant, the head of the facility to which the defendant is committed, or the attorney representing the state may request that the court modify an order for inpatient treatment or residential care to order court-ordered outpatient mental health services.

(2) The court shall hold a hearing on a request made by the head of the facility to which the defendant is committed. A hearing under this subsection must be held not later than the 14th day after the date of the request.

(3) If a request is made by the defendant or the attorney representing the state, the court must act on the request not later than the 14th day after the date of the request. A hearing under this subsection is at the discretion of the court, except that the court shall hold a hearing if the request and any accompanying material provide a basis for believing modification of the order may be appropriate.

(4) If a request is made under subsection (1) of this Article, to assure consultation with the local mental health authority or local behavioral health authority, the court shall require the local

mental health authority or local behavioral health authority to submit to the court a statement prior to any hearing under this Article as to whether treatment and supervision can be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services are available to the defendant.

(5) If the head of the facility believes that the defendant is a person with mental illness who meets the criteria for court-ordered outpatient mental health services under Subtitle C, Title 7, Health and Safety Code, the head of the facility shall submit to the court prior to the hearing a certificate of medical examination for mental illness which identifies that although the defendant no longer meets the criteria for court-ordered inpatient mental health services, the defendant does meet the criteria for court-ordered outpatient mental health services.

(6) If a request is made by a defendant not later than the 90th day after the date of a hearing on a previous request, the court is not required to act on the request except on the expiration of the order or on the expiration of the 90-day period following the date of the hearing on the previous request.

(7) The court shall hold a hearing to determine whether the defendant should be court-ordered to outpatient mental health services under Subtitle C, Title 7, Health & Safety Code.

(8) Proceedings for court-ordered outpatient mental health services are governed by Subtitle C, Title 7, Health and Safety Code, to the extent that Subtitle C applies and does not conflict with this chapter, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(9) The court shall rule on the request during or as soon as practicable after any hearing on the request, but not later than the 14th day after the date of the request.

(10) An outpatient treatment program may not refuse to accept a placement ordered under this article on the grounds that any criminal charges against the defendant remain pending.

Appendix H

Expert qualifications in competency/insanity evaluations

Amendment to Article 46C.102 (a), Texas Code of Criminal Procedure, as follows:

Art. 46C.102. EXPERTS: QUALIFICATIONS. (a) The court may appoint qualified psychiatrists or psychologists as experts under this chapter. To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification ~~or experience~~ or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) ~~experience or~~ training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

(ii) ~~at least five years of experience in performing criminal forensic evaluations for courts; and~~

~~(iii)~~ at least eight ~~or more~~ hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment ~~and documented with the court~~.

Appendix I

Oath and promise to appear for persons with MI/IDD

Amendment to 17.04, Code of Criminal Procedure, as follows:

Art. 17.04. REQUISITES OF A PERSONAL BOND. A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain:

(1) the defendant's name, address, and place of employment;

(2) identification information, including the defendant's:

(A) date and place of birth;

(B) height, weight, and color of hair and eyes;

(C) driver's license number and state of issuance, if any; and

(D) nearest relative's name and address, if any; and

(3) except as provided in subsection (4), the following oath sworn and signed by the defendant:

"I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

(4) the oath described in subsection (3) is inapplicable to a personal bond ordered under Article 17.032, Article 16.22(c)(5), and Chapter 46B of this Code.

Appendix J

16.22 Interview for a defendant no longer in custody

Amendment to Subsection (a)(2) of Article 16.22, Code of Criminal Procedure, as follows:

(2) The magistrate is not required to order the interview and collection of other information under Subdivision (1) if (A) the defendant is no longer in custody, or (B) the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert described by Subdivision (1).

Appendix K

Psychiatric stabilization at the jail

Amendment to Section 511.009(d), Government Code, as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall:

(1) require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody; and

(2) require access to a prescription medication that is determined necessary for the care, treatment, or stabilization of a prisoner with mental illness by a mental health professional or other health professional under Subsection(a)(23)(A) or (B).

FYI, Section 511.009(a)(23)(A)-(B), Government Code, provides that the Texas Commission on Jail Standards must:

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day or, if a mental health professional is not at the county jail at the time, then require the jail to use all reasonable efforts to arrange for the inmate to have access to a mental health professional within a reasonable time;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional . . .

Appendix L

Clarification of Officer's Duties Upon Presenting a Person for Emergency Mental Health Services

Amendment to Texas Health & Safety Code Section 573.012 by adding new section (d-2) as follows:

(d-2) A peace officer does not have a duty to wait at a hospital or other facility for the person to be medically screened, treated, or to have their insurance verified. The officer's duties are complete when the officer makes a responsible delivery of the person to the appropriate hospital or facility staff member along with the completed documentation required by this subchapter.

Appendix M

Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Amendment to Tex. Health & Safety Code, Sec. 573.012, as follows:

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive

communication of image and sound between the judge or magistrate and the

applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2) If the person who is the subject of an application is receiving care in a hospital or a facility operated by a local mental health authority, a judge or magistrate may permit an applicant who is either a physician, a physician's assistant, a nurse practitioner, or a non-physician mental health professional, as defined by Section 571.003 (15) (A)-(D) of the Texas Health and Safety Code, to submit an application under the provisions of subsections (h) and (h-1).

Appendix N

Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Amendment to Tex. Health & Safety Code, Sec. 573.012, adding a new subsection (d-1) as follows:

(d-1) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Amendment to Tex. Code of Criminal Procedure, Art. 18.191, as follows:

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001 or 573.012, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Sections 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001 or 573.012, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the

sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, may not be destroyed or forfeited to the state.

Appendix O

Authorization for blood draws to monitor blood levels of psychoactive medications involuntarily administered to patients in accordance with lawful orders

Amendment to Tex. Health & Safety Code §574.106 by adding new subsection (j-1), as follows:

(j-1) The authority to administer a medication involuntarily to a patient under subsection (a) includes the authority to obtain blood samples for analysis and conduct evaluations and laboratory tests that are reasonable and medically necessary to safely administer psychoactive medications.

Appendix P

Statutory authority to delay the arrest of a mental health patient, detained under an emergency detention or order of protective custody, who engages in conduct that may subject the patient to arrest for an assault or other low-level offense, until the patient's mental health condition has been stabilized

Amendment to Chapter 15, Code of Criminal Procedure, by adding new section 15A, as follows:

Art. 15A.01. Deferral of Arrest for Nonviolent Offenders Receiving Emergency Mental Health or Intellectual Disability Services.

(a) In this article, "violent offense" shall mean an offense listed in Art. 42A.054 of this code. This article does not apply to a person who is charged with or subject to arrest for a violent offense.

(b) In this article "detained person" shall refer to a person who is being detained under Chapter 573, or Chapter 574, Subchapter B, of the Texas Health and Safety Code, who subsequent to the detention engages in conduct that would constitute a criminal offense at the facility where the person is being detained for emergency mental health services.

(c) An officer who has probable cause to make a warrantless arrest or who has a warrant for the arrest of a detained person for an offense other than a violent offense shall defer the arrest of the detained person until after the detained person has completed the detention for emergency mental health services.

(d) The deferral of arrest authorized by this article is subject to the approval of the head of the facility or designee. If the head of the facility or designee does not approve the deferral of arrest authorized by this article, the law enforcement officer may immediately take the person into custody.

(e) A copy of the notice of approval or disapproval of the deferral of the arrest by the head of the facility or designee, must be in writing and delivered to the officer seeking to arrest the detained

person within one hour of the time the officer appears at the facility to make an arrest. A copy of the notice shall be filed by the facility with the court having probate jurisdiction over the person detained.

(f)A subsequent arrest of a detained person for whom an arrest was deferred will require a warrant based on probable cause.

(g)The facility where the detained person is located shall notify the law enforcement agency who sought the arrest of the detained person at least 12 hours prior to releasing the detained person.

(h)Nothing in this article shall be construed to limit any other lawful disposition of the acts for which an arrest was deferred.