

SUBJECT: Restrictions on detention and transportation of persons with mental illness

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Rose, S. King, J. Davis, Eissler, Naishtat, Pierson

0 nays

3 absent — Herrero, Hughes, Parker

SENATE VOTE: On final passage, March 14 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — Aaryce Hayes, Advocacy, Inc.; (*Registered, but did not testify*:  
Susanne Elrod, Texas Council of Community MHMR Centers)

Against — None

BACKGROUND: Health and Safety Code, sec. 573.001 allows peace officers, without a warrant, to take persons into custody if the officer believes that a person is mentally ill and because of that mental illness there is a substantial risk of serious harm to the mentally ill person or others. Peace officers are required to immediately transport the person to the nearest appropriate inpatient mental health facility or, if this is not available, to a mental health facility deemed suitable by the local mental health authority.

In these situations, jails or similar detention facilities may not be deemed suitable except in an extreme emergency. People detained in a jail or nonmedical facility must be kept separate from others who are charged with or convicted of crimes.

Under sec. 574.022, a judge may issue a protective custody order if the judge determines that it is a doctor's opinion that a person is mentally ill and the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending a hearing. Persons under protective custody orders may not be detained in nonmedical facilities used to detain persons charged with or convicted of crimes except because of, and during, an extreme emergency and only for up to 72 hours.

Health and Safety Code sec. 534.053 requires local mental health authorities to have 24-hour emergency screening and rapid crisis stabilization services and community-based residential services or hospitalization

**DIGEST:**

CSSB 261 would give peace officers transporting persons with mental illness the option of taking these persons to a medical facility or other facility that the local mental health authority had deemed suitable, if the current options of an inpatient mental health or other mental health facility were not available.

The bill would allow these persons to be taken to jails only if an inpatient mental health facility or another mental health was not available and the nearest medical facility or facility approved by the local authority was more than 75 miles away.

Persons could be detained in a jail or similar detention facility only for up to 12 hours. The sheriff or officer responsible for the detention facility would be required to ensure compliance with the current requirement that mentally ill people be kept separate from other prisoners. The sheriff or officer responsible for the facility would have to document the time the detention began, its duration, its reason, and the time that a representative of the local mental health authority arrived at the facility.

CSSB 261 would revise the custody restrictions applied to people under protective custody orders so that they were the same as those arrested without a warrant.

CSSB 261 also would impose new restrictions on how mentally ill persons could be transported and restrained. Persons could be restrained only during their apprehension, detention, and transportation. The method of restraints would have to permit the person to sit upright without undue difficulty.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSSB 261 would address problems with timely and safe transportation to appropriate mental health facilities of mentally ill persons taken into custody by law enforcement authorities. The bill would not impose any

new requirements on communities but would encourage them to develop alternatives to using jails as holding facilities for the mentally ill who have not committed a crime.

Currently, law enforcement officers who have taken a mentally ill person into custody sometimes delay their transportation to an appropriate facility. While some delays may be due to emergency reasons, in other cases officers may wait until it is cost effective to transport a person. This too often results in jails serving as holding facilities for mentally ill persons who have not been charged with a crime. Jail staff often are not adequately trained to handle persons with mental illness who may face violence, exploitation, and extortion from other inmates. Such detentions can lead to a deterioration in the condition of the conditions of the mentally ill and exacerbate the person's illness. In addition, many jails are facing crowding, and should not be using beds for the mentally ill when they are needed for prisoners.

CSSB 261 would address these problems by limiting the detention in jails of persons for mental health reasons and allowing it only if another appropriate facility was more than 75 miles away. This would help ensure the likelihood of appropriate and timely mental health care and encourage communities not to use scarce jail beds for people with mental illness who would be more appropriately held in another setting.

CSSB 261 would not impose new requirement on local communities. Current law already requires use of holding facilities other than jails, which should be used only in emergencies. Each local Mental Health Authority already should have developed alternatives to jail for these mentally ill people, and the bill would encourage the use of these options, not hospital emergency rooms. CSSB 261 should help make the development of alternative holding facilities a priority. The decision about placement would remain a local decision, but could include a psychiatric treatment setting such as a crisis unit or a medical facility.

CSSB 261 would not be burdensome for small, rural areas or those whose resources are stretched because it would cap the distance that a peace officer would have to drive a mentally ill person at 75 miles, a reasonable standard. Officers also would have the option to call an ambulance to transport a person.

CSSB 261 also would address concerns with the safe and appropriate transportation of the mentally ill. In some cases, mentally ill persons have been transported face down, hog tied, or in hobble restraints that put them at risk for positional asphyxiation. The bill address these concerns by prohibiting the inappropriate use of certain types of restraints and allowing only those that would diminish the risk of positional asphyxiation by allow a person to sit upright. Law enforcement officers have other, effective options for restraints such as handcuffs and separate leg hobbles, which can detain a person without risking asphyxiation.

**OPPONENTS  
SAY:**

CSSB 261 could result in an increased and inappropriate use of hospital emergency rooms for mentally ill persons. If peace officers or local mental health authorities were unable to provide a facility that met the requirements of CSSB 261 they could turn to emergency rooms, which often are not equipped to handle people with mental illness who are not experiencing other medical emergencies.

**NOTES:**

The House committee substitute added to the Senate version of the bill the provisions authorizing the option for peace officers to take mentally ill persons to medical facilities or other facilities deemed suitable by the local mental health authority.