



December 2015, Number 84-4

Criminal Justice

State grant funds legal aid for some arrestees with mental illness

[December 2](#) — Bexar County recently began a program partially funded by a state grant that could increase the number of indigent criminal defendants with mental illness released from jail on a personal bond before trial. The grant will help provide certain arrestees with attorneys when magistrates first set bail.

The Bexar County program, which began in September, could provide information for the Legislature this interim as House and Senate committees study jails, pre-trial services, mental illness in the criminal justice system, and the use of bonds to release individuals from custody.

Statutory framework

The Bexar County program is designed to work within the framework of the Texas Code of Criminal Procedure (CCP) for identifying arrestees with mental illness.

CCP, [art. 15.17](#) requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights, including the right to request an attorney if the arrestee cannot afford one. At this time, magistrates set bail. [Art. 17.03](#) gives magistrates discretion to release certain defendants on personal bond but prohibits this for those charged with certain violent or serious crimes. Under a personal bond, defendants agree to return to court and to comply with conditions established by the court but are not required to post cash or surety.

[Art. 16.22](#) requires a sheriff to notify magistrates within 72 hours if the sheriff has cause to believe that a person in custody has a mental illness. This can start a process of gathering and assessing information about the arrestee.

[Art. 17.032](#) establishes procedures for releasing on personal bond certain arrestees believed to have a mental illness.

Magistrates must release those who qualify, unless good cause is shown otherwise. To qualify, arrestees cannot be charged with or have a previous conviction for certain violent offenses. Arrestees also must be examined by a mental health expert. Magistrates must determine that appropriate community-based services are available and, unless there is good cause, require treatment as a condition of release on personal bond if certain conditions are met.

Grant to provide attorneys at magistration hearings

The state grant will help to provide attorneys soon after arrest to certain arrestees with mental illnesses who cannot afford to hire one. Attorneys will be appointed before these arrestees are first taken to a magistrate and their bail is set. Arrestees generally appear before magistrates at this time without legal representation.

Recommendation for release on personal bond. Appointed attorneys gather information about the arrestee and work with prosecutors to consider developing a joint recommendation for the arrestees' release on personal bond. Magistrates must receive a written assessment by a mental health professional and a treatment plan as a condition of the joint recommendation for a bond. Under the grant, arrestees charged with certain offenses in addition to those listed in CCP, art. 17.032 will not be considered for a joint recommendation. Arrestees released on personal bond must agree to supervision by the Bexar County Pre-Trial Services Department.

The state grant was made through the Texas Indigent Defense Commission and will help pay for three assistant public defenders. The budget for the five-year program is \$1.5 million, with the state grant accounting for about \$607,000 of the total.

(continued on page 2)

Evaluation. Data will be collected to measure changes in the number of arrestees diverted from jail to mental health treatment, and quarterly progress reports will be submitted to the state. The first report should be made to the Texas Indigent Defense Commission in January.

Bexar County projects that the program could increase the number of arrestees released on personal bond instead of jailed. During an 11-month period spanning 2014 and 2015, 125 arrestees were diverted from jail to treatment. If the entity assessing arrestees fully staffs the magistration facility as anticipated and certain targets are met, 2,164 arrestees could be diverted from the jail annually, according to the grant application.

Proponents of the program say that by providing attorneys to certain indigent defendants with mental illness at magistration, the grant program aims to help maximize the use of mental

health treatment options and provide a more appropriate response to those with mental illness accused of low-level, non-violent crimes. They say diverting some arrestees from jail to treatment could help relieve jail overcrowding and save counties money that could be used to support the criminal justice system.

Some have expressed concerns that judicial discretion be maintained in decisions to release arrestees on personal bond and that magistrates receive thorough information about arrestees' mental health. Proponents say attorney recommendations are not binding on judges, who may continue to make independent decisions and deny such release if it is appropriate or if the available information is not adequate, even if a recommendation is made for treatment rather than jail.

— by Kellie A. Dworaczyk

Public Education

AG issues opinion on instructional materials for schools

December 9 — The Texas attorney general said in a December 4 opinion that a court likely would determine that the Legislature has not specifically delegated to the State Board of Education (SBOE) the authority to enact certain rules on school districts' adoption of textbooks and instructional materials. The opinion on the SBOE's authority was requested in June by the then-board chair and continued by the current chair after her appointment by the governor.

The [opinion](#) states that the SBOE's rulemaking authority for the adoption of textbooks under Education Code, [sec. 31.003](#) should be considered alongside [sec. 11.151\(b\)](#), which says that all powers and duties not specifically delegated by statute to the Texas Education Agency or the SBOE are reserved for local school boards. The authority of local school boards to select instructional materials was enhanced in 2011 when the Legislature passed SB 6 by Shapiro, which allowed districts to use their instructional materials allotment to buy materials that are adopted by the SBOE or that are adopted locally.

According to the attorney general opinion, [KP-0043](#), the Legislature has not specifically delegated authority to the SBOE to require school districts, in adopting instructional materials, to:

- adopt a public input and participation process;
- adopt procedures ensuring prior local approval of changes in content made by a publisher to materials not purchased from the SBOE's approved list;
- specify which essential knowledge and skills (TEKS) are covered by each locally adopted material and identify which passages cover which specific elements of the TEKS; or
- develop conflict of interest policies and require public schools and publishers to keep contact registers between school officials and publishers.

The opinion says the SBOE likely would exceed its rulemaking authority by adopting a rule to ensure locally adopted instructional materials comply with Education Code, [sec. 28.002\(h\)](#), which requires districts to offer instruction in U.S. and Texas history and the free enterprise system with a curriculum that emphasizes patriotism and democratic values.

According to the opinion, the SBOE does have authority to impose an administrative penalty against a publisher for a factual error identified by a district.

— by Janet Elliott