

BILL ANALYSIS

S.B. 32
By: Zaffirini
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current Texas law requires that a local mental health authority ensure that 24-hour emergency screening services, rapid crisis stabilization services, community-based crisis residential services, or hospitalization services are available in each service area. The law requires that a local mental health authority maintain short-term detention facilities as the appropriate alternative to incarcerating persons with mental illness. Jails too often serve as holding facilities for persons with mental illness who have not been charged with a crime. While such persons await transportation to a state hospital, they generally have limited or no access to mental health services, allowing their conditions to deteriorate further. Moreover, such individuals are sometimes transported in restraints and in positions that compromise their physical safety.

S.B. 32 limits the detention of certain persons with a mental illness to a maximum of 12 hours and only if a medical facility or other appropriate facility, as determined by a local mental health authority, is more than 75 miles away. The bill requires the maintenance of short-term detention facilities and prohibits the use of certain forms of restraint.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

S.B. 32 amends the Health and Safety Code to add a medical facility or other facility that a local mental health authority deems suitable as an alternative facility to which a peace officer is required to immediately transport a person taken into custody without a warrant for an emergency detention because of the person's mental illness if neither an appropriate inpatient mental health facility nor a mental health facility deemed suitable by the local mental health authority is available. The bill revises the conditions under which a jail or similar detention facility used to detain persons charged with or convicted of a crime may be considered suitable for detention of such a person taken into custody. The bill makes such a facility unsuitable unless an inpatient or other mental health facility deemed suitable by the local mental health authority is not available and the nearest medical facility is located more than 75 miles from the location where the peace officer has custody of the person, rather than making such a facility

unsuitable except in an extreme emergency. The bill limits the detention of such a person in a jail or similar detention facility under certain conditions to no longer than 12 hours. The bill requires the sheriff or other officeholder responsible for the facility to document the time the person's detention begins, the duration of the detention, the reason for the detention, and the time a representative of the local mental health authority arrives at the facility. The bill clarifies that the sheriff or responsible officeholder is required to ensure that a person detained in the jail or similar detention facility is kept separate from any person who is charged with or convicted of a crime.

S.B. 32 clarifies that a person taken into custody under protective custody order may be detained only in the manner provided by provisions relating to detention in protective custody. The bill revises the exceptions to the prohibition against a person under a protective custody order being detained in a jail or nonmedical facility used to detain persons who are charged with or convicted of crimes to prohibit such a detention unless a mental health facility deemed suitable by the local mental health authority or an inpatient mental health facility operated by the Department of State Health Services is not available and the nearest medical facility or other facility deemed suitable by the local mental health authority is located more than 75 miles from the location where the peace officer has custody of the person. The bill limits the detention of such a person in a jail or nonmedical facility to no longer than 12 hours. The bill requires the sheriff or other officeholder responsible for the facility to document the time the person's detention begins, the duration of the detention, the reason for the detention, and the time a representative of the local mental health authority arrives at the facility. The bill requires the sheriff or office holder responsible for a jail or nonmedical facility to ensure that a person detained in the jail or facility under a protective custody order is kept separate from any person who is charged with or convicted of a crime. The bill removes the exception to the prohibition against a person under a protective custody order being detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by provisions regarding probable cause hearings for an extreme emergency.

S.B. 32 authorizes a patient who is physically restrained in order to protect the person's health and safety of the patient or that of a person traveling with the patient to be restrained only during the apprehension, detention, or transportation of the patient. The bill requires the method of restraint to permit the patient to sit in an upright position without undue difficulty.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.