

## Texas Commission on Jail Standards Mental Health Study

HB1 directed the Texas Commission on Jail Standards (TCJS) to conduct the following study relating to mental health screening and treatment practices of inmates with mental illnesses:

- a. *The Commission on Jail Standards shall use funds appropriated above to conduct an analysis of the process for determining the mental health status of inmates in county jails in coordination with the Texas Council on Offenders with Mental Impairments.*
- b. *This analysis shall include reviews of screening methods for determining mental health status, referral procedures for diagnostics and treatment, and level of coordination with the public mental health system on identification and treatment activities.*
- c. *The Commission shall report the findings of this analysis to the 79<sup>th</sup> Legislature by January 1, 2005.*

To accomplish this activity, the Commission and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) identified a number of stakeholders to participate as a subcommittee in this review. These included representatives from the Texas Department of Criminal Justice (TDCJ), Texas Association of Counties (TAC), the Jail and Sheriffs Associations, the Correctional Managed Health Care Committee (CMHCC), and the Texas Council on Community Mental Health/Mental Retardation Centers (MH/MR) Centers Inc.

The sub-committee identified the following six primary areas of focus to direct their activities:

1. Improvements to the mental health screening process, including a review of intake screening instruments and procedures for cross-referencing the Case Assignment and Registration (CARE) system.
2. The status of the working relationship between the local jails and public mental health system, and the reliability of the mental health screening process at the time of intake.
3. The level of access to Medical and/or psychiatric information that may be available to the jails from other public sources.
4. The overall adherence to statutory mandates for mandatory psychiatric or psychological evaluations within 72 hours of detention or pre-trial release.
5. The level of pre- and post-release linkages that exist for inmates whose psychiatric treatment in jail was provided by private providers compared to the public mental health system.

6. A review of best practices for timely identification and continuity of care that are currently in operation at local jails across the state.

In carrying out its review of these issues, the subcommittee conducted on-site reviews of medical records completed by jails; a statewide survey that solicited information pertaining to mental health screening treatment and provider information (Attachment A – Survey Summary); and on-site visits with local jails to review the intake and screening process. A summary of these and other activities are included in this report, as well as findings and recommendations toward improving this state’s response to individuals with mental illnesses in our local communities and jails.

### **Scope of the Problem**

We do not have reliable statistics on the number of persons with mental illnesses involved in the criminal justice system. Despite this gap in statistical knowledge, efforts have been initiated to provide, at a minimum, baseline data from which to begin this discussion.

In September 2004, TDCJ/TCOOMMI conducted a data match of all offenders in the adult criminal justice system (probation, institutions, parole) against the statewide MH/MR client database, referred to as CARE. According to the data, **17 percent** of adult offenders were current or former clients of the public mental health system

<b>Overview of CARE Matches</b>	
Probation:	59,612 (15%)
CID:	33,008 (22%)
Parole:	12,332 (16%)
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Total:	104,952 (17%)

Several issues are raised with this encounter data. First, although the numbers provide a good baseline of prevalence rates, it is not a total or accurate assessment of actual numbers. The CARE system only includes those individuals who have ever received an MH/MR service from the public mental health system. This in turn means that those individuals who were denied services due to lack of resources or who accessed private psychiatric treatment would not be represented in the data match. Furthermore, an individual's mental health status may have changed thus making him/her ineligible for MH/MR services.

A second factor involves the offender population in this data review. The large majority of the offenders in this sample are felons. In comparison, local jails process a significant number of defendants charged with misdemeanor offenses. Anecdotal evidence suggests that a large number of persons charged with misdemeanors have a serious mental illness. This may in turn suggest that the overall prevalence rate of persons with mental illness in jails may be higher than the 17 percent noted for the felony population.

Due to the limited timeframe of the study, a comprehensive evaluation of prevalence data was not possible. The subcommittee did, however, review certain screening and identification practices that provide preliminary information pointing to the need for improvements.

### **Screening and Identification**

In the subcommittee's review of the jails' screening and identification practices, it became apparent that significant improvements are needed. This issue was best demonstrated by a study conducted by TCOOMMI on the medical reports submitted by local jails to TDCJ for all inmates committed to state confinement. This study, which consisted of a random sample of 100 new inmate admissions in March 2004, revealed the following:

- ★ The majority of inmate records reviewed had a health status form submitted by the jail;
- ★ Of the **100** inmate records reviewed, **15 (15%)** had a mental health diagnosis noted (**10** had the same diagnosis as noted on the CARE system);
- ★ Of the remaining **85**, **29 (34%)** were found on the CARE system as current or former clients of MH/MR, but no such mental health diagnosis was indicated by the jail or the health status form;
- ★ All total, **44** of the **100** inmates reviewed were former or current clients of the public mental health system.

Though the sample size was relatively small in comparison to the overall number of admissions to TDCJ, the findings could raise the following issues:

- 1) If the detainee's mental illness was not identified during jail incarceration, did the courts or defense attorney know of the defendant's mental health status?
- 2) Could the defendant's competency be questioned since no mental health issue was noted?
- 3) Could the defendant have been diverted to a sentencing option other than incarceration, such as the specialized probation and treatment programs the

Legislature has funded for that purpose through the TDCJ Community Justice Assistance Division (CJAD) and TCOOMMI?

An additional issue concerning screening and identification involves the compliance with the 72-hour time frame for mandatory assessments. According to the responses on the survey, 78% of the respondents reported that assessments were conducted within the statutory requirements. The remaining 22% of respondents reported assessments being conducted anywhere from 1 - 4 weeks after intake and booking. Delays in assessments are problematic for a number of reasons, the most obvious being the potential decompensation of the inmate due to treatment delays. In addition, without a timely assessment, jail staff are forced to deal with an inmate whose untreated illness may manifest behaviors which make management difficult. Finally, depending upon the pending charges, the defendant could have been released on a pre-trial basis with conditions of mental health treatment per Article 17.032, Code of Criminal Procedure.

In many cases, the simple act of contacting MH/MR at or near the time of intake could have established current or prior service history, thus allowing for a timely identification and treatment response. Furthermore, if the defendant was an active MH/MR client, the additional assessment could possibly have been avoided, thus reducing duplication.

These and other similar factors more than demonstrate the need to improve compliance with statutory requirements for assessments, and the benefit of increased coordination and information sharing between the jail and local MH/MR.

In order to improve the mental health screening and identification process for local jails, the following recommendations are proposed:

- 1) Strengthen current statutory requirements for continuity of care provisions set forth in Chapter 614.013, Health and Safety Code. Currently, TCOOMMI is required to coordinate the efforts of the state and local criminal justice and mental health systems in developing a continuity of care system for offenders with mental illnesses or mental retardation. This activity requires participating agencies to have signed Memoranda of Understanding (MOU) that defines each entity's individual and collective role in identifying and treating offenders with mental impairments. The statutory provisions do not include specific mandates for collecting data or enforcement capabilities. Such requirements should be added in order to facilitate improved oversight of this activity.
- 2) Require local jails and MH/MRA's to establish a system to cross-reference the inmate census against the statewide MH/MR database to identify current or former clients of the system. As previously noted, the cross-referencing activity yielded a significant number of former MH/MR clients that were not identified by the local jails as having mental health issues. Although it is recognized that this cross-referencing activity will not identify every inmate with a mental illness (e.g. an inmate received private mental health care) it does represent a starting point to gather more reliable baseline data.

- 3) Require MH/MRA's to respond to requests for access to the CARE database in a timely fashion and to respond to evaluation/treatment referrals in a timely fashion.

There are, however, procedural limitations associated with these recommendations which may require further refinement. Of particular concern is the timeliness of the initial referral for the cross-referencing and the response from the MH/MRA.

The subcommittee recognized that the most appropriate point of identification is at time of arrest or intake. Unfortunately, while law enforcement and jail operations occur "24/7," the local MH/MR agency is staffed primarily Monday - Friday, 8:00 a.m. - 5:00 p.m. As a result, unless the defendant is booked during the working hours of the local MH/MR center, there will be significant delays in the turnaround time for the cross-referencing activity. In addition, jail staff noted that once the intake has been completed, the paperwork is forwarded to the inmate's record, and would not necessarily be updated to reflect the information provided by the CARE system match.

To counter this problem, the subcommittee considered a recommendation to initiate a 24 hour hot line that local law enforcement and jail staff could access to request MH/MR service status, or to allow electronic access to MH/MR data by jail staff. Understanding the confidentiality restrictions, the system could be developed that allowed access only to those inmates/client data that was being requested by jail staff. Despite the limitations in current screening and identification practices, there exist opportunities to enhance the process within existing statutory and regulatory practices. Furthermore, where changes are warranted, the obstacles toward implementation could be overcome through continued coordination among the relevant local and state entities.

### **Local Jails and the Public Mental Health System**

In the jail survey, 75% of the respondents noted that the local MH/MR is contacted when an assessment is needed to determine if an inmate has a mental impairment. In the same survey however, there is no indication that the local MH/MR is under contract with the county to provide this or any other treatment service within the jail.

In addition, the majority of survey respondents cited lack of responsiveness to referrals as the number one problem encountered with MH/MR, and inmates not meeting the definition of a "priority population" as the second most common problem. Both problems can be directly linked to funding and the often posed question of "who is responsible for inmates with mental illnesses in local jails?"

The courts have consistently upheld that jails or prisons must provide a minimum standard of medical care for those inmates in their custody. By statute, "a county is liable for all expenses incurred in the safekeeping of prisoners confined in the county jail or kept under guard by the county." On the other hand, the state is the primary funding entity of mental health services either through the state hospitals or the local MH/MRAs. The county or city may contribute some level of funding for mental health, but there exists no mandatory requirements on the local level of contributions.

The question most often raised by local officials, particularly the jails, is “if the inmate is or has been a client of MH/MR, then why are they not responsible for their care and treatment”? The answer is complex for those individuals served by multiple agencies and systems such as criminal justice and mental health.

The Legislature has in large part recognized this problem through its creation of TCOOMMI, and targeting funds specifically for offenders with mental impairments and other needs. This targeted funding is to address one of the state’s fundamental responsibilities for public safety. By having targeted programs for offenders the treatment and supervision of the offender can be initiated without delay. This in turn minimizes opportunities for recidivism due to lack of access to services resulting from a resource- limited mental health system. In addition, because the offender is under the supervision or control of the criminal justice system, there is an expectation of service/treatment participation. If the pre-trial defendant, probationer or parolee refuses to participate in a TCOOMMI program, the supervising entity may exercise its revocation authority.

We believe that there are certain persons with mental illness involved in the criminal justice system who do not belong there. This segment of the population is typically in and out of jail on petty offenses and, if properly treated, would not be considered a risk to public safety. If adequate funding and statutory safeguards to treatment were provided, it is anticipated that a significant number of individuals with mental illness could be diverted from the jail and into more appropriate treatment environments.

In addition, if such services were funded (i.e., crisis bed, case management, etc.), it could lend itself to operationalizing the jail diversion policies set forth in HB 2292, enacted during the regular session of the 78<sup>th</sup> Legislature. The intent of that legislation was to create opportunities for jail diversion through the coordinated efforts of local communities. Realistically, those efforts would require an infusion of funds targeted to individuals who constitute a high risk of incarceration.

An additional benefit of increased state funding would involve federal entitlements. For individuals who are otherwise eligible for Social Security Income (SSI) or Medicaid, incarceration results in termination of benefits. If diverted to community based alternatives, Medicaid could be accessed to offset certain treatment costs such as psychiatric assessments, medications, and rehabilitation services. The actual cost savings of this proposal are unknown, but could be determined if the Legislature directed that a cost benefit analysis to be conducted.

## **Best Practices**

As the subcommittee conducted its review, it became clear that there were promising activities in various jails that served as models for replication. Though several of the sites discussed have achieved certain areas of excellence, there was no one site which had what could be described as the perfect system. Despite some limitations, these sites do demonstrate viable practices that warrant highlighting.

### **Harris County**

Perhaps the factor that most contributes to this jail's best practices is the presence of the local MH/MR center in jail operations. Harris County contracts with the MH/MRA of Harris County to provide jail based mental health services, including screening, assessments and treatment. As a result, the Harris County jail has developed one of the most comprehensive continuity of care systems in the state, and possibly the country.

Starting at intake, inmates who have been flagged at booking as having a suspected mental impairment are referred to MH/MR regardless of prior or current service history. In addition, pre-trial services include interview questions that may reveal mental health issues. In the event that the inmate is not identified at the initial intake process, referrals from jail staff can occur at any time if the inmate appears to be in need of assessment or treatment. Another effective, and simple practice involves the use of an orange sheet of paper that is placed in an inmate's record that flags a mental health issue. Any person who has legal access to the records, whether it be the courts, defense attorneys, etc., can be made aware of the defendants' mental health condition through the simple identification method of the orange sheet of paper.

An additional practice employed by Harris County is the utilization of mental health court liaisons assigned to the district courts and a few of the misdemeanor courts. This is an excellent strategy toward providing continuity of care to those defendants who will be released on bail, pre-trial release or on some form of supervision. These liaisons, who are funded by TCOOMMI, work hand-in-hand with the courts, probation or parole staff and the New Start program (a TCOOMMI funded mental health treatment program for offenders with mental illness) to ensure that appropriate supervision and mental health treatment are provided to the offender once he/she is released from jail. This in turn ensures minimal gaps in the continuum of care between the jail and community.

### Lubbock County

In 1997, the Lubbock County Sheriff's Office (LCSO) and the Lubbock Regional MH/MR Center (LRMHMRC) began working on a Memorandum of Understanding (MOU) that would allow people with severe and persistent mental illness to receive needed mental health services while incarcerated. This was a significant departure from previous business practices, when LRMHMRC and the jail had virtually no interaction. The current Sheriff, David Gutierrez, was a driving force in this effort and continues to be a strong supporter.

The MOU provides a structure and a framework that allows these two agencies to work together and share information that is related to continuity of care. The MOU clearly outlines the roles and responsibilities of the LCSO and the LRMHMRC as well as ancillary services when needed, such as Emergency Medical Services, the Lubbock Police Department and the University Medical Center. Exhibits with the MOU provide specific protocols, outlining step-by-step processes for a variety of situations and services.

Prior to the Memorandum of Understanding, there were no services offered in the County Jail by Lubbock Regional MH/MR Center. Since the inception of the MOU,

LRMHMRC now offers the following services to people at any point of engagement with the criminal justice system:

- ❖ Crisis evaluation - offered anywhere from the point of law enforcement contact to the jail setting.
- ❖ Eligibility determination – offered anywhere from the point of law enforcement contact to the jail setting.
- ❖ Continuation of LRMHMRC psychiatric services in place at the time of arrest.
- ❖ Initiation of psychiatric services while incarcerated.
- ❖ Provision of psychotropic medications that are not on the jail's formulary to those people receiving service from LRMHMRC.
- ❖ Transfer to inpatient psychiatric hospitalization when necessary – from the point of law enforcement contact, or while incarcerated.

LRMHMRC makes an effort to offer as many services in the jail setting as possible, to reduce cost and risk to the county. LRMHMRC has also started to provide a Competency Restoration Program at no charge to the county. This Program is provided in the most appropriate setting whether it be Sunrise Canyon Hospital, the Lubbock County Jail or in the community.

The true value in this MOU is the relationship that has emerged between the two agencies. Because of this relationship, many other parts of the county are now more aware of the services offered by LRMHMRC and the needs of the people in the community. Many people have been helped through mere discussion among various parties and through creative sentencing. Additionally, the Sheriff's Office and the Lubbock Regional MH/MR Center, at the request of TCOOMMI, have spoken in other parts of the state to promote more coordination between law enforcement agencies and mental health/substance abuse providers.

## **Summary**

During the Jail Commission's review of local jails and mental health issues, it became evident that the Legislature has enacted a number of proactive policies regarding offenders with mental illnesses and other special needs. Examples of these include targeted funding for juvenile and adult probation and parole populations; innovative statutory and regulatory practices impacting this population; and the establishment of an oversight entity (the TCOOMMI) to coordinate the multi-agency response to these issues. These and other legislatively mandated initiatives have contributed to Texas' national recognition as being at the forefront on issues relating to offenders with special needs.

Despite these progressive efforts, there is a huge gap in the identification and diversion of high risk individuals from incarceration at the local level. Because of this gap, the primary focus of this report was directed toward strengthening existing laws and practices toward earlier identification, and strategies for expanded opportunities for diversion from the criminal justice system, when appropriate.

The Jail Commission's study of mental health issues involving local jails yielded a number of findings that, if implemented, could improve the manner in which individuals with mental illnesses could be identified and diverted from the criminal justice system. Furthermore, the study also provided information on strategies to strengthen existing laws and regulations to address gaps in the system toward timely identification through sharing of information and developing written agreements that hold entities responsible for their respective roles in the process. These and other recommendations set forth in this report will require no additional funds to implement, and therefore can be pursued through changes in statutory or regulatory practices, specifically in TCOOMMI's enabling legislation and Jail Commission's Standards. Though these proposed policy changes are anticipated to have a positive impact, there remain other areas that will require increased funding.

As noted in the report, the public mental health system's current funding is inadequate to meet the demands for service within the community. Oftentimes, persons with mental illness wind up in the criminal justice system due to the lack of other treatment alternatives. This is particularly true for those individuals whose untreated illness manifests itself in behavior which requires some type of response from law enforcement. For those individuals whose actions are more "aggravating" than criminal, the community's response should be directed toward treatment rather than incarceration. This response will require additional funds to develop such interventions as crisis stabilization beds, residential and case management services and access to psychiatric care.

With any request for new funding, there is an expectation of outcomes that demonstrate positive results. To ensure that such funding is effective in diverting persons with mental illness from incarceration, statutory changes are warranted in the civil outpatient commitment laws.

For those individuals with a history of treatment non-compliance resulting in contact with law enforcement and the criminal justice system, outpatient commitments should be utilized to hold individuals accountable for compliance with their treatment plans. As previously noted in this report, any new funding initiative would require close monitoring and evaluation to ensure that the intended outcomes are being achieved.

This option, for the most part, does not exist in the civil system. If a person with mental illness chooses not to participate in treatment, there is nothing to force the individual to do so, unless there is a medical opinion suggesting that the person constitutes a danger to self or others. Recognizing this dilemma, any request for increased funding for the public mental health system should also include provisions for strengthening the civil outpatient commitment statute for those individuals who have a documented pattern of treatment refusal and criminal justice contacts.

Though this study did yield a number of issues that could be addressed on a short term basis, there are others that will require a more long term examination. Several of the recommendations contained in this report will need to be incorporated within statutory, regulatory or administrative practices. In addition, as history has demonstrated, continued monitoring and oversight must be accomplished in order to ensure implementation and compliance. Texas may in fact have the most comprehensive

public policy in the country in its response to offenders with mental illnesses and other special needs. If there is no enforcement of or compliance with the policy, however, the policy is meaningless.