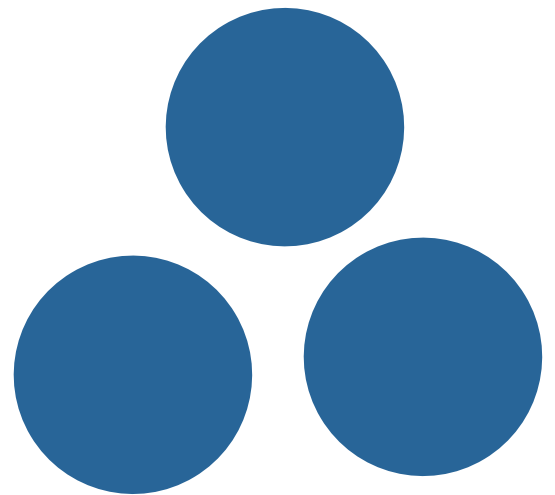


# The Challenge of Identifying, Diverting, and Treating Justice-Involved People with Mental Illnesses

Review of Texas Policies and Recommendations for Improvements

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## I. Overview

How to best manage the number of people with mental illnesses who are involved in the criminal justice system is long-standing problem that goes back decades. The Meadows Mental Health Policy Institute (MMHPI or the Institute) has completed in-depth data analysis in several Texas counties to assess screening, assessment, and diversion practices. In addition, the Institute's Senior Fellow for Justice Policy, Tony Fabelo, PhD, has worked in a variety of capacities over the last three decades and has viewed each step of the development of Texas's current system from close at hand. The analyses in this report lead the Institute to conclude that, despite real progress, the "numbers" show how much further we have to go to improve our screening, assessment, and diversion from jail to community treatment to meet current legislative standards. In this report, we highlight analyses conducted in Dallas and Bexar County, not because these counties have uncommon problems, but because these counties have shown the leadership to operationally tackle them, which led to the production of this information. All counties in Texas, particularly those in less populated areas, face tremendous challenges in complying with both the letter and spirit of laws requiring pretrial jail diversion of people with mental illnesses to treatment for those qualifying for this option. Bexar County and Dallas County illustrate the problem from a data-driven perspective.

Texas has been a national leader in establishing a legal framework to effectively identify people with mental illnesses who are admitted to jail and allow for their diversion to community treatment. The challenges addressed in this report are primarily operational. The screenings for suicide and mental health at jail intake are designed to flag people suspected of having mental illnesses early and provide jail administrators with protocols to prevent jail suicides. However, the screenings capture a large population that is labeled as "suspect of mental illness," and then the law requires clinical assessments for this large population, whether or not they stay in the jail, while both jail-based and community-based resources and capacity to conduct these clinical assessments are generally insufficient.

This report is designed to assist the 86th Texas Legislature and Texas Judicial Commission on Mental Health in determining the next set of policies that need to be considered to continue to improve the screening, assessment, and pretrial release to community treatment of people identified with mental illnesses at jail intake. The report first provides a historical perspective on the legislative policies that have been instituted to address this issue and to improve mental health treatment options for people with mental illness who are involved with the criminal justice system. Then it reviews Texas's legal mandates for screening, assessment, and pretrial release and identifies gaps between what is legally mandated and the system's capacity to meet those mandates. Finally, based on this review, we make recommendations for the legislature and commission to consider and debate.

MMHPI acknowledges the significant implementation challenges that underlie both the current system requirements and the proposed redesign of this policy. The goal is to take the present framework policies and strengthen them by more effectively and efficiently aligning state and local resources with the intent of state policies. Of particular concern is the priority on jail safety and health within detention settings – specifically, the goals of the Sandra Bland Act to prevent jail suicides, increase jail safety, and improve mental health services within Texas jails. We recognize that implementation of the recommendations will take further refinement and stakeholder input over time and will involve collaboration between local mental health providers, hospital districts, other jail-based health and mental health providers, and county officials.

## II. Historical Overview

In the early 1970s, Texas – along with the rest of the nation – started reducing state psychiatric inpatient capacity and de-institutionalized mental health services. The number of beds in Texas state mental health hospitals decreased by 81% between 1970 and 1999. In 1999, there were 2,309 patients in state mental health hospitals (about the same number as today) compared to 12,413 in 1970.<sup>1</sup> De-institutionalization was a reaction to historically wretched living conditions in mental institutions across the country, including Texas. Yet, as a result of de-institutionalization a large number of people with serious mental illnesses ended up in communities without adequate services, cycling in and out of the criminal justice system, typically for public nuisance offenses as opposed to more serious crimes.

The public and political will to address this issue increased over time, and Texas eventually led the nation in instituting state policies to address the growing population of people with mental illnesses who are involved with the criminal justice system. In 1987, in an effort to improve access to and delivery of services for people with mental illness, Texas created what is today referred to as the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI). This agency was the first in the United States to mandate the coordination of policies between the health and criminal justice systems.

Over time, Texas also instituted a strong set of policies to better identify people with mental illness in jails, promote continuity of care among criminal justice and mental health agencies, and share critical information to facilitate the delivery of services.<sup>2</sup> In 1993, Senator John Whitmire sponsored the overhaul of the criminal justice system through Senate Bill (SB) 1067, which included an important requirement for mental health screening upon admission to jail.<sup>3</sup> In the Texas Code of Criminal Procedure (CCP) Article 16.22 (commonly referred to as CCP Art. 16.22), the legislature adopted a requirement for the sheriff to notify a magistrate if there is “credible evidence” that a defendant is suspected of having a mental illness or an intellectual or developmental disability. The sheriff is required to notify the magistrate with this information within 72 hours of identification. Additionally, in Texas Code of Criminal Procedure (CCP) Article 17.032 (commonly referred to as CCP Art.17.032), adopted in the same legislation, the magistrate is required to consider releasing a defendant with a mental illness on bond, with treatment as a condition of release, unless “good cause is shown” otherwise. These two

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<sup>1</sup> Criminal Justice Policy Council. (2000, February). The public mental health system in Texas and its relation to criminal justice.

<sup>2</sup> Texas Health and Safety Code, section 614.013, 614.015, 614.016, and 614.018.

<sup>3</sup> Senate Bill 1067 (73rd Texas Legislature). Senator Whitmire was then, and continues to be, the chair of the Senate Criminal Justice Committee.

provisions (CCP 16.22 and 17.032) represent the foundation of a system that intends to identify mental illness early and refer people to treatment instead of jail.

In 2000–2001, the Texas Commission on Jail Standards (TCJS) added a rule requiring all jails to complete a screening instrument immediately upon admission to identify people who are at risk of committing suicide.<sup>4</sup> In 2007, the legislature passed provisions for facilitating continuity of care between criminal justice and mental health agencies and for creating a reporting system to allow local officials to determine at jail intake if a person has ever had contact with the state public mental health system (commonly referred to today as the Continuity of Care Query or CCQ).<sup>5</sup> In addition, Health and Safety Code Section 614.017 allows information exchange between law enforcement and human services agencies and further promotes continuity of care between the criminal justice and community treatment systems.

Programs for people with mental illnesses who are involved in the criminal justice system also expanded in the early 2000s. In 2001, the Texas Criminal Justice Policy Council (CJPC), working with TCOOMMI, developed the Enhanced Mental Health Initiative, which was adopted by the legislature with an appropriation of \$35 million in new funding for the criminal justice system. The new funding was directed at providing mental health services for adults and juveniles in community supervision. The goal of the Enhanced Mental Health Initiative was to improve mental health and criminal justice outcomes in the community by providing specialized supervision, case management, and treatment services.<sup>6</sup>

The initiative was further expanded in 2003. By fiscal year (FY) 2016, approximately 7,813 people with mental illness who were on parole and probation were served with TCOOMMI funding. The initiative reached a funding level of \$25 million a year in the 2018–2019 biennium.<sup>7</sup> In recent years, the focus of the program has shifted to providing services to people with high risks and complex clinical needs to maximize the impact of limited resources.

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<sup>4</sup> Texas Commission on Jail Standards, 273.5 (b). According to Brandon Wood, Executive Director of the TCJS, the first suicide screening tool mandated statewide was adopted on May 5, 2001 (personal communication, August 20, 2018).

<sup>5</sup> Senate Bill 839 (Senator Duncan, 80th Texas Legislature, 2007). The data system used to determine if someone has ever had contact with the state mental health system is the Continuity of Care Query or CCQ. The CCQ must be used by all jails to screen defendants admitted to jail in order to stay in compliance with TCJS regulations. See: <http://www.tcjs.state.tx.us/docs/TA%20Memo%20Care-CCQ.pdf>

<sup>6</sup> Specialized caseloads offer people with mental illness supervision by officers who are familiar with their special needs. Officers work toward keeping the person in treatment in the community and prevent re-offending. See Criminal Justice Policy Council. (2002, May). *Overview of the enhanced mental health services initiative*.

<sup>7</sup> Texas Department of Criminal Justice. (2017, February). Biennial report of the Texas Correctional Office on Offenders with Medical or Mental Impairments, fiscal year 2015–2016. Retrieved from [http://www.tdcj.state.tx.us/documents/rid/TCOOMMI\\_Biennial\\_Report\\_2017.pdf](http://www.tdcj.state.tx.us/documents/rid/TCOOMMI_Biennial_Report_2017.pdf)  
Texas Department of Criminal Justice. (2017, August 25). *Agency operating budget 2018*. Retrieved from [http://www.tdcj.state.tx.us/documents/bfd/Agency\\_Operating\\_Budget\\_FY2018.pdf](http://www.tdcj.state.tx.us/documents/bfd/Agency_Operating_Budget_FY2018.pdf)

In 2001, the Texas Legislature moved to improve the defense of Texans living in poverty when it passed the Fair Defense Act (SB 7 authored by Senator Ellis). For the first time, Texas had state standards for legal defense of people in poverty and state funds allocated for improvements. The Texas Indigent Defense Commission (TIDC) has since targeted improvements in the defense of people with mental illness. Funding was awarded to Travis County to establish the nation's first stand-alone public defender office exclusively representing people with mental impairments. Similarly, mental health units were created in existing public defender offices in Dallas, Harris, and El Paso counties. Bexar County established a public defender office in 2015 to provide representation to people with mental illness at the magistration hearing related to pretrial release for the first time in the state.<sup>8</sup>

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<sup>8</sup> Texas Indigent Defense Commission. (2010, April 14). *Representing the mentally ill offender*. Retrieved from <http://www.tidc.texas.gov/resources/publications/reports/special-reports/mhdefenderresearch/>

### III. Recent Momentum for Improvements

High-profile tragedies of school shootings and jail suicides involving people with mental illness have given new urgency and momentum to efforts aimed at improving mental health policies in Texas and nationally. Reactions to the 2012 Sandy Hook Elementary School shootings that left 20 children and six adults dead in Newtown, Connecticut, led to major policy discussions on how to restrict gun access by people with mental illness.<sup>9</sup> While the great majority of people with mental illness are not violent and do not commit these types of acts,<sup>10</sup> as explained in *Time Magazine's* December 2014 cover story, these types of events “earn headlines, anger the public, and motivate politicians to action in a way that the mundane suffering of the homeless or convicted criminals does not.”<sup>11</sup>

In response to public fear and concern surrounding Sandy Hook and other mass shootings, Texas Senator John Cornyn introduced the *Mental Health and Safe Communities Act* to the United States Congress in 2015 to strengthen federal programs related to mental health in the criminal justice system.<sup>12</sup> The bill directs federal funds toward improving responses to mental health crises, identifying people who are potentially dangerous because of mental illness, providing treatment to prevent acts of violence, and improving the background check system.<sup>13</sup> Additionally, the Council of State Governments Justice Center (CSGJC), in partnership with the National Association of Counties (NACo) and the American Psychiatric Association Foundation, is spearheading a national initiative to engage counties in activities directed at reducing the number of people with mental illness in local jails by connecting them with appropriate services in the community.<sup>14</sup>

The school shooting tragedies have continued and so has the discussion on the relationship between these events and mental health, further bringing attention to this area. Most recently, (May 2018) a mass shooting occurred at Santa Fe High School in Galveston County, leaving 10 students dead.<sup>15</sup> On May 30, 2018, Texas Governor Gregg Abbott responded to this tragedy by unveiling his School and Firearm Safety Action Plan, which includes an emphasis on mental

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<sup>9</sup> Mitchell, M. (2013, July 14). *Texas lawmakers increase funding for mental health*. Fort Worth Star-Telegram.

<sup>10</sup> Meadows Mental Health Policy Institute. (2018, May). What we know about violence and mental illness: Preliminary summary – May 2018. Dallas, Texas: Author.

<sup>11</sup> Edwards, H. S. (2014, December 1). Dangerous cases: Crime and treatment. *Time Magazine*.

<sup>12</sup> Library of Congress. (n.d.). *S.2002 – Mental Health and Safe Communities Act of 2015*. Retrieved from <https://www.congress.gov/bill/114th-congress/senate-bill/2002>

<sup>13</sup> Cornyn, J. (2015, October 5). *Newsroom: Cornyn urges action on Mental Health and Safe Communities Act*. Retrieved from [http://www.cornyn.senate.gov/public/index.cfm?p=NewsReleases&ContentRecord\\_id=006952cf-d1ea-476d-8dcd-f4cca5cbdaba](http://www.cornyn.senate.gov/public/index.cfm?p=NewsReleases&ContentRecord_id=006952cf-d1ea-476d-8dcd-f4cca5cbdaba)

<sup>14</sup> Details about the Stepping Up Initiative are available at this link: <https://stepuptogether.org>.

<sup>15</sup> Hanna, J. (2018, May 18). Officials identify suspect in shooting that killed 10 at Texas' Santa Fe High School. *CNN*.



health screening and counseling and strengthening the mental health crisis response infrastructure in Texas schools.<sup>16</sup>

Another tragedy that sparked a national conversation about mental illness and the criminal justice system was the suicide of Sandra Bland in the Waller County, Texas, jail in July 2015. Ms. Bland's death occurred following a controversial arrest and after jail officials failed to consider screening information that highlighted her risk of suicide. Sandra Bland's case resulted in large political and financial implications for county and state officials.<sup>17</sup> The case has also triggered many questions about the number of suicides in jails nationally.<sup>18</sup> In July 2015, state legislators convened hearings in reaction to this case, which disclosed deficiencies in the training, screening, and assessment of people with mental illness in jails.<sup>19</sup> On December 1, 2015, the Texas Commission on Jail Standards also adopted and implemented an enhanced suicide and medical/mental/developmental impairments screening form for all the county jails in the state to address some of the issues raised in the Bland case.<sup>20</sup>

As momentum surrounding these issues increased, so did state-level mental health funding. In Texas, the mental health system received a significant infusion of over \$250 million in new funds in 2013 for the subsequent two-year state funding cycle. Among other things, this funding was targeted at reducing the waiting list for mental health services and at increasing funding for crisis intervention for people involved with the criminal justice system.<sup>21</sup>

At the national level, the Patient Protection and Affordable Care Act provided new funding and program opportunities to improve the delivery of health services for the people with mental illness who are involved with the criminal justice system. Texas's Medicaid 1115 Healthcare Transformation waiver waives certain Medicaid regulations and allows pilot programs of alternate methods of financing and delivery of Medicaid services. A number of jurisdictions are using part of these funds to support programs for people with mental illness who are involved with the criminal justice system.

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<sup>16</sup> Office of the Texas Governor. (2018, May 30). *School safety action plan*. Retrieved from [https://gov.texas.gov/uploads/files/press/School\\_Safety\\_Action\\_Plan\\_05302018.pdf](https://gov.texas.gov/uploads/files/press/School_Safety_Action_Plan_05302018.pdf)

<sup>17</sup> Sanchez, D. (2015, July 22). What we know about the controversy in Sandra Bland's death. *CNN*. Retrieved from <http://www.cnn.com/2015/07/21/us/texas-sandra-bland-jail-death-explain/>

<sup>18</sup> Frosch, D., & Campy, A. (2015, July 23). Sandra Bland case in Texas renews scrutiny of jail suicides. *Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/sandra-bland-case-in-texas-renews-scrutiny-of-jail-suicides-1437690298>

<sup>19</sup> Texas House County Affairs Committee, July 30, 2015.

<sup>20</sup> Wood, B. S. (2015, October 22). Revised intake screening form memorandum. Texas Commission on Jail Standards.

<sup>21</sup> Specialized caseloads offer people with mental illness supervision by officers who are familiar with their special needs. Officers work toward keeping the person in treatment in the community and prevent re-offending. See Criminal Justice Policy Council. (2002, May). *Overview of the enhanced mental health services initiative*.

The Meadows Mental Health Policy Institute (MMHPI or the Institute), established by The Meadows Foundation and launched in April 2014, has enriched policy discussions and contributed to the momentum of efforts to improve mental health and criminal justice policies and practice in Texas. Our mission is to “provide independent, non-partisan, and trusted policy and program guidance that creates systemic changes so all Texans can obtain effective, efficient behavioral health care when and where they need it.”<sup>22</sup> Our board includes distinguished people who are well connected to the needs and challenges of the mental health system.<sup>23</sup> The Institute uniquely provides a high-powered, non-partisan group that is prepared to have major influence in the mental health policy debates in the state.

Our expert staff has been successful in addressing policy issues at the legislative level. During the 84th Texas Legislative session in 2015, this staff worked with key policy makers and the Texas Sunset Advisory Commission to improve mental health policies.<sup>24</sup> These policies included the Sunset package of bills related to the operational aspects of the mental health system (i.e., mandating the consolidation of basic front-door mental health assessments and screening and referral for mental health and substance abuse services). The policies established incentives to increase the availability of health workers in the state and provide continuity of Medicaid services for juveniles in detention (a similar policy for adults in jail failed to pass the legislature).<sup>25</sup> The policies also included an expansion of mental health services for armed forces veterans, with an additional \$20 million in program funding from private partners and the state Health and Human Services Commission.<sup>26</sup>

The Institute continued its work to promote policy discussions and conduct local systems assessments. In 2017’s 85th Texas Legislature, our staff assisted legislative and judicial leaders in crafting policies that generated additional resources for local authorities to divert people with mental illness away from jail and into treatment and to enhance the early identification provisions from CCP 16.32 and 17.032 (as discussed above).<sup>27</sup> For example, Senate Bill (SB) 292 (authored by Senators Huffman, Nelson, and Schwertner) allocated over \$30 million in fiscal year (FY) 2018–2019 to create a grant program to reduce recidivism, arrest, and incarceration

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<sup>22</sup> Meadows Mental Health Policy Institute. (2018). *About*. Retrieved from <http://www.texasstateofmind.org/about/about>

<sup>23</sup> A list of Meadows Mental Health Policy Institute board members, along with biographical summaries, is available at <http://www.texasstateofmind.org/about/board>.

<sup>24</sup> For a summary of these policies see: <http://www.texasstateofmind.org/blog/mmhpi-and-the-84th-session-of-the-texas-legislature>.

<sup>25</sup> In the 85th Texas Legislature in 2017, House Bill 337 (Collier) gave county sheriffs the option of notifying the Health and Human Services Commission to suspend, not cancel, a person’s Medicaid benefits while in confinement, with benefits restored – in most cases – upon their release.

<sup>26</sup> Senate Bill 55 by Senator Nelson.

among people with mental illness. This program funds jail diversion and other local community best practices to address the intersection of criminal justice and mental illness at the local level. House Bill (HB) 13 (authored by Representative Price) provided an additional \$30 million in matching grants for the biennium to support community mental health programs that provide services and treatment to people with mental illness, with deference to rural areas.

Two sets of policies emanating from the legislative session put additional requirements on jail administrators to better screen for mental illness and divert people from jail to treatment. In reaction to Sandra Bland's suicide, the legislature passed SB 1849 (authored by Senator Whitmire; companion HB 2702 authored by Rep. Coleman), referred to as "The Sandra Bland Act." This legislation enacted provisions requiring law enforcement and jail infrastructure to be strengthened to address mental health issues. SB 1326 (sponsored by Senator Zaffirini) codified recommendations from the Texas Judicial Council's Mental Health Committee, targeting the criminal and judicial process for people with mental illness charged with crimes and strengthening the screening and assessment requirements. Specifically, SB 1326 included the following recommendations:

- The time in which mental health screening results must be provided to a magistrate is reduced from 72 hours to 12 hours.
- The screening duties are now expanded to municipal jails.
- The time in which a mental health assessment must be completed for those in custody is now 96 hours; for those released from custody (on surety bonds or personal bond) it must be completed within 30 days.
- There is a new reporting requirement to the Office of Court Administration on the number of mental health assessments conducted as part of this process.
- The bill requires, with some exceptions, jail-based or outpatient restoration for those defendants charged with Misdemeanor B offenses who are found to be incompetent to stand trial.

## IV. Identifying, Assessing, and Diverting from Jail to Treatment: Policies in a Nutshell

### A. Screening: Establishing Suspicion of Mental Illness

The Texas Commission on Jail Standards (TCJS) requires jails to complete an intake suicide and mental health screening form on all inmates immediately upon admission into a Texas jail. This screening instrument is used to establish the “credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability” (CCP 16.22 (a)(1)). The tool’s answers, therefore, establish the early identification of a defendant as “suspected of having mental illness or intellectual disability.”

Screening for mental health issues involves a short list of questions asked by correctional officers when a person who is arrested enters the jail. These questions have been tested nationally to have a high degree of predictive validity. This means that a percentage of people “flagged” on suspicion of suicide and/or mental health disorders on the screening instrument would be diagnosed with a treatable serious mental illness after an assessment is conducted later in the process.<sup>28</sup> The standard screening tool is brief, as correctional staff have a limited amount of time to spend interviewing the arrested person at jail booking. In addition, correctional staff are not trained to diagnose mental illnesses. This is done later in the process with a clinical assessment after suspicion of mental illness is established with the screening.

Jails are required to use the Commission’s Screening Form for Suicide and Medical and Mental Impairments.<sup>29</sup> This form was created as “an objective suicide risk assessment with clear guidance for front-line personnel of when to notify superiors, mental health providers, and magistrates” to help sheriffs meet all statute requirements of CCP Art. 16.22. The form is user-friendly and can be completed within an average time of three minutes.<sup>30</sup> It has 16 questions, for example:

- Are you thinking of killing or injuring yourself today? If so, how?
- Are you feeling hopeless or have nothing to look forward to?
- Do you currently believe that someone can control your mind or that other people can know your thoughts or read your mind?
- Does inmate display any unusual behavior, or act or talk strangely (cannot focus attention, hearing or seeing things that are not there)?

<sup>28</sup> National Institute of Justice. (2007, May). *Mental health screens for corrections*. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/216152.pdf>

<sup>29</sup> See instructions for using the screening form at: [https://www.tcjs.state.tx.us/docs/Instructions-Suicide\\_Medical\\_and\\_Mental\\_Impairments\\_Form.pdf](https://www.tcjs.state.tx.us/docs/Instructions-Suicide_Medical_and_Mental_Impairments_Form.pdf). See form at: [https://www.tcjs.state.tx.us/docs/ScreeningForm-SMMDI\\_Oct2015.pdf](https://www.tcjs.state.tx.us/docs/ScreeningForm-SMMDI_Oct2015.pdf).

<sup>30</sup> Wood, B. S. (2015, October 22). Revised intake screening form memorandum. Texas Commission on Jail Standards.

The instructions on how to “score” the questionnaire are based on answers of “yes” to four questions that are “strong indicators of inmates at high risk of suicide” or follow-up inquiries from a “yes” answer in 11 questions about mental health symptoms and risk factors. There are also instructions on making “careful observations of the inmate’s demeanor and appearance” that can lead to suspicion of a mental illness.<sup>31</sup>

At intake, a correctional officer is also required to conduct a Continuity of Care Query (CCQ) using the Texas Department Public Safety (DPS) Texas Law Enforcement Telecommunications System (TLETS) to check if the person has a record of receiving public mental health services through the state’s Department of State Health Services (DSHS).<sup>32</sup> This requirement became effective in 2010 for all jails.<sup>33</sup> Matches are made using name, sex, race, and date of birth, but can include social security number if it is available. There are “exact matches” in which the data inquiry matches last name, first name, date of birth, sex, social security number, and race. Most of the matches are a “probable match,” which is a match of a combination of some, but not all, of the above identifiers.<sup>34</sup> The jail official conducting the inquiry receives results stating that the person has a record in DSHS of receiving – or having received – services from a local mental health authority (LMHA). The information does not include the type of service or the diagnosis the person received. It only gives the name and phone number of the LMHAs that provided the services. Qualified staff can call the LMHA to verify the person’s name and review the contact information with the authority, but this is usually not done at intake because of the high volume of cases at intake and the lack of personnel to invest in that extra step. In jails in which the mental health services are provided by the LMHA, like in El Paso County, the authority will have more seamless access to the actual records and can verify the CCQ hits and level of services.

There are over 800,000 CCQ inquiries a year, with about 40% of the inquiries resulting in a match (see Figure 3 in section V.A. later in this report).<sup>35</sup>

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<sup>31</sup> Texas Commission on Jail Standards. (n.d.). *Instructions for suicide and medical/mental/developmental impairments form*. Retrieved from [https://www.tcjs.state.tx.us/docs/Instructions-Suicide\\_Medical\\_and\\_Mental\\_Impairments\\_Form.pdf](https://www.tcjs.state.tx.us/docs/Instructions-Suicide_Medical_and_Mental_Impairments_Form.pdf)

<sup>32</sup> Texas Department of Public Safety. (n.d.). *Texas law enforcement telecommunications system*. Retrieved from [http://www.dps.texas.gov/director\\_staff/information\\_management/tlets/tletsindex.htm](http://www.dps.texas.gov/director_staff/information_management/tlets/tletsindex.htm)

<sup>33</sup> Munoz, A. (2010, September 21). *Memorandum: CCQ to replace CARE check system*. Texas Commission on Jail Standards. Retrieved from <https://www.tcjs.state.tx.us/docs/TA%20Memo%20Care-CCQ.pdf>

<sup>34</sup> Texas Department of Public Safety. (n.d.). *Continuity of care course objectives*. Retrieved from [http://www.dps.texas.gov/director\\_staff/information\\_management/tlets/CCQ.pdf](http://www.dps.texas.gov/director_staff/information_management/tlets/CCQ.pdf)

<sup>35</sup> See: [http://www.dps.texas.gov/director\\_staff/information\\_management/tlets/CCQ.pdf](http://www.dps.texas.gov/director_staff/information_management/tlets/CCQ.pdf) and Texas Health and Human Services Commission. (2017, September). *Annual report on the screening of offenders with mental illness*. Retrieved from <https://hhs.texas.gov/sites/default/files//documents/laws-regulations/reports-presentations/2017/screening-offenders-mental-illness-fy17-aug-24-17.pdf>

## **B. Notification: Mandatory Reporting of Suspicion of Mental Illness to Supervisor and Judicial Magistrate**

After the TCJS form and the CCQ are completed (in compliance with the instructions described above), corrections officers notify a magistrate that a “person is suspected of having a mental illness” if there are positive answers to the relevant set of the questions in the screening form or positive matches in the CCQ system. This notification needs to happen within 12 hours of establishing suspicion of a mental illness. Additionally, corrections officers immediately notify a supervisor if the person is in crisis. The form provides a space at the end for date, time, and method of notifying the magistrate. Most jails conduct the notification through electronic mail. The TCJS audits jails’ form usage, including signing the bottom section for magistrate notification. The TCJS makes sure that the notices are emailed to the magistrates; however, TCJS has no jurisdiction to determine if the magistrates acted upon the notices upon receipt.<sup>36</sup>

It is important to note that that jail medical staff is responsible for quickly examining a person flagged by the screening to establish if the person has a mental illness and, if so, the level of its severity, as well as provide an appropriate medical intervention within the jail. The medical staff may also recommend that the person be housed in an observation cell or be classified as needing to be housed in a specialized mental health area of the jail. The medical staff would also conduct a clinical mental health assessment. All of these processes are conducted for internal jail management purposes and are not linked to judicial officials’ purpose of determining if a person should be released from jail to treatment, as required by the statutes under discussion here. As discussed later in the recommendations, it may make more sense to link the internal jail medical mental health assessment processes to the judicial goals of this statute.

## **C. Assessment: Mandatory Order for Assessment by Magistrate**

The provision of notice satisfies the requirements of CCP 16.22 early identification. The next step is for the magistrate to order a mental health assessment. Under CCP 16.22, upon receipt of the notice, the magistrate “shall order” the LMHA or another qualified mental health expert to conduct an assessment if the person has a mental illness as defined in the Health and Safety Code.<sup>37</sup> The “shall order” language is preceded with the language that the magistrate can make a “determination that there is a reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability” and then order the assessment (see Figure 2

<sup>36</sup> Brandon S. Wood, Executive Director, Texas Commission on Jail Standards (personal communication, July 9, 2018).

<sup>37</sup> Section 571.003 defines mental illness as a disease or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that: (A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or (B) grossly impairs behavior as demonstrated by recent disturbed behavior.

in section IV.G of this report for full language). However, for practical purposes, the magistrate makes the “determination” based on the notification emanating from the TCJS process since the magistrate does not have further information to determine if the notification does not merit a “reasonable cause to believe” that there was no mental illness.

The assessment has to be ordered “not later than 96 hours after the time an order was issued” if the defendant is in jail, and “not later than the 30<sup>th</sup> day after the date an order was issued” for a defendant released from custody. The latter is mainly for defendants who were released on surety bond after the magistrate was notified of the suspicion of mental health problems. The magistrate is not required to order an assessment “if 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” if the assessment was done by the LMHA or qualified expert (CCP 16.22(2)).

The TCJS *screening* is administered quickly by non-expert staff. An *assessment* is more comprehensive. “An assessment catalogs the inmate’s psychosocial, medical, and behavioral needs and strengths. The nature of the behavioral health problems is described, their impact on level of functioning is reviewed, and the inmate’s motivation for treatment and capacity for change is evaluated.”<sup>38</sup> There are protocols or forms that help structure these assessments, but there is no required “assessment form” unless the LMHA conducts the assessment. In that case, the LMHA must use the process and form titled Mental Health Uniform Assessment for Texas Resilience and Recovery, created by the Department of State Health Services.<sup>39</sup> This approach provides a “uniform process used to assess the (mental health service needs of adults in Texas)” in crisis situations, during intake for non-crisis related services, when there is a need to update the services to be delivered to an individual (including continued care) or to plan discharges. The Mental Health Uniform Assessment for Texas Resilience and Recovery form is used to structure the results of the Adult Needs and Strengths Assessment (ANSA). The form includes a diagnosis, includes the authorized “Level of Care,” and lists the “score” in the assessment along many dimensions (e.g., suicide risk, trauma, dangerousness).<sup>40</sup>

A mental health assessment leads to a diagnosis of mental illness and a treatment plan. The assessment has to be conducted by a certified clinician or a psychiatrist. The key to the diagnosis is the evaluation of the resultant disability and functional impairment that often determines if the person can get access to care in the public system. The challenging part, from the perspective of correctional and judicial officials, is that some people “may have disorders

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<sup>38</sup> Steadman, H. J., Scott, J. E., Osher, F., Agnese, T. K., & Robbins, P. C. (2005, July). Validation of the brief jail mental health screen. *Psychiatric Services*, 56(7), page 6. Retrieved from <http://ps.psychiatryonline.org>

<sup>39</sup> Texas Department of State Health Services. (2017, April 19). *Texas resilience and recovery*. Retrieved from <https://www.dshs.texas.gov/mhsa/trr/>

<sup>40</sup> Texas Department of State Health Services. (2007). Resiliency and disease management program manual.



not associated with significant functional impairments, but which create challenges for corrections and program management, such as antisocial or borderline personality disorders in which relationships are destabilized by the individuals' hostile, impulsive, or eccentric behavior."<sup>41</sup> In other words, when correctional and judicial officials see a person who may have mental health problems, the person may not be functionally impaired enough to qualify for treatment in the public system.

#### **D. Transmission of Assessment Results to Magistrate: Mandatory Use of Uniform Form and Mandatory Report to the State**

Once an assessment is conducted, clinical staff who conducted the assessment are required to provide the results of the assessment to the magistrate or, if magistration has been completed, to the court in which the case is assigned, on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(b), Health and Safety Code (the TCOOMMI form is not an assessment, rather it is only a transmission form). This form is known as the TCOOMMI Collection of Information Form for Mental Illness and Intellectual Disability.<sup>42</sup> This form is one of the requirements adopted in SB 1326 passed during the 85th Texas Legislature and emanating from the Texas Judicial Council's Mental Health Committee interim work.

The TCOOMMI form has a section on previous assessment history, current information, and observations and findings that provides a checklist with the options of identifying the defendant as a "person who has mental illness" or a "person who has an intellectual disability," or that there is "clinical evidence to support the belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B, Code of Criminal Procedure." The form ends with a statement regarding "any appropriate or recommended treatment or service"; however, the form does not require an evaluation of whether the person can actually qualify for treatment in an LMHA or another program.

SB 1326 added a section in the law that requires the "court" to submit the number of reports provided to the court under this article to the Office of Court Administration (OCA) on a monthly basis. OCA started requiring this report on September 1, 2017.<sup>43</sup>

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<sup>41</sup> Osher, F., D'Amora, D. A., Plotkin, M., Jarrett, N., & Eggleston, A. (2012). Adults with behavioral health needs under correctional supervision: A shared framework for reducing recidivism and promoting recovery. Council of State Governments Justice Center Criminal Justice.

<sup>42</sup> A copy of this form can be accessed at [https://www.tdcj.texas.gov/documents/rid/SB\\_1326.pdf](https://www.tdcj.texas.gov/documents/rid/SB_1326.pdf).

<sup>43</sup> Texas Judicial Branch. (n.d.). *SB 1326 reporting guidance*. Retrieved from <http://www.txcourts.gov/media/1438900/sb-1326-reporting-guidance.pdf>



### E. Treatment Recommendation: No Mandate for Providing Treatment

As stated above, the TCOOMMI form required to transmit the results of the assessment to the magistrate or judge includes the option to identify the need for appropriate or recommended treatment or service, but it does not require an evaluation of whether the person can actually qualify for treatment in an LMHA or another program. The law also does not mandate treatment for the person or mandate that treatment be provided if the person wants to participate in treatment. As a condition of pretrial release, the court may order that the person participate in community treatment, but if the person does not qualify for treatment in the public system or does not have the financial resources to pay for treatment, treatment is not provided.

In Texas, defendants with bipolar disorders, major depressive disorders, and schizophrenia causing “serious functional impairment and severe and persistent mental illness” are in a “priority population” eligible for treatment by the LMHA. These diagnoses are commonly referred to as serious persistent mental illnesses (SPMI).<sup>44</sup> With sufficient resources, LMHAs can serve people with other diagnoses. However, LMHAs often do not have sufficient resources and, as a result, many have waitlists of eligible people who require mental health services. The Texas Legislature addressed this problem by increasing funding for services, which helped reduce waitlists, but, with a growing state population, this continues to be a challenge. People do get services if they are in crisis, which is defined as presenting an “immediate danger to self or others; at risk of serious deterioration of mental or physical health.” Crisis services focus on stabilizing a person who is experiencing a mental health crisis. These services can be provided in hospital emergency rooms if, for example, the local jurisdiction does not have a crisis stabilization unit, extended observation unit, or mobile crisis outreach teams, or has these services but does not have enough capacity to serve the community.

The goal after stabilization is to connect the person to treatment for longer-term recovery. The goal of treatment is “recovery” as there is no “cure” for these conditions in the same sense that somebody can be cured of an ear infection or similar physical conditions. Recovery from a mental illness or behavioral health problem is more akin to diabetes, which also cannot be “cured” but can be managed over time. People can recover from behavioral health problems and, with the right support, they can be productive in their lives and recover a sense of well-

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<sup>44</sup> The Texas Administrative Code states that the Texas Department of Mental Health and Mental Retardation’s priority population for mental health services include “adults who have severe and persistent mental illnesses, such as schizophrenia, major depression, manic depressive disorders, or other severely disabling mental disorders which require crisis resolution or ongoing and long-term support and treatment.” Texas Administrative Code, Title 40, Part 1, Chapter 72, Subchapter B, Rule § 72.204 (1993). Retrieved from [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=40&pt=1&ch=72&rl=204](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=72&rl=204)

being.<sup>45</sup> Treatment can also be more challenging when the person also has a substance use problem. The combination of mental health and substance use problems is commonly referred to as co-occurring conditions.<sup>46</sup> Among the 18.7 million adults in the United States who experienced a substance use disorder, 45.6%—8.5 million adults—had a co-occurring mental illness.<sup>47</sup> In jail, some estimates indicated that about 72% of jail inmates who had a serious mental illness also had a co-occurring drug and/or alcohol problem.<sup>48</sup>

Therefore, access to treatment is driven by crisis, having a mental health diagnosis that included in the state's a priority population, or being able to pay for treatment. The following quote accurately describes this situation here in Texas, and across the nation:

*“Access to treatment is primarily guided by ability to pay and the payment source. Employer-sponsored health insurance provides a pathway to a wide range of healthcare professionals. A privately insured individual may receive care regardless of level of impairment. In these cases, prioritization is not driven by need but by ability to pay. Individuals whose income or disability qualifies them for Medicaid benefits are limited to accessing providers that accept Medicaid (and new patients). The uninsured often have the most limited options and rely on the resources provided by targeted, special programs in the mental health safety net. Public health officials typically prioritize mental health dollars for people with serious mental illnesses by setting strict eligibility criteria for accessing publicly funded treatment services. However, even with this prioritization, the treatment capacity in any one jurisdiction rarely matches the demand.”<sup>49</sup>*

There are no statewide data to determine how many people who receive mental health assessments in the criminal justice system qualify for treatment. However, based on our work with other criminal justice systems in the state, as discussed below, it seems that assessments

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<sup>45</sup> Hogg Foundation for Mental Health. (2016). A guide to understanding mental health systems and services in Texas, 3rd edition, 131–137.

<sup>46</sup> Substance Abuse and Mental Health Services Administration. (2017, September 20). *Mental and substance use disorders*. Retrieved from <https://www.samhsa.gov/disorders>

<sup>47</sup> Substance Abuse and Mental Health Services Administration. (2018). Key substance use and mental health indicators in the United States: Results from the 2017 National Survey on Drug Use and Health (HHS Publication No. SMA 18-5068, NSDUH Series H-53). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from <https://www.samhsa.gov/data/>

<sup>48</sup> Blandford, A. M., & Osher, F. C. (2012, August). A checklist for implementing evidence-based practices and programs for justice-involved adults with behavioral health disorders. Retrieved from <https://csgjusticecenter.org/wp-content/uploads/2014/12/ScreeningAndAssessment.pdf> for Justice-Involved Adults with Behavioral Health Disorders <https://csgjusticecenter.org/wp-content/uploads/2014/12/ScreeningAndAssessment.pdf>

<sup>49</sup> Osher, F., D'Amora, D. A., Plotkin, M., Jarrett, N., & Eggleston, A. (2012). Adults with behavioral health needs under correctional supervision: A shared framework for reducing recidivism and promoting recovery. Council of State Governments Justice Center Criminal Justice.

are not ordered for all those who are suspected of a mental illness – and for those with ordered assessments, most would not qualify for treatment in an LMHA.

### **F. Personal Bond and Referral to Treatment: Discretionary Decision**

Texas CCP 17.01 establishes the distinction between “bail bond” and “personal bond.” Bail bond involves a cash deposit or other security provided by an insurance company in what is commonly referred to as a “surety bond” provided by a “bail bondsman.” Personal bond can include release on personal recognizance, commonly referred to as a PR bond, which is based on a person swearing under oath to appear before a magistrate. Counties may provide a non-binding general bond schedule as a guide; the court then makes a discretionary decision about the amount of bond, which would be based on its review of factors specific to the defendant. Bail can be denied in certain cases as established by state law. For example, although bail can be set for people charged with murder, it cannot be set for those charged with murder in which the penalty can be a death sentence (capital felony). Bail can also be denied to “habitual” felony offenders (offenders with three sequential convictions).

CCP 17.032 establishes the process by which defendants with a mental illness are considered for release on a personal bond if they remain in custody. (This process is different if the defendant is found incompetent to stand trial; that process is not discussed here.) If the defendant has not committed a “violent offense” as defined in CCP 17.032, is eligible for personal bond as established by law, and the magistrate determines services are available and the defendant would appear in court with any other “credible information,” then the magistrate *shall* require that the defendant submit to outpatient or inpatient treatment as a condition of release on personal bond.

The magistrate *shall* set a condition for treatment if he or she releases the defendant on personal bond, but the magistrate is not required to grant a personal bond. Magistrates consider factors such as local personal bond judicial restrictions, ability to supervise defendants on pretrial release, availability of treatment resources for defendants who are not in the priority population for LMHA services, and the risk for the defendant to fail to appear to court hearings.

Jurisdictions have different pretrial release practices, with some having judicial restrictions on who is eligible for a personal bond that are beyond the restrictions established by state law.<sup>50</sup> Texas counties, district court judges, and county court at law judges, particularly in the larger urban counties, are facing litigation over constitutional practices related to the operation of their pretrial systems, which includes these judicial restrictions that go beyond what Texas

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<sup>50</sup> Texas Code of Criminal Procedure. (n.d.). *Chapter 17, bail*. Retrieved from <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.17.htm>

statute requires. County officials mainly relate the threat of litigation to the 2017 federal court case filed in Harris County. The case is commonly known as the O’Donnell case.<sup>51</sup> The O’Donnell decision put the counties and the judiciary on notice that the long-standing practice of administering a bail system that does not base pretrial release decisions on an individualized defendant assessment, including his or her financial ability to pay surety, is unconstitutional. To date, Harris County has spent well over \$1 million defending and appealing the case. In February 2018, the Court of Appeals affirmed the findings of facts in the case, though it did direct the Federal District Court to revise the scope of the remedy in the original injunction against Harris County.<sup>52</sup> The Court of Appeals stated:

*"[W]e have already concluded that the incarceration of those who cannot pay money bail, without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements."*

*"Texas law requires officials 'to conduct an individualized review based on five enumerated factors, which include the defendant's ability to pay, the charge and community safety' during the probable cause hearing within 24 hours or the 'next business day' hearing."*

Similar litigation was filed on January 21, 2018, against Dallas County, the Dallas County Sheriff, Dallas County magistrates, and Dallas County judges, and on April 8, 2018, against Galveston County and its district judges, county court at law judges, county magistrates, and district attorney.<sup>53</sup> In addition to litigation, the Texas Supreme Court Judicial Council is again pushing for pretrial reform, thus acknowledging the need to address some of the issues raised by the local litigation and reformers.<sup>54</sup>

Counties also vary in their ability to provide pretrial supervision, which is necessary to effectively connect people with mental illness to treatment while on pretrial release. For example, counties like Bexar, Harris, Tarrant, and Travis have well-developed pretrial supervision departments, whereas Dallas County only recently formed one in 2017 and Galveston has no pretrial department that can provide meaningful supervision at the time of this report (although the Institute is working with Galveston County officials to create a department to support local efforts to modernize their pretrial system and avoid litigation).

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<sup>51</sup> Lynn O’Donnell, et al, and Harris County, Civil Action No, H-16-1414, April 28, 2017.

<sup>52</sup> U.S. Court of Appeals for the Fifth Circuit. (2018, February 14). No 17-20333.

<sup>53</sup> Daves et al vs. Dallas County et al, Case No. 3:18-cv 154 and Booth vs. Galveston, Civil Action No. 18-cv-Class Action.

<sup>54</sup> Texas Judicial Council Guardianship, Mental Health & Intellectual/Developmental Disability Committee. (2018, June). *Texas Judicial Council committee report and recommendations*.

At the end of the CCP 17.032 evaluation process, the magistrate has great discretion to release the person on personal bond to treatment if the defendant has not been released already on a surety bond. The magistrate has to consider many factors when deciding to grant a personal bond with a condition to go to treatment. The availability of treatment resources affects this decision. There is also the unstated “conflict of perspectives” between correctional and judicial officials and clinicians about the effectiveness of treatment. Correctional and judicial officials seek “treatment” for behaviors that may be related to crime whereas clinicians view treatment as a long-term recovery process dealing with debilitating conditions that have a negative impact on a person’s well-being. As a national report states:

*“Behavioral health professionals often express concern that criminal justice agencies refer types of individuals for which service providers have developed few effective interventions (such as those for individuals who have personality disorders), and have expectations that treatment alone is sufficient to change their criminal behavior. At the same time, criminal justice professionals are frustrated by the lack of community-based treatment services and alternatives to incarceration and the revolving door nature of this population.”<sup>55</sup>*

### **G. Release on Surety Bond: Mandatory Mental Health Assessment**

As explained above, bail bond involves a cash deposit or other security provided by an insurance company in what is commonly referred to as a “surety bond” provided by a “bail bondsman.” The amount of bail is set in what is commonly referred to as the CCP Art. 15.17 magistration hearing (initial probable cause hearing), which occurs within 24 hours of a person’s arrest. A hearing within 48 hours may also be available to review the prior decision if the person has not been released.

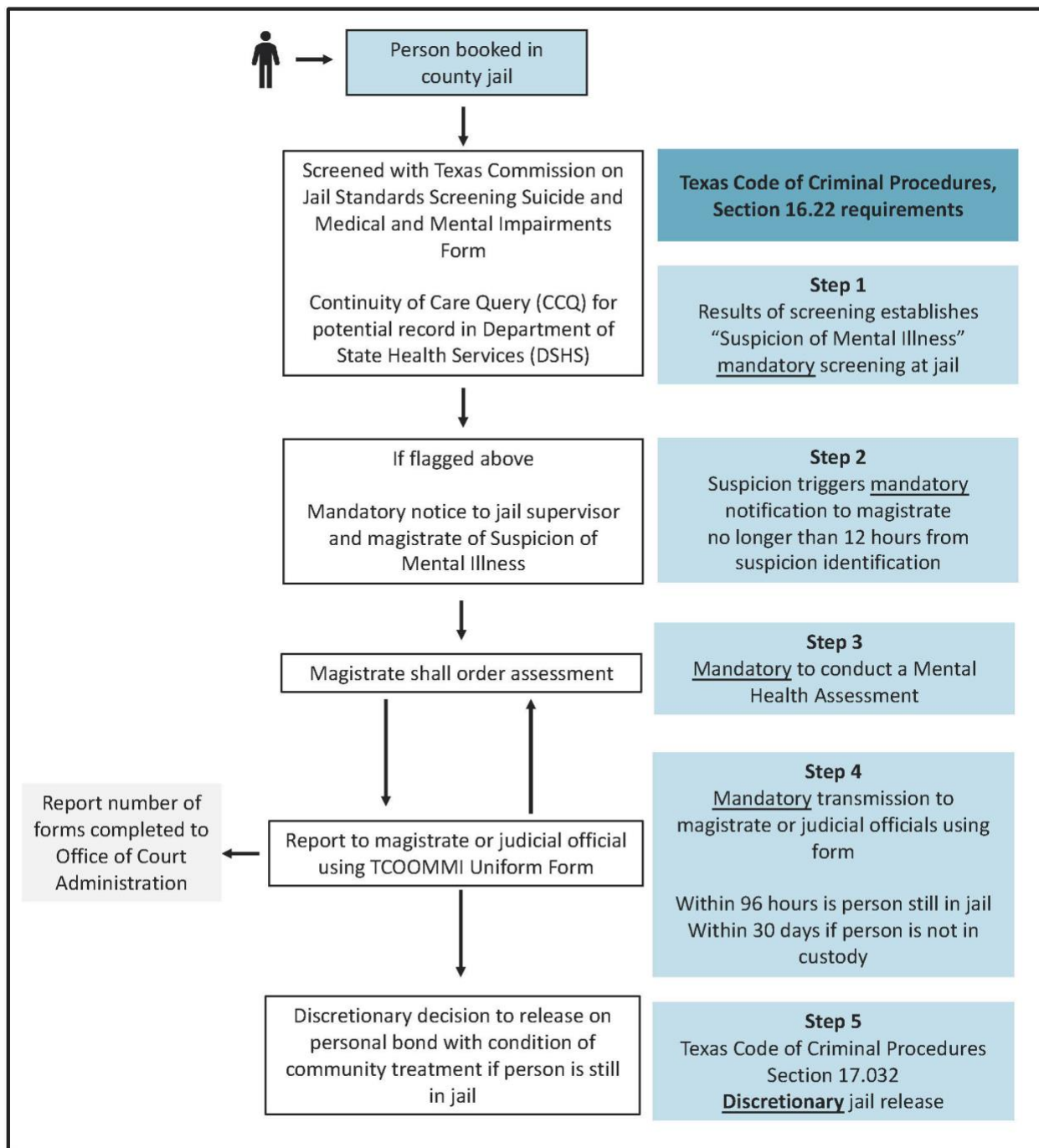
Most of the defendants released prior to adjudication from jail are released as a result of the person posting a “surety bond.” If people who are arrested can post bond, they are released fairly quickly from jail, sometimes in less than 24 hours. Under CCP 16.22 requirements, the magistrate “shall” order that a mental health assessment be conducted no later than 30 days after the order for the assessment was issued. There is no practical way to enforce the order unless the defendant who is released on surety bond has a condition of supervision that requires him or her to show up at an LMHA or other designated appropriate location for an assessment.

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<sup>55</sup> Blandford, A. M., & Osher, F. (2013, November). *Guidelines for the successful transition of people with behavioral health disorders from jail and prison*. SAMHSA’s GAINS Center for Behavioral Health and Justice Transformation and the Council of State Governments Justice Center.

Figure 1 below summarizes the CCP 16.22 and CCP 17.032 requirements explained above. Figure 2, which follows, presents the key statutory language mandating transmission of information to the magistrate and mandating a mental health assessment.

**Figure 1: Summary Overview of the Texas Code of Criminal Procedures Section 16.22 and 17.032**





**Figure 2: Key Statutory Language Mandating Transmission of Information to Magistrate and Mandating a Mental Health Assessment**

(a)(1) Not later than **12 hours after receiving credible information** that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, **the sheriff shall provide written or electronic notice of the information to the magistrate**. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, **the magistrate**, except as provided by Subdivision (2), **shall order** the local mental health or intellectual and developmental disability authority or another qualified mental health or intellectual disability expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The **magistrate is not required** to order the collection of information under Subdivision (1) **if 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 local mental health or intellectual and developmental disability authority or another mental health or intellectual disability expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

## V. Known Gaps Between Legal Requirements and Operational Realities

### A. Statewide Overview

Texas has been a national leader in creating a legal and policy framework for addressing the needs of people with mental illness who are involved with the criminal justice system, but there is still a significant gap between these standards and the operational capacity of county criminal justice and mental health systems to meet them. In this section, we review the data generated by various analyses of local practices that show this gap. These data analyses have been missing from previous examinations of these policies as state data are very limited in this area, and local systems have not been systematic in their efforts to capture information on the number of screenings, assessments, and magistrations hearings related to mental health for the purpose of pretrial release.

In 2017, the Meadows Mental Health Policy Institute (MMHPI) worked with the Texas Commission on Jail Standards (TCJS) to survey county jail administrators to determine issues affecting the implementation of Senate Bill (SB) 1849 (The Sandra Bland Act) requirements. All but one county jail administrator responded to the survey. As stated above, SB 1849, as well as SB 1326, shortened the deadline by which a sheriff is required to provide notice to a magistrate

if there is reasonable cause to believe a defendant has a mental illness or an intellectual or developmental disability. The deadline was shortened from no later than 72 hours to no later than 12 hours after the sheriff receives this information about defendants. The TCJS form is the required screening tool for identifying evidence of mental health problems for all Texas jails.

An MMHPI/TCJS report in January 2018 reviewed the results of this survey in detail.<sup>56</sup> For example, 96% of the jails answering the survey (216 of the 226 jails that submitted a response to this question) reported that they can provide early identification notice to a magistrate within 12 hours of receiving this information. However, when asked if the jail had a plan to actually send notice to a magistrate within 12 hours of booking to meet requirements, in the amended Code of Criminal Procedure Article 16.22, only 62% (142 of the 227 jails that responded to this question) answered affirmatively.

The survey did not ask about protocols for conducting the required mental health assessments under CCP Article 17.032 once magistrates have been informed of the suspicion of mental health problems from the screening at jail intake. A known obstacle to the timely completion of these assessments is the availability of clinical staff who are capable of identifying the need for assessment, conducting the assessment, or asking the local mental health authority (LMHA) to conduct one. Only 8% of jails said they would be able to provide inmates with access to mental health services 24 hours a day by September 1, 2018, as required by SB 1849. Survey results showed that 39% of the jails have tele-psychiatry equipment to provide access to care, 58% reported to have a Memorandum of Understanding (MOU) with their region's LMHA for provision of mental health services and supports to inmates, and only 46% reported to have departmental participation in collaboration and coordination activities with the LMHA in the jail's jurisdiction. Finally, about 68% of the jails (156 of the 228 jails that responded to this question) do not have an inpatient mental health treatment facility that is available for diversion in their jurisdiction. About 10% (22 respondents) did not know if such a facility was available in their area.

While data from this survey are helpful, there are still significant gaps in our knowledge about existing practice. For example, no statewide data can describe:

- How many people are screened positive for mental illness at each Texas jail;
- How many of the CCP 16.22 notifications to the magistrate are acted upon;
- How many mental health assessments are conducted after screening (data is starting to be reported to the Office of Court Administration, but it is unreliable at this time);<sup>57</sup>

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<sup>56</sup> Meadows Mental Health Policy Institute and Texas Commission on Jail Standards. (2018, January). *Senate Bill 1849 survey: Summary of major findings*.

<sup>57</sup> Between September 1, 2017, and June 30, 2018, there were 15,242 assessments reported to the OCA. However, an analysis shows the unreliability of the reporting. For example, Tarrant County reported 7,529 assessments, almost 50% of the total reported statewide. Harris County, with the largest jail population in the state, reported 137



- How many CCP 17.032 hearings or evaluations are conducted based on those assessments;
- How many defendants are supposed to have assessments within 30 days because they were released on surety bond, or “were not in custody,” following a CCP 16.22 notification, or how many actually received assessments;
- How many personal bonds to mental health treatment are granted for defendants not released on surety bond; and
- How many people were released from custody with a condition to participate in community mental health treatment actually received treatment

Figure 3 below shows the number of requests for a Continuity of Care Query (CCQ) match and the number of records matched between September 1, 2016, to June 22, 2017.<sup>58</sup> As explained above, at jail intake, a correctional officer must conduct a CCQ using the Texas Department Public Safety (DPS) Texas Law Enforcement Telecommunications System (TLETS) to check if the person has a record of receiving public mental health services through the state’s Department of State Health Services (DSHS). Matches are made using name, sex, race, and date of birth but can include social security number if it is available. There are “exact matches” in which the data inquiry matches last name, first name, date of birth, sex, social security number, and race. Most of the matches are a “probable match,” which is a match of a combination of some, but not all, of the above identifiers.<sup>59</sup> The jail official conducting the inquiry receives results stating that the person has a record in DSHS of receiving – or having received – services from an LMHA. The information does not include the type of service or the diagnosis the person received. It only gives the name and phone number of the LMHAs that provided the services.

During the reporting period (September 1, 2016, to June 22, 2017), there were 843,329 CCQ requests. Those requests led to 330,729 matches, the great majority of which (272,063) were partial matches. A positive CCQ paired with the TCJS screening, if positive, triggers the need for a mental health assessment. There may be multiple requests for a match for the same person during the booking process and during the year. Therefore, we cannot assume that all of the CCQ matches should have led to an equivalent number of assessments. However, even if we assume that only half of these matches lead to a notice to the magistrate under CCP 16.22 that

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assessments, while Deaf Smith County, with one of the smaller jail populations in the state (80 as of June 1, 2018), reported 127 assessments. Dr. Tony Fabelo, Senior Fellow with MMHPI, discussed these findings with David Slayton, Director of OCA, in a meeting on July 12, 2018.

<sup>58</sup> Texas Health and Human Services Commission. (2017, September). *Annual report on the screening of offenders with mental illness*. Retrieved from <https://hhs.texas.gov/sites/default/files//documents/laws-regulations/reports-presentations/2017/screening-offenders-mental-illness-fy17-aug-24-17.pdf>

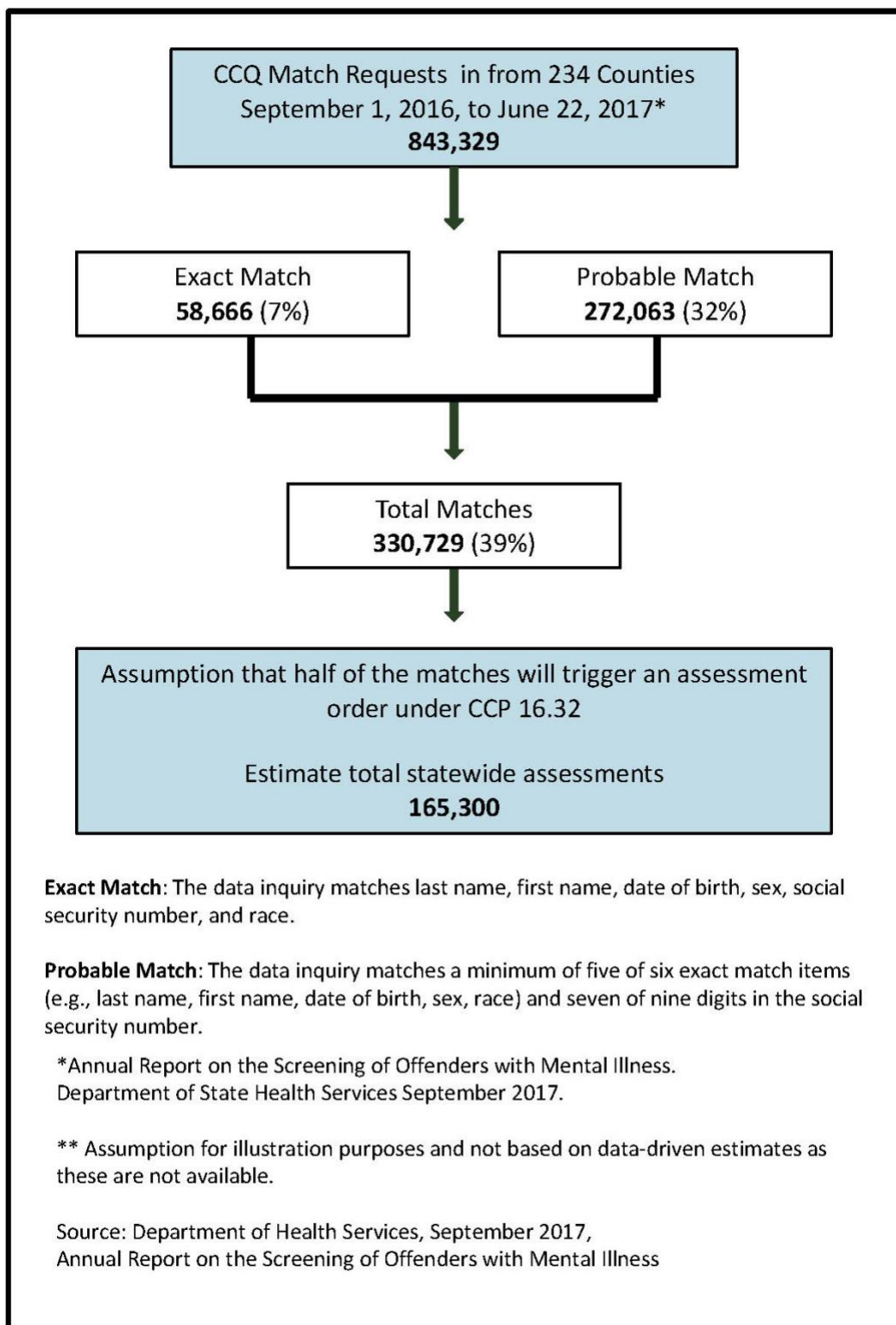
<sup>59</sup> See [http://www.dps.texas.gov/director\\_staff/information\\_management/tlets/CCQ.pdf](http://www.dps.texas.gov/director_staff/information_management/tlets/CCQ.pdf) and Texas Health and Human Services Commission. (2017, September).

triggers the provision that the “magistrate shall order” an assessment, there should be about 165,300 mental health assessments conducted each year in the Texas criminal justice system.

MMHPI is currently assisting Dallas and Bexar counties in addressing the challenges of early identification, assessment, and diversion from jail. In these two counties, we have collected screening, assessment, and magistration data that, to the best of our knowledge, are not available or easily extractable from reporting systems in other counties. As stated above, we highlight these analyses in Dallas and Bexar counties not because these counties have uncommon problems, but because these counties have shown the leadership to tackle these problems operationally, which led to the production of this information. Most counties in Texas, particularly in less populated areas, face tremendous challenges in complying with the letter and the spirit of these legal provisions.

Our analysis of these data illustrated both the gap between the high number of people suspected of mental illness and the low number of people who are assessed for mental illness, and the gap between the number of people who are assessed for mental illness and the number who are granted release on personal bond to treatment.

**Figure 3: Statewide Requests for CCQ Matches and Match Rate, September 1, 2016, to June 22, 2017**



## B. Dallas County Experience

MMHPI has supported Dallas County's efforts to improve various aspects of its criminal justice and mental health systems, particularly law enforcement's role in responding to psychiatric crises, diverting offenders with mental health needs from jail and into treatment, and identifying people with high risks and complex clinical needs who routinely cycle between jails, emergency rooms, and inpatient care to connect them to the right treatment or divert them from further involvement in the justice system. This effort has been funded by the W.W. Caruth, Jr. Foundation, with contributions from local and state funding sources. This project is commonly referred to as the Dallas Smart Justice Stepping Up Project.

When this project began in 2016, one of the goals was to address the fact that Dallas did not have a method to supervise people with mental illnesses on pretrial release and monitor their compliance with treatment requirements (except for a small population participating in specialty court programs).<sup>60</sup> By county officials' own admissions, Dallas was also not complying with CCP 16.22 and CCP 17.032. According to the county criminal justice director work plan of August 2015, the county was not complying because (a) "the magistrates are not taking any action on this report as there have not been mental health professionals available to take the reports and do the required assessments" and (b) there was "no specific process in place to ensure that all defendants screened through the CCP16.22 process are granted a personal bond release if the conditions of CCP17.032 are met."<sup>61</sup> The Smart Justice initiative proposed new processes to address these deficiencies, and MMHPI's technical assistance team helped the county implement these processes. The new protocols became operational in April 2017, and data collection on the new processes started at that time.<sup>62</sup>

Table 1 below shows the number of jail bookings in Dallas in 2017 and the number of unique people that were "flagged" by various screening methods as suspected of having a mental health problem. This information comes from the Dallas JIMI/STELLA Jail Mental Health Flag Report generated by the Dallas Criminal Justice Office.<sup>63</sup> In 2017, there were 66,154 total jail bookings (a person can have multiple bookings during the year) in the Dallas County Jail and a total of 31,849 unique people flagged for suspicion of mental illness. This was as a result of one or various flags or matches of records in one or more of the screening systems. There were

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<sup>60</sup> Council of State Governments Justice Center. (2016, April). *The Dallas County Smart Justice Planning Project: An overview of phase one system assessment findings*. Stepping-Up Conference Bulletin, 6.

<sup>61</sup> Ron Stretcher, S. (2015, August). *Compliance with CCP Art. 16.22 and 17.032 work plan*. Dallas County Criminal Justice Department.

<sup>62</sup> For a full report on implementation strategies and progress report see: Council of State Governments Justice Center. (2017, December 15). *Early identification, diversion and connection to treatment of justice-involved mentally ill persons: Implementation and impact analysis*.

<sup>63</sup> Stretcher, R. (2018, July 13). *Jail Population Committee meeting, statistical tables*. Dallas County Criminal Justice Department, 34.

56,092 screening “hits” or “flags,” with 72% (or 22,826) flagged through the jail booking process from information in the “gold form,” which is the Dallas version of the required TCJS screening form. The second largest number of flags resulted from a match in the CCQ system (46%). Other screenings included (a) people who have been identified with a service utilization history and service ID from the previous mental health NorthSTAR system (36% of the flags), (b) people who have an identified service utilization and service ID from the current North Texas Behavioral Health Authority system (13%), and (c) people with a Parkland Jail Health Psychological Assessment Program (10%).

**Table 1: Number of Screenings for Mental Health at Jail Intake by Different Screening Methods in Dallas County, 2017**

Mental Health Screenings at Jail Intake by Method, 2017	Number	Percentage
Total Jail Bookings	66,154	N/A
Suspected Mental Health Problems	31,849	N/A
Total Flags from Any Screening	56,092	N/A
Mental Health Flag Categories	Number of Flags	Percentage of Flag Hits
NorthSTAR Prior Service Utilization	11,324	36%
NTBHA Service Utilization and ID	4,028	13%
CCQ Match (Required by TCJS)	14,787	46%
Parkland Jail Mental Health Psychological Assessment Program	3,127	10%
TCJS Screening Form (Required at Jail Booking)	22,826	72%

Dallas does not have the capacity to conduct mental health assessments for 31,849 people as required by CCP 16.22. Therefore, for the Dallas Smart Justice Stepping Up project, certain decisions were made to “filter” the number of people who could be assessed and benefit from the pretrial mental health program.<sup>64</sup> The decisions are all discretionary, involving reviews by the offices of the District Attorney, Public Defender, and Pretrial Services.<sup>65</sup> These offices agree on selecting only defendants eligible for personal bond for whom the screening process shows a suspicion of a mental illness. In Dallas, this selection criteria could significantly reduce the number of eligible defendants for the program. Dallas judges issue “orders” that define who is eligible for personal bond that go beyond the restrictions in state law. These orders significantly limit the number of defendants who are eligible for personal bond. Approximately 18% of the

<sup>64</sup> Meadows Mental Health Policy Institute. (n.d.). *Caruth smart justice grant: Mental health–PR bond processes flowchart*. Dallas, TX: Author.

<sup>65</sup> Dallas County. (n.d.). *Memorandum of Understanding between the Dallas County District Attorney’s Office and the Dallas County Public Defender’s Office regarding early identification of arrested persons suspected of mental illness or a person with a developmental disability*. Dallas, TX: Author.

defendants in Dallas are excluded from personal bond by judicial restrictions.<sup>66</sup> Based on these “filters,” the magistrates order the mental health assessments for defendants who have qualified. As discussed below, the number of assessments ordered in 2017 was approximately seven percent of what would have been required under CCP 16.22 (2,237 instead of 31,849).

Figure 4 below shows the first set of numbers related to the screening and identification of people who were eligible for personal bond in Dallas between April 17, 2017, to April 30, 2018, based on the program’s protocols. During this period, there were 68,100 bookings in the Dallas County Jail, with 15,995, or 23%, screened for the program (using the program selection protocols discussed above) and suspected of having a mental illness (which is a little less than half the number identified with a potential mental health problem at jail intake). Because of local judicial restrictions on granting personal bonds (now subject to federal litigation) and a large number of intakes released on surety (commercial bond), only 2,237 defendants were eligible for a mental health bond (14% of those flagged for suspicion of mental health problems). Out of the group of people who were eligible for bond, 661 were presented to the magistrate (30% of eligible people), 49% of whom had misdemeanor charges. In addition, 570 defendants who were presented to the magistrate were granted a personal bond to supervision and treatment (86% were presented to the magistrate, and 25% were ordered to have an assessment).

Most of the cases of defendants who were eligible for an assessment were not presented to the magistrate (1,576 or 70%). Of those not presented, 21% of the defendants posted bond, 16% “declined assessment,” 13% did not have a verifiable residence and contact information, 9% refused to participate, and another 9% were “homeless with no reference.”<sup>67</sup>

Dallas does not have the resources to conduct all of the assessments of people identified with a suspected mental illness as required by CCP 16.22 (31,849), and even when the resources are dedicated to people targeted for the program (15,995), the number of assessments that are conducted is relatively small (2,237), and the number of people who are granted personal bond to treatment represented only 25% of those eligible for a mental health bond in which an assessment was ordered (570).

This small number of defendants who participated in the program will have a minimal impact on reducing the prevalence of mental illness in the jail population, which is the main goal of the

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<sup>66</sup> Council of State Governments Justice Center. (2016, September 9). *Texas pretrial: Sorting out the numbers and what they mean*. Austin, Texas: Council of State Governments Justice Center Research Division.

<sup>67</sup> Dallas County. (n.d.). *Dallas County smart justice metrics, CSJ data report summary, April 2017–April 2018*. Dallas, TX: Author.

national Stepping Up Initiative in which Dallas was one of the first participants.<sup>68</sup> The Dallas County Jail has a capacity of 8,746 beds and a population of 5,090 inmates as of June 1, 2018 (the jail is operating at 58% of capacity).<sup>69</sup> Based on limited data from the program, the number of defendants for whom an assessment was ordered (2,237) stayed in jail an average of 20 days, while those who were released with the special program processes (331 of the 570 granted a mental health bond) served an average of six days. The 14 fewer days served in jail for this group translated into 12 fewer jail beds utilized in a year because of the program.<sup>70</sup>

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<sup>68</sup> Dallas County Commissioners Court. (2015, July 7). *Resolution: Stepping Up Initiative to reduce the number of people with mental illnesses in jails*. Available at

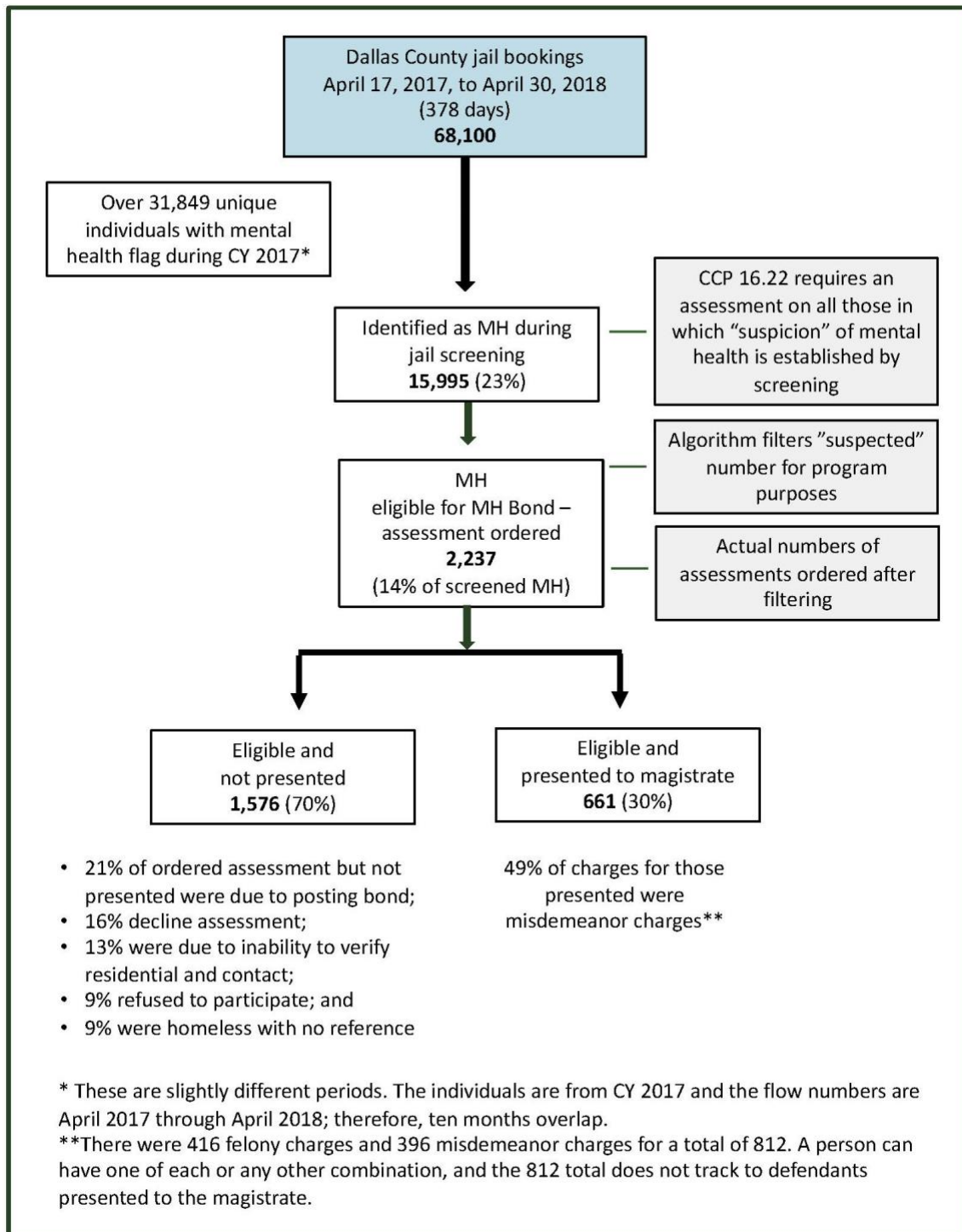
<https://www.dallascounty.org/department/comcrt/district1/documents/SteppingUpUPDTEDSIGNED.pdf>

<sup>69</sup> Texas Commission on Jail Standards. (2018, September 18). *Texas Commission on Jail Standards – abbreviated population report for 9/1/2018*. Retrieved from <https://www.tcjs.state.tx.us/docs/AbbreRptCurrent.pdf>

<sup>70</sup> Length-of-stay data are limited to aggregate numbers reported in Dallas County. (n.d.). *Dallas County smart justice metrics, CSJ data report summary, April 2017–April 2018*. Dallas, TX: Author.



**Figure 4: Number of Screenings for Mental Health and Identification of Eligible People for Personal Bond in Dallas County, April 17, 2017, to April 30, 2018**



### C. Bexar County Experience

In Bexar County, MMHPI’s team has assisted local officials in designing a new county facility to improve intakes and assessments. In 2016–2017, MMHPI’s team, working previously under the



Council of State Government Justice Center, documented archaic justice intake processes in Bexar County that were costly and inefficient. The main cause of inefficiencies stemmed from the use of the city central magistration facility as the main intake center for the county justice system (the facility commonly locally referred to as CMAG). A July 2016 report documented process bottlenecks that required transferring 59% of the arrestees at intake at CMAG (over 33,000 in 2015) to the jail for processing again, duplicating intake services at an annual cost of \$9.3 million above the original intake cost at CMAG of over \$3.6 million for this group.<sup>71</sup>

To address the problems documented in our analysis, in September 2016, Bexar County Commissioners Court approved funding for the construction of a new intake center for the county, named the Justice Intake and Assessment Center (JIAC). This facility is designed with a modern “open booking” physical layout to support more efficient intake processes. The facility and its new processes should (a) reduce the length of time it takes for defendant intakes in the county justice system, (b) reduce duplication of processes by eliminating the need to reprocess defendants that time-out in the city intake center in jail, and (c) provide for better and more timely assessments of defendants for pretrial release decision making.<sup>72</sup>

Until September 1, 2017, there were no legal requirements for mental health screening and assessments in city detention centers or municipal jails. These types of facilities are used in many counties as the main intake point to process arrests and conduct the first magistration hearing, after which a person can post bond and be released without ever getting to the county jail. SB 1326 amended the code to include language that added “municipal jailer” as another staff person who is responsible for screening for mental health concerns.<sup>73</sup> There is no statewide agency that regulates city detention centers or municipal jails; the TCJS only regulates county jails. Therefore, unless the local jurisdiction adopts some form of screening, this new requirement runs the risk of not being implemented in city detention centers or municipal jails.

Bexar County took the leadership in adopting its own screening and assessment policies for the CMAG as part of its inter-local agreement with the city of San Antonio. Three screenings for mental health concerns were adopted at the city detention intake process. The screenings can flag a defendant for suspicion of mental illness based on his or her answers in a short screening

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<sup>71</sup> Council of State Governments, Justice Center. (2016, July 28). Review of Bexar County justice intake processes and recommendations for improvements.

<sup>72</sup> Meadows Mental Health Policy Institute. (2018, July 26). Work plan to open new Bexar County justice intake and assessment center.

<sup>73</sup> Texas Code of Criminal Procedure. (2017, September 1). Article 16.22. Early identification of defendant suspected of having mental illness or intellectual disability, (a)(1). Available at <https://statutes.capitol.texas.gov/docs/CR/htm/CR.16.htm>

form provided by law enforcement at the time of arrest. A brief screening is used at CMAG intake (with some questions similar to the TCJS screening) and with the same CCQ match required at jail intake.

The county has funded clinicians to conduct mental health assessments during peak volume hours at the CMAG detention center of people suspected of a mental health disorders. With help from a state grant, the county created the Bexar County Public Defender Office (BCPDO) to represent eligible defendants with mentally illness at their first magistration hearing. The BCPDO advocates for releasing eligible defendants on personal bond to treatment and guides arrestees through the magistration process.<sup>74</sup> Finally, the county also provides about \$1.37 million a year to the LMHA for mental health treatment and support services to stabilize people with mental illnesses, restore mental health, and divert people from incarceration and facilitate their entry into treatment (the Bexar County Jail Diversion Program). The program includes jail diversion to the Community Reintegration Program and any other services, the Mental Health Court (County Court 12), and the Assisted Outpatient Treatment Program (AOT).<sup>75</sup>

Figure 5 shows the number of mental health screenings and people who are eligible for personal bond in the Bexar County CMAG intake facility during 2017. There were 54,233 intakes for defendants with a Misdemeanor B (referred to as county intakes that exclude city tickets that are not eligible for detention in a county jail) and higher charges. Using the three screening methods described above, 35% of intakes (18,907) were flagged for suspicion of mental health problems. This percentage is higher than what it should be because of the way the screenings are used and counted in Bexar County.<sup>76</sup>

Mental health assessments were conducted for 20% of people who were suspected of having a mental health problem (3,714). If the defendant refused to participate in the county's mental health diversion treatment program, then the assessment was considered "brief"; the majority (2,751, or 74%) of the assessments were brief. About one fourth of the people who received assessments were presented to the magistrate (840, or 23%) and, of those, a little over half (59%, or 495) were granted a personal bond to pretrial supervision and treatment. Cases presented by the public defender were more successful – 73% of those cases were granted a personal bond, compared to 47% for those presented by the Pretrial Office. Finally, all of the

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<sup>74</sup> Eure, S., & Young, M. L. (n.d.). *Central Magistrate mental health PR bond, year 2 report, October 1, 2016 – September 30, 2017*. Bexar County Public Defender's Office.

<sup>75</sup> Gilbert R. Gonzales, Bexar County Mental Health Director (personal communication, July 10, 2018).

<sup>76</sup> There is some double counting of screenings, such as when the defendant is flagged in the law enforcement form and the CCQ, which is counted as two screenings. The data do not allow for separating the double counting, but if the double counting occurred in about 25% of the cases, then the screening total should have been 13,500, or 25% of the cases, similar to the Dallas screening numbers.

defendants who were granted a personal bond were admitted to the Bexar County Jail Diversion Program (described above).

**Figure 5: Number of Screenings for Mental Health and Identification of Eligible People for Personal Bond in Bexar County City Detention (CMAG) Intake Facility, 2017**

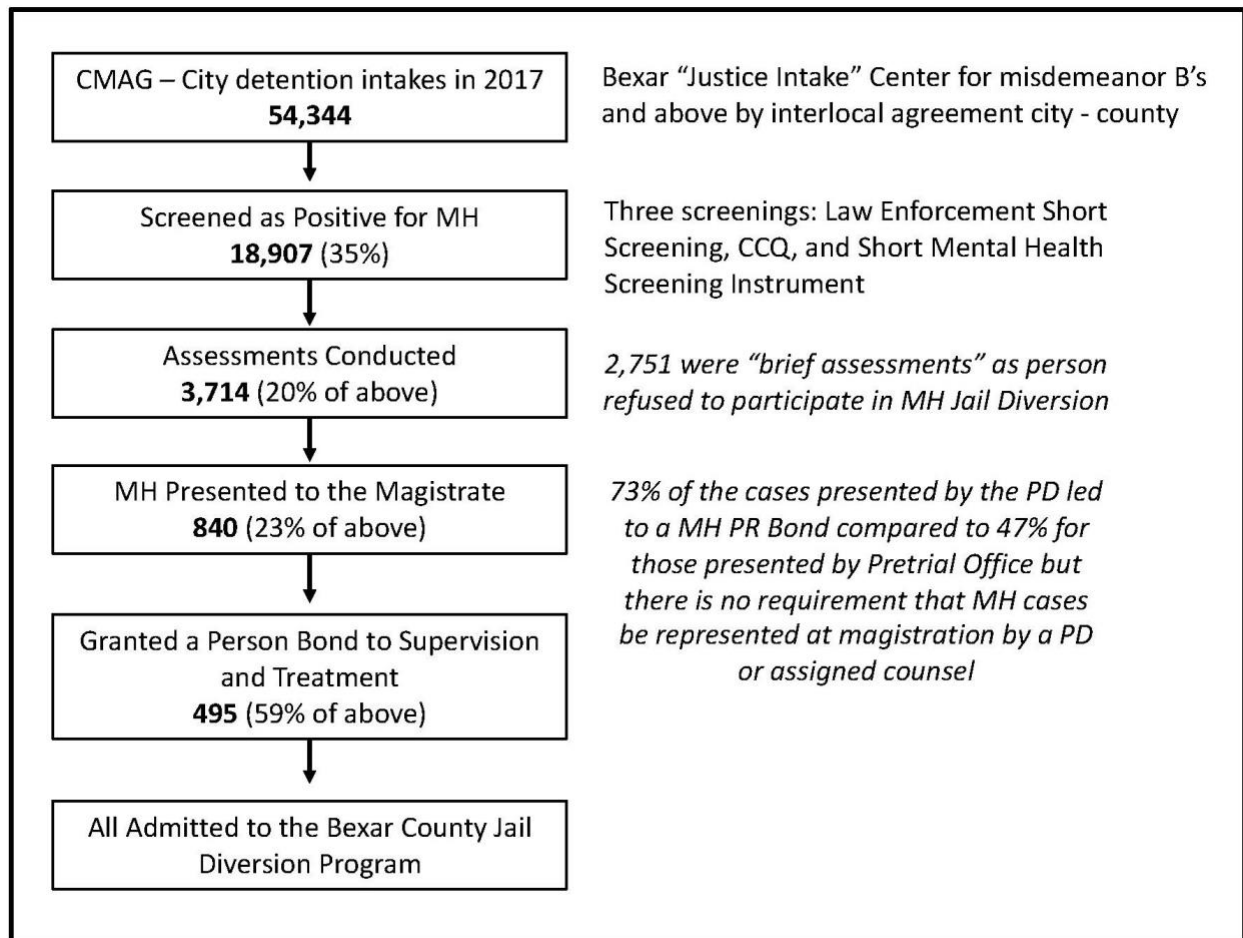


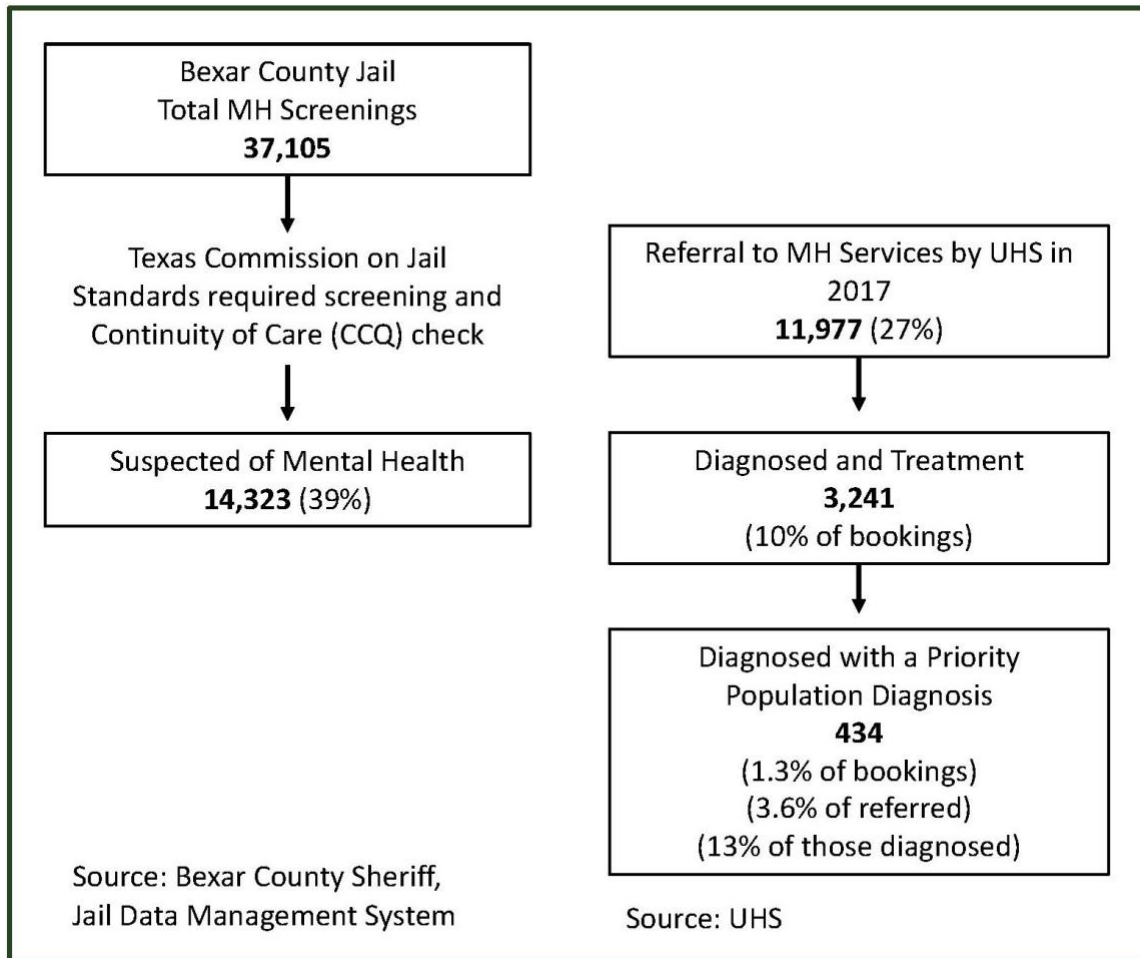
Figure 6 shows the number of mental health screenings conducted in the Bexar County Jail in 2017, using the TCJS and CCQ screening protocols. There were 37,105 screenings, of which 14,323 (39%) were “suspected of mental health.”<sup>77</sup> The University Health System (UHS) – the medical provider in the county jail – provided us with data on the number of people with a priority population diagnosis.<sup>78</sup> There were 11,977 referrals for mental health services from the jail to UHS (this may include a person referred more than one time during the year). There were 3,241 inmates (unduplicated) who were diagnosed by UHS and treated for mental illness and,

<sup>77</sup> Data from July 27, 2018 were collected by Bexar County Criminal Justice Coordinator from the Bexar County Sheriff’s Office.

<sup>78</sup> Martha Rodriguez, Health Services Administrator, University Health System (personal communications, between January and May 2018).

of those, 434 met priority population criteria. In other words, only about 13% of those diagnosed and treated by UHS (434 out of 3,242) would have been eligible for community treatment if they were not in jail. The remaining 87% (2,807) would not have been eligible for community treatment unless they were funded by the Bexar County Jail Diversion initiative, which has limited capacity.

**Figure 6: Number of MH Screening and Results in the Bexar County Jail, Number Referred to the University Health System (UHS) Mental Health Assessments, Number Received UHS Mental Health Services, and Number Diagnosed with Priority Population, 2017**



Bexar County, like Dallas County, does not have the resources to conduct all the assessments of people identified with suspicion of mental illness as required by CCP 16.22 (14,000 to 18,000 a year), and even when the resources are dedicated to those targeted for the county jail diversion program, the number of assessments that are conducted is relatively small (3,714), and the number of people granted personal bond to treatment represented only 13% of those eligible for a mental health bond for whom an assessment was ordered (495).

## VI. Summary and Preliminary Recommendations

### A. Summary

Texas has been a national leader in establishing a legal framework to effectively identify people admitted to jail who have mental illness and to allow for their diversion to community treatment. The problem is no longer primarily a legal one (although significant issues remain in clarifying the role of illness treatment and stabilization versus competency and forensic need). The problem is primarily operational. As the analyses discussed above illustrate, jails appear to meet state mandated standards for screening for signs of mental illness, but there is limited capacity to conduct assessments for everyone who is identified early at jail intake, most of whom quickly leave the jail to return to the community; the number of completed assessments is low, based on the best analyses possible using available data from Dallas and Bexar counties; and the number of people who end up in treatment is even smaller given the number of people who can qualify for treatment, as well as the capacity of local mental health systems. In addition, data on the number of screenings that are conducted are not easily available, and the required reporting to the state on the number of assessments that are conducted is unreliable at this time.

Below, we present a summary of issues from the discussion above, followed by our recommendations for the legislature and commission to consider.

- The screenings for suicide and mental health concerns at jail intake are designed to flag people suspected of having a mental illness early and provide jail administrators with protocols to prevent jail suicides. However, the screenings capture a large population that is considered “suspect of mental illness,” and then the law requires clinical assessments for this large population, whether or not they stay in the jail, while both jail-based and community-based resources and capacity to conduct these clinical assessments are generally insufficient.
- Statewide, it is not known how many of the cases in which a person is suspected of having a mental illness are acted upon by a magistrate by ordering the mandatory assessment once the information is transmitted by the Sheriff’s Office after initial screening in jail. Data analyses in Dallas and Bexar counties indicate that a large gap exists between the number of people who are suspected of having a mental illness and the number of assessments that are ordered.
- Local officials have developed their own policies to substantially reduce the number of clinical assessments that are conducted as part of this process according to available resources and capacity. However, these policies vary by locality and the policies are not

guided by any state policy that acknowledges the need to triage this population because of the lack of resources.

- There is no mechanism for ordering and conducting a review after the screening to determine if the full clinical assessment is needed to determine if the person is eligible for community treatment and will benefit from the available treatment directed at improving clinical outcomes and reducing recidivism. Under CCP 16.22, upon receipt of the notice, the magistrate “shall order” the LMHA or another qualified mental health expert to conduct an assessment to determine if the person has a mental illness as defined in the Health and Safety Code. The “shall order” language is preceded with the language that the magistrate can make a “determination that there is a reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability,” and then order the assessment. However, for practical purposes, the magistrate makes the “determination” based on the notification emanating from the Texas Commission on Jail Standards (TCJS) process since the magistrate does not have further information to determine if the notification does not merit a “reasonable cause to believe” that there was no mental illness.
- Protocols for conducting mental health assessments vary by and within localities, and judicial officials now need to obtain clinical assessment results through the state-mandated TCOOMMI Collection of Information Form for Mental Illness and Intellectual Disability. The court then needs to report the number of forms transmitted every month to the Office of Court Administration, but the variety – and lack – of local protocols have made it difficult and unreliable to report this number.
- The great majority of defendants identified as needing treatment do not have private insurance or private resources to pay for it and only qualify for public services if they are in crisis or are diagnosed with the most severe mental health conditions, which is a very small portion of the population entering the justice system.
- When judicial officials make decisions to release defendants on pretrial bond to community treatment, they are unlikely to be aware of the gap that often exists between the person’s need for treatment and availability of actual treatment resources. Or, judicial officials may assume a lack of treatment capacity even if it is, which can also have a negative impact on their decisions.
- Treatment effectiveness is affected by the availability of close pretrial supervision. Many counties do not have a pretrial supervision department or the capacity to provide effective specialized supervision.

- The vast majority of defendants released from jail on pretrial bond in Texas are released quickly from jail on surety or commercial bond, generally within hours. If defendants are suspected of having a mental illness based on screening results, the law also requires the magistrate to order a clinical assessment, but this is not routinely done because of limited resources and capacity to conduct timely clinical assessments. In general, defendants on surety or commercial bond are not supervised by a county pretrial agency that can monitor their compliance to participate in the assessment process, even if the assessment was ordered. Furthermore, it is not necessarily true that it is in the public interest (or the interest of these individuals) for all of these people to receive a mental health assessment once released from a detention setting.

## B. Recommendations

Figure 7 below presents a graphic summary of the recommendations. As noted in the beginning of the report, these recommendations address the CCP 16.22 and CCP 17.032 policies only. This report does not examine or make proposals regarding the competency identification and restoration process, which is important, but only affects a relatively small portion of the population admitted to Texas jails.

This proposal creates a new model clearly targeting three goals for the screening and assessment statute as described below. The idea is to modernize the statute's purposes and update the model in relation to upcoming changes in pretrial policies as well as realistic expectations regarding local resources that are available to implement the law.<sup>79</sup>

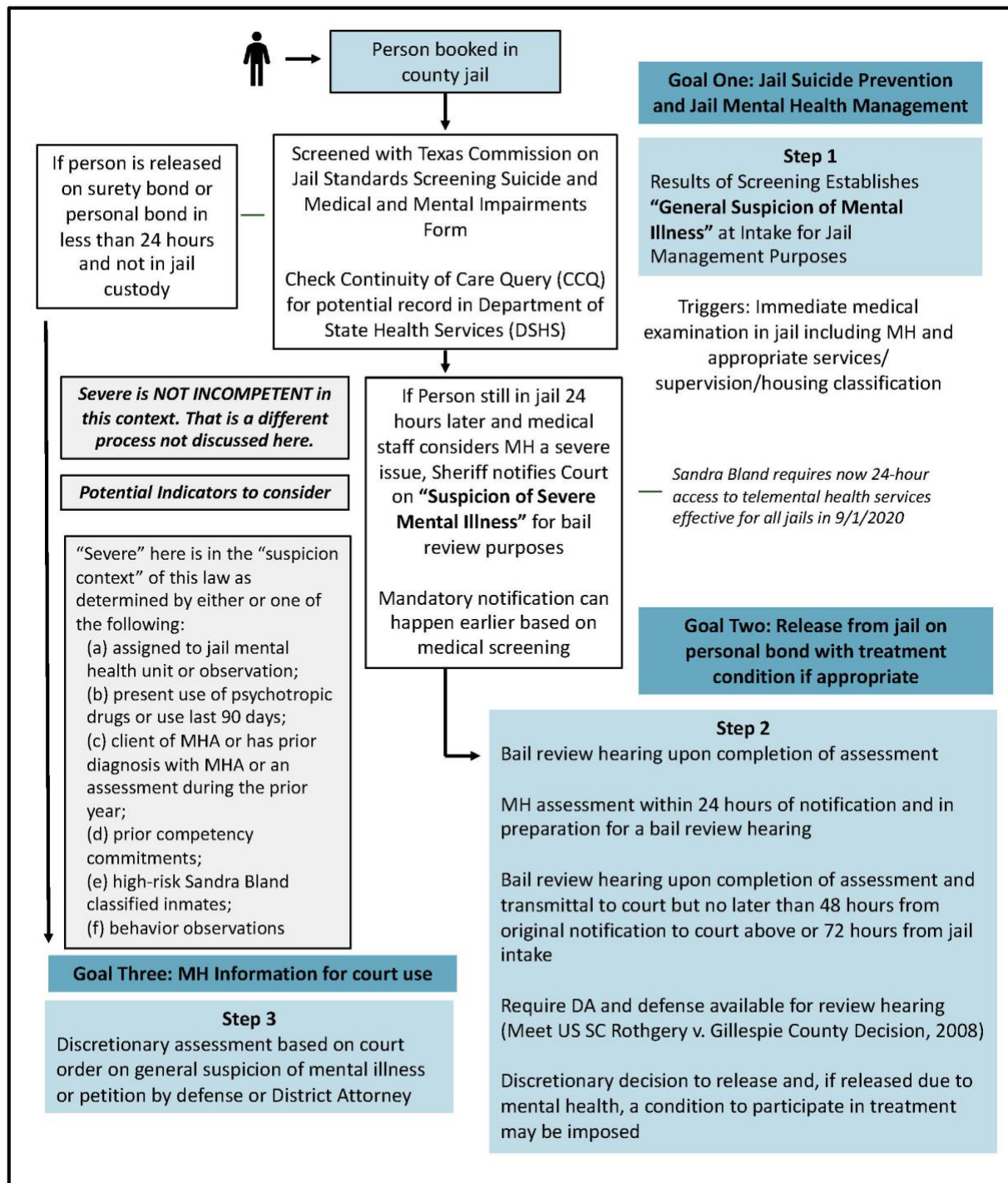
MMHPI acknowledges the significant implementation challenges that underlie both the current system requirements and the proposed redesign of this policy. The goal is to take the present framework policies and strengthen them by more effectively and efficiently aligning state and local resources with the intent of state policies. Of particular concern is the priority on jail safety and health within detention settings – specifically, the goals of the Sandra Bland Act to prevent jail suicides, increase jail safety, and improve mental health services within Texas jails. We recognize that implementation of the recommendations will take further refinement and stakeholder input over time and will involve collaboration between local mental health providers, hospital districts, other jail-based health and mental health providers, and county officials.

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<sup>79</sup> In its June 2018 report, the Texas Judicial Council of the Supreme Court proposed pretrial reform recommendations for consideration of the 86th Texas Legislature. The report is available at <http://www.txcourts.gov/tjc/committees/criminal-justice-committee/>. Governor Abbott also announced a major reform effort with the Damon Allen Act, which will also be introduced during this legislative session (announcement in <https://www.dallasnews.com/news/texas-legislature/2018/08/07/texas-gov-abbott-proposes-hiking-bail-defendants-represent-threat-police>).



**Figure 7: Graphic Depiction of Proposed New Model for CCP 16.22 and CCP 17.032 Mental Health Early Identification and Assessment Policy**





## Goal 1: Jail Suicide Prevention and Jail Mental Health Management

The first priority is to ensure the safety of individuals in custody and address any acute medical needs. Suicide is an important medical risk that screening and assessment protocols are designed to identify and prevent. In addition, there is a need to provide quick screenings by jail administrators to identify people with potential mental illnesses that also might affect safety and medical stability; trigger internal protocols to further examine priority medical and mental health needs that are identified; and provide appropriate observation, treatment, and housing classification based on these medical needs.

***Present screening for mental health concerns at jail intake should stay the same, but it should not trigger automatic notification to the magistrate or court simply based on the initial screening. Notification should be based on a more thorough medical assessment that includes attention to any mental health concerns identified through the screening.***

The present screening protocols should continue to use the Texas Commission on Jail Standards Screening Suicide and Medical and Mental Impairments Form and the check on the Continuity of Care Query (CCQ) of Department of State Health Services (DSHS). Any person identified at this initial jail intake based on these should be flagged as having a “General Suspicion of Mental Illness.” This general suspicion should trigger immediate safeguards if there is any risk of suicide or other imminent harm, but absent that, action should wait until internal protocols further examine the person’s mental health needs as part of the mandatory, routine medical assessment. The assessment results should be used to determine needed observation, treatment, and housing classification. This initial screening should no longer trigger a mandatory notification to the magistrate, as required presently.

Again, people found to be at risk of suicide (or other acute medical risks) would trigger those protocols based simply on the screening. However, all other people flagged under this proposed revised protocol would need to be referred to medical staff for the required mandatory medical evaluation of their mental needs. The TCJS has adopted rules to implement the Sandra Bland Act (SB 1849, 85th Legislative Session), which will become effective on September 1, 2020, and will enhance medical and mental health services responses for people flagged at intake, or identified later, for suspicion of mental health disorders. Among other provisions, the new rules require automated electronic sensors and cameras to help ensure the safety of inmates with high levels of risk. These inmates must be in cells where observations occur every 30 minutes or less. The rules also require jails to provide inmates with 24-hour access to a health professional, which can be in person or through a telehealth service. If a

health professional or telehealth service is unavailable at the jail, then the jail must transport inmates to a health professional.<sup>80</sup>

***Under the proposed policy, mandatory notification would be triggered only if the mandatory medical screening validates the mental health screening results, as described below.***

Any person who has been found to have:

- (a) A “general suspicion of mental illness” at initial intake (first screening) and
- (b) Has been in jail for 24 hours or longer;

And has either:

- (c) Been assigned to a jail mental health unit or observation area;
- (d) Been found to use psychotropic drugs presently or during the last 90 days;
- (e) Been a client of the local mental health authority (LMHA), or has a prior diagnosis with an LMHA, or has a prior assessment during the prior twelve months;
- (d) Had prior competency commitments;
- (e) Been a high-risk Sandra Bland Act-classified inmate; or
- (f) Shown behavioral manifestations related to mental illness.

Will then be identified with “Suspicion of Severe Mental Illness” through this second validated screening.

This validated screening identification would then trigger an immediate notification to the court.

*Note again:*

Determination of competency and competency restoration is not covered in this report, as stated above. Rather, the scope of this report is only the determination of severity of mental illness.

We suggest incorporating the second validated screening criteria describe above into a mandated statewide form that could be used by all jail medical and mental health providers. Medical and mental health services are provided in jails by different agencies, ranging from local mental health authorities on contract with the county (El Paso), to county hospital districts that serve people in poverty (Bexar and Dallas), to private providers (Galveston). Having some uniformity in defining the second screening will set a minimum standard. Local policies may add to the minimum standard, as determined by the jurisdiction.

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<sup>80</sup> Texas Commission on Jail Standards. (2018, August 24). Chapter 273. Health Services, 37 TAC §273.2. *Texas Register*, 43(34), 544–5604. Retrieved from <https://www.sos.state.tx.us/texreg/archive/August242018/Adopted%20Rules/37.PUBLIC%20SAFETY%20AND%20CORRECTIONS.html#102>

**Goal 2: Release from Jail on Personal Bond with Treatment Conditions, if Appropriate**

The second goal is to release people suspected of having a severe mental illness – as defined in this context – who are still in jail 24 hours after intake in an expedited manner that considers public safety.

***Conduct mandatory assessment and mandatory bail review hearings based on a more thorough mental health assessment if the person is still in jail custody after 24 hours.***

For people in jail after 24 hours, the mandatory notification to the court triggered by the second validated screening would next trigger a mandatory mental health assessment that must be completed within 24 hours of this notification.

Once this more thorough mental health assessment is completed, a bail review hearing in the court of jurisdiction would need to be conducted to determine if the person can be safely released to treatment in the community. Bail review hearings are already allowed by law based on court motions or at the request of either the state or the defense. Bail review hearings for misdemeanants are starting to be used in local jurisdictions to comply with the O'Donnell versus Harris County federal court decision that dealt with constitutional deficiencies in pretrial practices. Many counties are already adopting, or plan to adopt, a bail review hearing as part of a process to evaluate earlier decisions not to release a defendant on personal bond when the defendant is unable to afford the bail originally set.

Presently, there is no specificity as to what a CCP 17.032 “mental health bond” hearing should include. For example, a bail review hearing for a defendant who is not released at initial magistration can also be used to examine the results of the mental health assessment and the possibility to release the defendant from jail on personal bond to treatment and/or pretrial supervision.

The defense and district attorney will be present in this hearing. The Texas Indigent Defense Commission is already promoting policies to have indigent defense counsel at the magistration hearings. If the district attorney participates in the bail review hearing, then the U.S. Supreme Court decision in *Rothgery v. Gillespie County* (2008) requires defense to be present.<sup>81</sup> This hearing is not designed to review the charges or evidence; its goal is only to determine if the rationale to not grant a personal bond and maintain a person on pretrial detention is justified because of public safety risks.

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<sup>81</sup> Justia. (2018). *U.S. Supreme Court, Rothgery v. Gillespie County, 544 U.S. 191 (2008)*. Retrieved from <https://supreme.justia.com/cases/federal/us/554/191/>

The bail review hearing would be conducted more quickly than the present requirement under CCP 16.32: that an assessment be transmitted to the court within 96 hours for a person still in custody, and the requirement of CCP 17.032 that an unspecified hearing be conducted to determine if the person can be released on a mental health personal bond. The proposed hearing will happen within 72 hours as follows: 24 hours in jail and flagging with “suspicion of severe mental illness,” which triggers mandatory notification to the court; 24 hours to conduct the assessment; and 24 hours to have the bail review hearing. The hearing could even happen more quickly if local processes are efficient.

***Use the modified TCOOMMI form to transmit the results of assessment.***

The decision to release a person on bail is at the judge’s discretion, as it is currently required under CCP 17.032. The present TCOOMMI form will still be used to transmit the results of the mental health assessment to the court. The form will be modified to include a clear statement of the severity of the case, a clear determination on treatment availability in the community, and confirmation that the defendant will qualify for available community treatment.

**Goal 3: Mental Health Information for Court Use**

The third goal is to provide mental health assessments for the court to use in these cases.

***Abolish mandatory mental health assessment for those who are not in custody, recognizing that the court can still order assessments as deemed appropriate.***

This proposal would abolish the present mandatory assessment requirement for defendants flagged for suspected mental health disorders at jail intake who do not remain in jail over 24 hours. These are defendants who are released quickly on surety or personal bond. The faithful implementation of the present law would require that over 300,000 assessments be conducted each year in Texas. Dallas County presented 2% of the required assessments to a magistrate, and Bexar County presented 4%. There is neither the capacity in the system to conduct the required number of assessments nor the mechanism to monitor the assessment requirement of those released on surety bond.

Likewise, it is not clear that it is in the public interest for courts to mandate assessment of the mental health needs of every Texan who encounters the justice system. There are costs in carrying out such assessments, and the benefits (in terms of safety and health within detention, or particularly severe mental health needs more generally, that the court prioritizes) must outweigh them. The safeguard for individual needs in the community that rise to such a level would remain under the purview of the court, which could, at any time order assessments for

any person who is not in custody if the court sees an individualized need for it based on the “general suspicion” of mental illness established at jail intake.

***Report key statistics to TCJS and work with the Judicial Commission on Mental Health to better define assessments.***

The lack of basic reporting in this area makes it difficult to track and understand the law’s effectiveness in areas where needs do warrant assessment and intervention. Therefore, this proposal includes a requirement that the Texas Commission on Jail Standards (TCJS) begin collecting monthly statistics on the number of people flagged at screening as having a “General Suspicion of Mental Illness” and the number of people flagged as having “Suspicion of Severe Mental Illness,” which will trigger the mandatory notifications to the court. The TCJS already collects monthly statistical reports of population counts, and these two additional data points will be added to those reports.

Finally, the Texas Judicial Council Guardianship, Mental Health, and Intellectual/Developmental Disability Committee has recommended that “assessments” be better defined in legislation, and this is another important change to consider. As they stated:

*“Feedback indicates that there is uncertainty about the credentials necessary for an individual to perform an ‘assessment;’ whether this assessment focuses on competency to stand trial; and payment responsibility for the assessment.”*

*“A single uniform term should be used in place of ‘assessment’ or ‘collection of information’ to convey that a full-blown examination and mental health or IDD diagnosis is not required at this juncture.”<sup>82</sup>*

This report recommends that the newly established Judicial Commission on Mental Health consider taking on the work to define these assessments.

***Summary of Proposed Changes***

Table 2 (which begins on the following page) summarizes the key provisions of the law today, the changes proposed in this report, and the rationale for the changes proposed above.

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<sup>82</sup> Texas Judicial Council Guardianship, Mental Health & Intellectual/Developmental Disability Committee. (2018, June). *Texas Judicial Council committee report and recommendations*, 3. Retrieved from <http://www.txcourts.gov/media/1441879/guardianship-mental-health-idd-committee-report.pdf>

**Table 2: Analysis of Key Provisions of CCP 16.22 and CCP 17.032, Proposed Changes in Policy, and the Rationale for the Proposed Changes**

Area	Now	Proposed	Rationale
<p><b>1. Establishing “Suspicion of Mental Illness” at Jail Intake</b></p>	<p>Determine with screening protocols using Texas Commission on Jail Standards (TCJS) and/or CCQ protocols.</p>	<p>Same, except first screening will establish “General Suspicion of Mental Illness.”</p>	<p>Well-established system to prevent suicides and maintain jail housing and medical decisions at jail intake as it is. This general suspicion should trigger immediate safeguards if there is any risk of suicide or other imminent harm.</p>
<p><b>2. Consider Developing a Statewide Screening Form to Establish “Suspicion of Severe Mental Illness”</b></p>	<p>None</p>	<p>Criteria needs to be developed and validated but, at a minimum, the second screening needs to be guided by the factors below:</p> <p>Determine by any, or one, of the following: (a) person is assigned to jail mental health unit or observation; (b) present use of psychotropic drugs or use within last 90 days; (c) client of LMHA, or has prior diagnosis with LMHA or an assessment during the prior year; (d) prior competency commitments; (e) high-risk Sandra Bland-classified inmates; (f) behavior observations</p> <p><b>Note: Severe Mental Illness is NOT necessarily the same as Incompetent to Stand Trial in this context. That determination is a different process that is not discussed here.</b></p>	<p>Medical services and mental health services are provided in jail by different agencies, ranging from the LMHA on contract with the county (El Paso) to the county indigent hospital district (Bexar and Dallas) to private providers (Galveston). Having some uniformity to define the second screening will set a minimum standard. Local policies may add to the minimum standard.</p>

Area	Now	Proposed	Rationale
<p><b>3. Notification to Magistrate</b></p>	<p>Mandatory for all cases flagged at jail intake by the screening form.</p>	<p>“Suspicion of Severe Mental Illness”</p> <p>Mandatory notification to the COURT if (a) person is in jail for 24 hours or more and (b) when medical screening determines that mental health condition may be severe and more than a generalized condition.</p> <p><b><i>Note: Severe Mental Illness is NOT necessarily the same as Incompetent to Stand Trial in this context. That determination is a different process that is not discussed here.</i></b></p> <p>“Severe” here is in the context of “suspicion” as determined by either or one of the following: (a) person is assigned to jail mental health unit for observation; (b) present use of psychotropic drugs or use within last 90 days; (c) client of LMHA during last year, or prior diagnosis with LMHA; (d) prior competency commitments; (e) high-risk Sandra Bland-classified inmates.</p>	<p>Presently, the mandatory notifications are done for all who are flagged at the screening intake, which captures a wide range of potential mental health conditions, including Axis II disorders like antisocial and borderline personality disorders, representing up to 40% of jail bookings.</p> <p>The volume of notifications required from the screening cannot be meaningfully examined by magistrates.</p> <p>The proposal will limit the number of notifications to only those defendants remaining in jail more than 24 hours for whom medical staff have identified a severe condition.</p>



Area	Now	Proposed	Rationale
<p><b>4. Order for Assessment To Be Conducted</b></p>	<p>Mandatory for all defendants for whom the magistrate was notified, including cases released from jail on surety bond. This refers to all those defendants flagged by the screening form as suspected of having a mental illness. An assessment completed a year prior can be used instead of ordering a new one.</p>	<p>Mandatory only for defendants for whom the court was notified because of a “Suspicion of Severe Mental Illness” and the defendant is still in the custody of the jail for 24 hours or longer.</p> <p>For the assessment conducted for the bail review hearing, abolish mandatory assessment requirements for defendants not in custody of the jail because they were released on personal or surety bond in 24 hours or less.</p> <p>A discretionary assessment may be conducted based on a court order on general suspicion of a mental illness or a petition by the defense or district attorney.</p>	<p>The faithful implementation of the present law would require over 300,000 assessments to be conducted each year. However, only 2% of required assessments were presented to a magistrate in Dallas and only 4% in Bexar County. There is no capacity in the system to conduct the required number of assessments, and there is no mechanism to monitor the assessment requirement of those released on surety bond.</p> <p>The proposal will reduce the overall number of assessments and target them to the jail population. The courts can still order assessments for those released from jail on personal or surety bond in 24 hours or less as needed.</p>
<p><b>5. Definition of Assessment</b></p>	<p>None</p>	<p>Recommendation as proposed by the Texas Judicial Council Guardianship, Mental Health, and Intellectual/Developmental Disability, June 2018 report, page 3.</p> <p>Judicial Commission on Mental Health to continue to work on this issue.</p>	<p><i>“Feedback indicates that there is uncertainty about the credentials necessary for an individual to perform an ‘assessment;’ whether this assessment focuses on competency to stand trial; and payment responsibility for the assessment.”</i></p> <p><i>“A single uniform term should be used in place of ‘assessment’ or ‘collection of information’ to convey that a full-blown examination and mental health or IDD diagnosis is not required at this juncture.”</i></p>

Area	Now	Proposed	Rationale
<p><b>6. Timing</b></p>	<p>Twelve hours to transmit suspicion of mental health to magistrate, 96 hours to complete assessment for the magistrate if person is in jail, and 30 days to complete assessment for the magistrate if person is out of custody.</p>	<p>“General Suspicion of Mental Illness” upon jail intake is transmitted immediately to appropriate jail and medical staff.</p> <p>If there is a “Suspicion of Severe Mental Illness” and the person is in custody of jail for 24 hours, the court is notified immediately within 24 hours or less.</p> <p>Notification can be made earlier if the medical screening and more detailed mental health screening are completed earlier than 24 hours.</p> <p>The notification to court triggers a mandatory assessment that needs to be completed within 24 hours from the notification.</p> <p>Bail review hearing takes place within 48 hours of court receiving notification.</p> <p>Total process time is 72 hours:</p> <ul style="list-style-type: none"> <li>• 24 hours in jail and “Suspicion of Severe Mental Illness” triggers mandatory notification,</li> <li>• 24 hours to conduct the assessment, and</li> <li>• 24 hours to have a bail review hearing.</li> </ul>	<p>Presently, assessments for people in custody, if done, only target selected cases based on local protocols that vary by locality and according to knowledge and resources of present requirements.</p> <p>Proposal will reduce the number of required assessments to only defendants that appear to have more severe disorders, and the timing will be relevant to the goal of diverting these people from jail to treatment in the community.</p> <p>Timing for conducting the assessment and for the bail review hearing for the eligible population will be quicker than at present.</p> <p>Assessments for people out of custody are not being done, and the operational protocols to do them are difficult to establish. Proposal abolishes this requirement and acknowledges that the court can always order an assessment, if needed, based on suspicion of mental illness.</p>

Area	Now	Proposed	Rationale
<p><b>7. Bail Review Hearing</b></p>	<p>CCP 17.032 requires a hearing to determine if the person should be released on a “mental health personal bond.”</p>	<p>Bail review hearing will be conducted for all defendants who are still in jail custody after 24 hours.</p> <p>Mental health assessment will be considered a factor in this hearing for notifications to the magistrate of people identified with a suspicion of severe mental illness.</p>	<p>Operationally, there is no specificity to what a CCP 17.032 hearing is, and jurisdictions do not see this as a separate hearing process.</p> <p>Bail review hearings for defendants who are not released at initial magistration can also be used to examine the impact of mental illness and the need to release the person from jail to treatment.</p> <p>Practices are changing in reaction to federal court decisions in pretrial litigation (e.g., O’Donnell vs. Harris County), and many counties are already adopting or plan to adopt a bail review hearing process.</p>
<p><b>8. Defense at Bail Review Hearing</b></p>	<p>No requirement for defense to be present in magistration hearing.</p>	<p>District attorney (DA) and defense will be present at bail review hearing.</p>	<p>The Texas Indigent Defense Commission is already promoting policies to have indigent defense counsels at the magistration hearings.</p> <p>If DA participates in the bail review hearing, then U.S. Supreme Court (SC) decision requires the presence of defense (U.S. SC Rothgery v. Gillespie County Decision, 2008).</p>
<p><b>9. Collection of Information Form for Mental Illness and Intellectual Disability – TCOOMMI</b></p>	<p>Form to transmit results of assessments to magistrates.</p>	<p>Same, but modify the form to include a determination of level of severity, if the person is eligible for community treatment, and if treatment is available.</p>	<p>The court needs to have a clear understanding that the person assessed can actually participate in treatment and that treatment is available.</p>

Area	Now	Proposed	Rationale
<p><b>10. Report Monthly Numbers of TCOOMMI Assessments to Office of Court Administration (OCA)</b></p>	<p>Report monthly number of assessments to OCA.</p>	<p>Recommendation as proposed by the Texas Judicial Council Guardianship, Mental Health, and Intellectual/Developmental Disability, June 2018 report, page 4.</p>	<p>“Feedback indicates concern over the potential for a redundant reporting requirement for screenings performed pursuant to Article 16.22. Subsection (e) should be amended as follows: (e) The magistrate [clerk of the trial court] shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis the number of written assessments provided to the court under Subsection (a)(1)(B).”</p>
<p><b>11. Statewide Reporting of Persons Flagged on MH by TCJS Form</b></p>	<p>None</p>	<p>Include in TCJS monthly report the number of people flagged at screening with suspicion of mental health problems and number of notifications to the magistrate under the new proposed changes.</p>	<p>There is no statewide reporting of these critical indicators that can be used to monitor the implementation of the policy and to estimate policy and fiscal impacts as needed for statewide policy making.</p>

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