
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 237 **Hearing Date:** March 21, 2017
Author: Hertzberg
Version: February 6, 2017
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Criminal Procedure: Arrest*

HISTORY

Source: Los Angeles District Attorney's Office

Prior Legislation: None known

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcements; California Attorneys for Criminal Justice; California College and University Police; California District Attorneys Association; California Narcotic Officers Association; California Public Defender's Association; Disability Rights California; Drug Policy Alliance; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; National Association of Social Workers, California Chapter; Riverside Sheriffs Association

Opposition: None known

PURPOSE

The purpose of this legislation is to permit law enforcement to transport a person suffering from a mental illness to a therapeutic healthcare facility, including a mental health urgent care center, emergency room, or other location providing acute substance use disorder detoxification for persons who suffer from co-occurring mental health disorders, as specified.

Existing law requires that when an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before the magistrate. (Penal Code § 849(a).)

Existing law provides that a peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

- The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
- The person arrested was arrested for intoxication only, and no further proceedings are desirable.

- The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.

(Penal Code § 849(b))

Existing law states that the record of arrest of a person released. Thereafter, the arrest shall not be deemed an arrest, but a detention only. (Penal Code § 849(c).)

This legislation allows a peace officer to release a person from custody, instead of taking the person before the magistrate, if the person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance use disorders, for mental health evaluation and treatment, and no further proceedings are desirable.

COMMENTS

1. Need for This Legislation

According to the author:

SB 237 would create more options for compassionate treatment for individuals with mental illness by allowing law enforcement to transport low level offenders suffering from an acute mental health crisis to Urgent Care Centers (UCCs) rather than to jail.

UCCs are not inpatient facilities but are safe and secure acute care medical facilities that specialize in treating persons with mental illnesses. UCCs provide a location, other than emergency rooms or county jails, where persons suffering from mental health crises can be evaluated, psychiatrically stabilized and have a plan for further action formulated to assist them, whether by returning home, proceeding to a residential treatment location, a hospital, supportive housing, substance use disorder treatment facility.

Law enforcement may lack the legal authority to transport an individual suffering from an acute mental health crisis to a mental health UCC in lieu of arrest, absent the individual's consent for treatment. UCCs can serve as an alternative to county jail where persons suffering from mental health crisis can receive the help they need.

2. San Antonio: Model of Mental Health Diversion

A mental health diversion model has been successfully utilized by law enforcement personnel in Bexar County, Texas. Specifically, in San Antonio, the law permits law enforcement officers to take individuals into custody and transport them to unlocked multi-disciplinary "Restoration Center," which provide mental health treatment, substance use disorder treatment, and acute detoxification for drugs and alcohol.

A recent article describes diversion in San Antonio:

The plan was simple: instead of arresting the mentally ill for crimes, treat them for their illness.

Keep them out of the jails and emergency rooms and instead provide them with a one-stop shop where they can be treated with psychiatric care, counseling and rehabilitation. The plan in this Texas city was to help them heal.

This happened in 2008 when the Roberto L. Jimenez M.D. Restoration Center opened. Since that time, close to 50,000 people have been treated, saving the law enforcement more than 100,000 manpower hours that can now be spent on the streets, and saving taxpayers more than \$50 million.

The center opened because of humane issues and not necessarily any financial ones that were plaguing the jails and hospitals. It came after Leon Evans was hired as president and CEO of the Center for Health Care Services in San Antonio. Previously he served as the director of community services for the Texas Department of Mental Health and Mental Retardation, and had become "aware of so many of these people becoming criminalized.

"There was a disconnect between the mentally ill and the community."

And it is a connection leaders in Montgomery are working toward building in the Capital City.

"I can prove treatment works," said Evans, the mastermind behind the center. "I do it through the criminal justice system. We focus our dollars on intervention points, catching these people before they end up in prisons and emergency rooms. We decided a person shouldn't be criminalized if they have a mental illness."

The Restoration Center, housed in a former job corps building, is an integrated clinic where people can receive psychiatric care, substance abuse services, general health care and transitional housing. There is a Sobering Unit, an Extended Observation Unit and a Detox Room. And there are programs including the "Mommies Program," which treats pregnant women addicted to heroin, and more programs including a Crisis Care Center, an Injured Prisoners and Minor Medical Clinic, an Opioid Addiction Treatment Services and Outpatient Transitional Services.

It costs \$100 million to operate annually.

"Leon is an icon in mental health," said Jimenez, a psychiatrist and mental health care advocate. "He proposed this idea ... where we had everything under one roof. It is truly a remarkable story.

"We're the third largest county in the state of Texas, and the poorest county in the state of Texas. And yet, we're able to do something that New York, Dallas, Chicago ... it didn't even dawn on them to do. It depended on relationships with city leaders, private businesses, military leaders, schools."

The relationships were built with law enforcement, first responders and emergency rooms.

A case based on numbers

When Evans worked for the state, he became "painfully aware of the people going through the criminal justice system with severe mental illness, and that they were really there because they were untreated."

Studies have shown, he said, that behavioral mental health is on the top of lists when looking at which diseases costs society the most in early death: bipolar, schizophrenia, major depression, post-traumatic stress, personality disorders, alcoholism and drug use.

People in the U.S. with severe mental illnesses, he added, die at least 25 years sooner than the general population as they go untreated and undiagnosed.

"These people are dying early, but not from their mental illness," Evans said. "Most go undiagnosed, and they start self-medicating with alcohol and drugs. Their illness is so debilitating so they don't work, don't have insurance, don't receive care, don't eat properly. All of these things compound their early death. So you're dying of congestive heart failure, liver disease, diabetes ..."

The problem, Evans said, is that the country used to think that 16 percent of people going to jail had mental illnesses, but "that's because we never tested them. It's more like 40 percent or maybe even higher. Most people are arrested for alcohol or drug-related offenses, and most of them have a mental health issue." (*Restoration Center: San Antonio's answer to mental health*, Kym Klass , Montgomery Advertiser, January 27, 2017, <http://www.montgomeryadvertiser.com/story/news/2017/01/27/restoration-center-san-antoniios-answer-mental-health/96457170/>.)

3. Mental Health UCCs in California

A UCC provides intensive crisis services to individuals who otherwise would be brought to emergency rooms. These facilities provide up to 23 hours of immediate care and focus on recovery and linkage to ongoing community services and supports that are designed to impact unnecessary and lengthy involuntary inpatient treatment. (<http://dmh.lacounty.gov>) Local law enforcement is currently utilizing UCCs in Los Angeles:

County mental health officials and police are increasingly looking to urgent care centers such as the facility in Boyle Heights as an alternative to jail beds or overcrowded psychiatric emergency rooms for people in the throes of a mental health crisis. There are now five such centers around the county, the newest of which opened last month, and the county plans to open four more over the next couple of years.

They provide short-term care for walk-in patients such as Rhaburn's son and for people transferred from emergency rooms or brought in by police after being deemed a danger to themselves or others. The centers handled more than 27,000 visits last fiscal year.

At the opening ceremony last month for the newest urgent care facility, county Supervisor Mark Ridley-Thomas said the centers can help prevent crises from escalating and “avoid needless violence in our communities.”

“Not only is it more humane, it is more cost effective, makes us better stewards of public resources, to build more urgent care centers than to build more jails,” he said.

It costs the county about \$28 million a year to operate five centers, with much of that coming from state mental health funding and Medi-Cal. The cost per patient ranges from \$200 to \$900, depending on the level of care required.

Support for the facilities wasn't always there. When the first county-contracted crisis center opened in 2006, it had to be placed inside a Culver City hospital because there were so many problems finding a neighborhood willing to take a stand-alone center, said Luana Murphy, head of Exodus Recovery, the contractor that runs three of the centers.

That first center shut down in 2014 after the hospital underwent changes but reopened last month at a new location on West Washington Boulevard. Four more have been established in Long Beach, Sylmar, Willowbrook and Boyle Heights.

Until recently, Los Angeles police were reluctant to take patients directly to the urgent care centers because, unlike hospital emergency rooms, the centers don't take people with serious medical issues or who are extremely drunk or aggressive.

But after meeting with Exodus staff over the summer to clarify the guidelines, police have begun taking more patients to the centers rather than emergency rooms. In December 2014, law enforcement officers took 209 patients to L.A. County-USC Medical Center and 107 to the Exodus center across the street. In August, officers took 196 patients to the hospital and 268 to the urgent care center. LAPD officers who had been frustrated at the time they spent waiting to hand off patients to medical staff at the overcrowded county emergency rooms said the turnaround time is much quicker at the urgent care centers.

“The times I've been there, it's been 15 minutes as opposed to two hours at the ER,” said Lt. Brian Bixler of the Los Angeles Police Department's specialized mental health team.

The turn to urgent care centers has also helped to alleviate overcrowding at the county hospitals' psychiatric emergency departments and in the regular emergency rooms. The average morning patient count for the three county psychiatric emergency rooms was about 40 in November, down from 60 a year earlier.

Mark Ghaly, director of community programs for the county's Department of Health Services, which runs the hospitals, said a “significant amount” of the reduction in crowding can be attributed to the increased use of urgent care centers.

But the centers are limited in what they can provide. Unlike hospitals, which can hold patients found to be in a severe crisis for three days before releasing them or seeking a longer court-ordered stay, the centers can keep people for only 23 hours.

By that time, the vast majority of the patients have stabilized enough to be sent home or to a sober living facility or homeless shelter, Murphy said. (*County turns to urgent care centers, rather than jails or ERs, to treat the mentally ill in crisis*, Abby Sewall, the Los Angeles Times, January 19, 2016, <http://www.latimes.com/local/california/la-me-crisis-center-20160119-story.html>)

4. Effect of this Legislation

Under existing law, law enforcement personnel may lack the legal authority to transport a person suffering from mental illnesses to a UCC in lieu of arrest, absent the person's consent. According to the sponsor, law enforcement personnel are often reluctant to seek written consent from persons who suffer from mental illnesses, and indeed may lack expertise in knowing when such a person is capable of consent. This legislation makes it clear that law enforcement is permitted to transport a person suffering from a mental illness to a therapeutic healthcare facility, including a UCC, emergency room, or other location providing acute substance use disorder detoxification for persons who suffer from co-occurring mental health disorders. This legislation would allow such transportation either before or after the booking process, without requiring officers to seek the consent of the individual, thereby providing a less restrictive alternative than a full custodial arrest.

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