Texas Law Fosters Development of Mental Health Courts

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On October 19, 2005, Speaker Tom Craddick released interim charges for Texas House Committees. Part of charge number three directed the Corrections Committee to “[e]xamine the probation system and reforms debated during the 79th Legislature, including using strategies such as graduated sanctions and specialized courts for reducing revocations and recidivism.”¹ Mental health courts may reduce recidivism and redirect those suffering from mental illness to treatment rather than incarceration.

There is no universally accepted definition or model for mental health courts. They are derived from the model of drug courts, which focus on addressing defendants’ addiction to reduce recidivism.² In 2003, Texas enacted House Bill 2609 (“H.B. 2609”), which granted authority to county commissioners to establish such courts for persons arrested or charged with misdemeanor offenses.³ H.B. 2609 amended the Texas Health & Safety Code to add § 616.001, which provides that a mental health court program contain certain essential characteristics, including the use of a non-adversarial approach to promote both public safety yet protect due process rights of participants.

In 2005, the Texas Legislature enacted House Bill 2518 (“H.B. 2518”)⁴ and extended the authority of mental health courts to handle felony cases in addition to providing protections for participants in mental health court programs. Mental health courts established under Section 616.002 of the Texas Health & Safety Code must (1) ensure a person is provided legal counsel before volunteering to participate in the mental health court program; (2) allow eligible individuals to choose whether to proceed through the mental health court program or the regular criminal justice system; (3) allow withdrawal from participation at any time before trial on the merits; (4) provide an individualized treatment plan for participants; and (5) ensure that the jurisdiction of the mental health court extends at least six months but not beyond the probationary period for the offense charged.⁵

⁵ Id. amending TEX. HEALTH & SAFETY CODE § 616.003.
In 2003, mental health courts were established in Tarrant County\(^6\) and Travis County.\(^7\) Dallas County established a mental health court in 2004,\(^8\) and Harris County established a new mental health court docket effective March 1, 2006.\(^9\)

It is difficult to track the exact number of “mental health courts” that have been established nationally. The National Alliance for the Mentally Ill (“NAMI”) is conducting an ongoing survey of mental health courts. For purposes of the survey, mental health courts are defined as adult criminal courts that devote a separate docket to persons with mental illness, divert defendants from jail into treatment programs, monitor treatment compliance, and when appropriate have the capacity to impose criminal sanctions for failure to comply.\(^10\) As of December 2005, NAMI listed 113 mental health courts. However, NAMI acknowledges that the survey currently “does not reflect a complete inventory of all mental health courts in the country.”\(^11\) In a 2005 year-end report, the Health Policy Tracking Service listed only 14 states with mental health court laws, but identified 34 states with at least one mental health court.\(^12\) Many of the mental health courts may be operating without specific enabling legislation or state funding. Local rather than statewide efforts “continue to be the primary catalysts in developing mental health courts throughout the country.”\(^13\) However, states are increasingly supporting these efforts through enabling legislation and in some cases by funding.\(^14\)

Some have argued that “implementation of mental health courts should proceed with caution”\(^15\) and should address problems drug courts have experienced, including ways to address non-compliance by defendants and the lack of community resources to assist mentally ill participants.\(^16\) Mental health advocates are concerned that mental health courts may diminish the rights of the mentally ill.\(^17\) Opponents also argue that mental health courts may reward offenders by providing them “access to treatment that is unavailable to the law-abiding mentally ill.”\(^18\)

Finally, empirical evidence supporting the efficacy of mental health courts is promising, but few outcome studies have been released, and those studies have looked only at the


\(^8\) NAMI, supra note 6, at 53-4.

\(^9\) Telephone conversion Feb. 8, 2006 with District Judge Mark Ellis, 351\(^{st}\) Criminal District Court, Harris County, Texas.

\(^10\) NAMI, supra note 6, at 2-3.

\(^11\) Id. at 3.

\(^12\) Rosenberg, supra note 7, at 12-14.

\(^13\) Id. at 6.

\(^14\) Id.


\(^16\) Sims, supra note 2, at 3.

\(^17\) See generally Faraci supra note 15.

\(^18\) Rosenberg, supra note 7, at 2.
outcomes of individual courts.\textsuperscript{19} Early evidence suggests that mental health courts may reduce recidivism, substance abuse, and psychological distress in mentally ill offenders.\textsuperscript{20} In H.B. 2609, Texas wisely requires mental health courts to monitor and evaluate their program goals and effectiveness.\textsuperscript{21}

May 2006