Criminal Jurisprudence Committee: Interim Charge 4

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Interim charge: Review trial court procedures in capital sentencing, and implementation applicable law in direct appeal and writ proceedings in capital cases, for compliance with constitutional protections and conflict of interest rules.

NAMI Texas is a nonprofit 501(c)3 organization founded by volunteers in 1984. We are part of the nation’s largest grassroots mental health organizations and we exist to help improve the quality of life for individuals with mental illness and their families. Around the state, we have 27 local NAMI affiliate organizations and approximately 2,000 members.

Serious Mental Illness and Capital Punishment

In Texas, approximately 1.1 million adults are living with a serious mental illness (SMI), such as schizophrenia, bipolar disorder, and major depression.¹ Common symptoms associated with SMI include hallucinations, delusions, and disorganized thought and speech—psychosis.² During periods of active psychosis, an individual may not be able to discern reality or, in the event that they commit a crime, the consequences associated with their actions.³

During the 86th Legislature, the House of Representatives passed H.B. 1936, which would exempt individuals living with SMI from capital punishment if the offense was committed while experiencing a mental health crisis. At the time, Representative Rose made clear that individuals with SMI who are exempted from the death penalty would not escape punishment, rather that the punishment would fit these individual’s reduced moral culpability.

In 2006, the American Bar Association took the same positions, stating that, “Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to exercise rational judgment in relation to conduct, or (c) to conform their conduct to the requirements of the law.”⁴

For these reasons, NAMI Texas supports legislation that would exempt from the death penalty individuals experiencing a psychotic episode while committing a capital offense. In

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addition to preserving life, this measure would also prevent the state from incurring costly litigation expense and reduce significant undue distress experienced by the defendant’s family and friends.

In addition to a capital punishment exemption for individuals experiencing a mental health crisis at the time of their offense, NAMI Texas supports investment in community-based programs that provide support to individuals living with SMI prior to criminal justice involvement.

**Community-Based Crisis Services for Individuals with SMI**

**Promote Use of Integrated Crisis Response Teams**—Community-based jail diversion programs have been shown to improve mental health outcomes, reduce criminal justice involvement, and lower costs associated with unnecessary law enforcement, hospital, and crisis service utilization. However, police officers may not have the appropriate resources to de-escalate and divert individuals in crisis. Integrated crisis response teams partner mental health professionals with law enforcement to ensure that individuals in crisis are connected to the appropriate community-based services. To ensure greater access and availability of integrated crisis response teams, Texas should require that a minimum percentage of Jail Diversion Matching Grants established in Texas Government Code Chapter 531 be used for integrated crisis response teams.

**Increase the Availability of Crisis Respite Services**—A community mental health system should match the needs of the individual seeking services to the services provided. In addition to walk-in services and mobile outreach, crisis respite is an essential component of the community-based continuum of care. Crisis respite provides temporary food, shelter, medical, psychiatric, case management, and counseling services to individuals with mental health concerns, and can be used as an alternative to inpatient hospitalization. Texas should invest in the Community Mental Health Crisis Services budget found in HHSC Strategy D.2.3 of the appropriations bill to promote engagement with community-based mental health services.

**Expand Provider Authorization in Requesting Emergency Detention**—Texas law currently allows physicians to submit application for an emergency detention warrant when a person in their care is experiencing a mental health crisis and presents as an imminent risk to themselves or others. Unfortunately, a physician may not always be available at the time when such a warrant is needed. Granting authorization to request an emergency detention warrant to licensed professionals with advanced medical or mental health training and education may improve treatment outcomes for individuals experiencing a mental health crisis. Texas should expand Health and Safety Code Chapter 573 to provide physician’s assistants, nurse

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practitioners, psychologists, and certain master’s-level mental health professional counselors or social workers the ability to submit applications for emergency detention warrants.

**Grant Physicians the Ability to Exercise Emergency Holds**—Individuals experiencing a mental health crisis who present with substantial risk of harm to themselves or others often seek care at hospitals and emergency rooms. A physician assesses the individual and administers treatment or refers them to a facility that can provide the appropriate care. Unfortunately, if the person in crisis requests to leave the facility prior to assessment and treatment, the individual must be allowed to leave. Texas should amend Health and Safety Code Chapter 573 to include a provision that allows a physician to detain an individual in crisis with substantial risk of harm to themselves or others for a period not to exceed 4 hours, from the time the person in crises requested to leave.

**Extend Emergency Detention Warrant Period from 48 to 72 Hours**—In Texas, emergency detention warrants provide physicians 48 hours to assess and initiate treatment to individuals experiencing mental health crises. Unfortunately, 48 hours may not be adequate time for a physician to observe treatment effect. If a physician determines the individual in crisis presents continued risk of harm to others or themselves, they may file to extend the hold with an Order of Protective Custody (OPC). The excessive utilization of OPCs can place additional strain on the mental health system, increase costs incurred by the consumer, and unnecessarily involve the judicial system in healthcare decisions. To allow physicians adequate time to treat and observe individuals living with mental illness, Texas should amend Health and Safety Code Chapter 573 to increase the emergency detention hold period from 48 to 72 hours.

**Conclusion**

Individuals living with SMI experiencing an episode of psychosis may not be able to discern reality or, in the event that they commit a crime, the consequences associated with their actions. Further, individuals living with SMI may not be able to understand the circumstance of the proceedings against them. For these reasons, the death sentence should not be applied to individuals living with SMI who commit a capital offense while experiencing an episode of psychosis.

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