

By: Ortega

H.B. No. 3638

A BILL TO BE ENTITLED

AN ACT

relating to the identification and assessment of defendants suspected of having mental illness or intellectual disability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a) This article applies only to a defendant who is committed to a sheriff's custody after arrest for an offense that was committed in the sheriff's jurisdiction and that is punishable as a Class B misdemeanor or any higher category of offense.

(a-1)(1) [~~(a)(1)~~] Not later than 72 hours after receiving credible information that may establish reasonable cause to believe that a defendant described by Subsection (a) [~~committed to the sheriff's custody~~] has a mental illness or is a person with an intellectual disability [~~mental retardation~~], 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 [~~mental retardation~~], the magistrate,

1 except as provided by Subdivision (2), shall order the local mental  
2 health [~~or mental retardation~~] authority, local intellectual and  
3 developmental disability authority, or another qualified mental  
4 health or intellectual disability [~~mental retardation~~] expert to:

5 (A) collect information regarding whether the  
6 defendant has a mental illness as defined by Section 571.003,  
7 Health and Safety Code, or is a person with an intellectual  
8 disability [~~mental retardation~~] as defined by Section 591.003,  
9 Health and Safety Code, including information obtained from any  
10 previous assessment of the defendant; and

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

13 (2) The magistrate is not required to order the  
14 collection of information under Subdivision (1) if the defendant in  
15 the year preceding the defendant's applicable date of arrest has  
16 been determined to have a mental illness or to be a person with an  
17 intellectual disability [~~mental retardation~~] by the local mental  
18 health or intellectual and developmental disability [~~mental~~  
19 ~~retardation~~] authority or another mental health or intellectual  
20 disability [~~mental retardation~~] expert described by Subdivision  
21 (1). A court that elects to use the results of that previous  
22 determination may proceed under Subsection (d) [~~(e)~~].

23 (3) If the defendant fails or refuses to submit to the  
24 collection of information regarding the defendant as required under  
25 Subdivision (1), the magistrate may order the defendant to submit  
26 to an examination in a mental health facility determined to be  
27 appropriate by the local mental health or intellectual and

1 developmental disability [~~mental retardation~~] authority for a  
2 reasonable period not to exceed 21 days. The magistrate may order a  
3 defendant to a facility operated by the Department of State Health  
4 Services or the Health and Human Services Commission [~~Department of~~  
5 ~~Aging and Disability Services~~] for examination only on request of  
6 the local mental health or intellectual and developmental  
7 disability [~~mental retardation~~] authority and with the consent of  
8 the head of the facility. If a defendant who has been ordered to a  
9 facility operated by the Department of State Health Services or the  
10 Health and Human Services Commission [~~Department of Aging and~~  
11 ~~Disability Services~~] for examination remains in the facility for a  
12 period exceeding 21 days, the head of that facility shall cause the  
13 defendant to be immediately transported to the committing court and  
14 placed in the custody of the sheriff of the county in which the  
15 committing court is located. That county shall reimburse the  
16 facility for the mileage and per diem expenses of the personnel  
17 required to transport the defendant calculated in accordance with  
18 the state travel regulations in effect at the time.

19 (b) A written assessment of the information collected under  
20 Subsection (a-1)(1)(A) [~~(a)(1)(A)~~] shall be provided to the  
21 magistrate not later than the 30th day after the date of any order  
22 issued under Subsection (a-1) [~~(a)~~] in a felony case and not later  
23 than the 10th day after the date of any order issued under that  
24 subsection in a misdemeanor case, and the magistrate shall provide  
25 copies of the written assessment to:

26 (1) the defense counsel;

27 (2) [~~7~~] the prosecuting attorney;

1           (3) [~~and~~] the trial court;

2           (4) the sheriff or other person responsible for the  
3 defendant's medical records while the defendant is confined in  
4 county jail; and

5           (5) as applicable:

6           (A) any personal bond office established under  
7 Article 17.42 for the county in which the defendant is being  
8 confined; or

9           (B) the director of the office or department that  
10 is responsible for supervising the defendant while the defendant is  
11 released on bail and receiving mental health or intellectual  
12 disability services as a condition of bail.

13           (c) A [The] written assessment under this article must  
14 include a description of the procedures used in the collection of  
15 information under Subsection (a-1)(1)(A) [~~(a)(1)(A)~~] and the  
16 applicable expert's observations and findings pertaining to:

17           (1) whether the defendant is a person who has a mental  
18 illness or is a person with an intellectual disability [~~mental~~  
19 ~~retardation~~];

20           (2) whether there is clinical evidence to support a  
21 belief that the defendant may be incompetent to stand trial and  
22 should undergo a complete competency examination under Subchapter  
23 B, Chapter 46B; and

24           (3) recommended treatment.

25           (d) [The] After the trial court receives the applicable  
26 expert's written assessment relating to the defendant under  
27 Subsection (b) or elects to use the results of a previous

1 determination as described by Subsection (a-1)(2) [~~(a)(2)~~], the  
2 trial court may, as applicable:

3 (1) resume criminal proceedings against the  
4 defendant, including any appropriate proceedings related to the  
5 defendant's release on personal bond under Article 17.032;

6 (2) resume or initiate competency proceedings, if  
7 required, as provided by Chapter 46B or other proceedings affecting  
8 the defendant's receipt of appropriate court-ordered mental health  
9 or intellectual disability [~~mental retardation~~] services,  
10 including proceedings related to the defendant's receipt of  
11 outpatient mental health services under Section 574.034, Health and  
12 Safety Code; or

13 (3) consider the written assessment during the  
14 punishment phase after a conviction of the offense for which the  
15 defendant was arrested, as part of a presentence investigation  
16 report, or in connection with the impositions of conditions  
17 following placement on community supervision, including deferred  
18 adjudication community supervision.

19 (e) [~~(d)~~] This article does not prevent the applicable  
20 court from, before, during, or after the collection of information  
21 regarding the defendant as described by this article:

22 (1) releasing a defendant who has a mental illness  
23 [~~mentally ill~~] or is a person with an intellectual disability  
24 [~~mentally retarded defendant~~] from custody on personal or surety  
25 bond; or

26 (2) ordering an examination regarding the defendant's  
27 competency to stand trial.

1           SECTION 2. The change in law made by this Act applies only  
2 to a person who is arrested on or after the effective date of this  
3 Act. A person arrested before the effective date of this Act is  
4 governed by the law in effect on the date the person was arrested,  
5 and the former law is continued in effect for that purpose.

6           SECTION 3. This Act takes effect September 1, 2017.