

By: Rodríguez

S.B. No. 1313

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,

except as provided by Subdivision (2), shall order the local mental health ~~[or mental retardation]~~ authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability ~~[mental retardation]~~ 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 ~~[mental retardation]~~ 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 ~~[mental retardation]~~ by the local mental health or intellectual and developmental disability ~~[mental retardation]~~ authority or another mental health or intellectual disability ~~[mental retardation]~~ expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (d) ~~[(c)]~~.

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be 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) [~~e~~] 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

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

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

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

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

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

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

(2) ordering an examination regarding the defendant's 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.