

BILL ANALYSIS

Senate Research Center

H.B. 601
By: Price et al. (Zaffirini)
Criminal Justice
5/6/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2017 the legislature passed S.B. 1326 by Zaffirini, relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness. During the interim the Office of Court Administration received feedback from court staff and stakeholders indicating that the bill's procedures and statutory language needed some tweaking.

Specifically, S.B. 1326 contained multiple references to the performance of an "assessment" if there is reasonable cause to believe that a defendant has a mental illness or is a person with an intellectual or developmental disability (IDD). The phrases "collect," "collection of information," and "information collected" also were used in the bill. A single uniform term should be used in place of "assessment" or "collection of information" to convey that a full-blown examination and mental illness or IDD diagnosis is not required before the defendant goes before a magistrate. The intent was to require only an interview to identify potential indicators of mental illness or intellectual disability.

Accordingly, HB 601 would clarify that the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert collecting information, as directed by a magistrate, regarding a defendant's potential mental illness or intellectual disability must simply interview the defendant and collect related information. What's more, HB 601 would remove the confusing reference to the preparation of a "written assessment" and replace it with "written report."

Another issue identified by stakeholders is the lack of express authority for the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to promulgate the "written assessment" form that is supposed to be used for the intake of criminal defendants and the lack of legal confidentiality of this form to protect sensitive medical information. HB 601 would provide this authority and keep sensitive information confidential.

H.B. 601 amends current law relating to procedures and reporting requirements regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Judicial Council in SECTION 2 (Article 16.22, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Article 16.22(a), Code of Criminal Procedure, as amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the 85th Legislature, Regular Session, 2017, and amends it to read as follows:

(a)(1) Requires the sheriff or municipal jailer, not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person

with an intellectual disability, to provide written or electronic notice to the magistrate. Requires the notice to include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. Requires 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, except as provided by Subdivision (2), to order the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert to:

(A) interview the defendant if the defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody, and otherwise collect information regarding whether the defendant has a mental illness as defined by Section 571.003 (Definitions), Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003 (Definitions), Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment or service; and

(B) provide to the magistrate a written report, of the interview and other information collected under Paragraph (A), rather than a written assessment of the information collected under Paragraph (A), on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) under Section 614.0032(c), rather than Section 614.0032(b) (relating to requiring TCOOMMI to approve and make generally available in electronic format a certain standard form for use by experts in reporting competency examination results), Health and Safety Code.

(2) Provides that the magistrate is not required to order the interview and collection of other 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 by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual disability expert described by Subdivision (1), rather than the magistrate is not required to order the collecting of information under Subdivision (1) if the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability, the local mental health authority, local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability authority, or another mental health or intellectual disability expert except under Subdivision (1).

(3) Provides that if the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), rather than fails or refuses to submit to the collation of information regarding the defendants required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail, or in another place determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority, for a reasonable period not to exceed 72 hours. Makes a nonsubstantive change.

SECTION 2. Amends Article 16.22, Code of Criminal Procedure, by adding Subsections (a-1) and (f) and amending Subsections (b), (b-1), (c), (d), and (e), as follows:

(a-1) Requires the commissioners court for the county in which the magistrate is located, if a magistrate orders a local mental health authority or local intellectual and developmental disability authority to conduct an interview and collect information under Subsection (a)(1), to reimburse the local mental health authority or local intellectual and developmental disability authority for the cost of performing those duties.

(b), (b-1), (c), and (d) Makes conforming changes to these subsections.

(e) Requires the Texas Judicial Council to adopt rules to require the reporting of the number of written reports provided to a court under Subsection (a)(1)(B), rather than requiring the magistrate to submit to the Office of Court Administration of the Texas Judicial System (OCA) on a monthly basis the number of written assessments provided to the court under Subsection (a)(1)(B). Requires the rules to require submission of the reports to OCA on a monthly basis

(f) Provides that a written report submitted to a magistrate under Subsection (a)(1)(B) is confidential and not subject to disclosure under Chapter 552, Government Code, but may be used or disclosed as provided by this article.

SECTION 3. Reenacts Articles 17.032(b) and (c), Code of Criminal Procedure, as amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the 85th Legislature, Regular Session, 2017, and amends it as follows:

(b) Requires a magistrate, notwithstanding Article 17.03(b), or a bond schedule adopted or a standing order entered by a judge, to release a defendant on personal bond unless good cause is shown otherwise if:

(1) makes no change to this subdivision;

(2) the defendant is examined by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability);

(3) makes a conforming change to this subdivision;

(4)–(5) makes no changes to these subdivisions.

(c) Requires the magistrate, unless good cause is shown for not requiring treatment or services, rather than treatment, to require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment or intellectual disability services as recommended by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert if the defendant's, rather than as recommended by the local mental authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert if the defendant's:

(1) makes no change to this subdivision; or

(2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services, rather than ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 4. Amends Section 8(c), Article 42.09, Code of Criminal Procedure, to require a county that transfers a defendant to the Texas Department of Criminal Justice under this article

to also deliver to the designated officer any presentence or postsentence investigation report, revocation report, psychological or psychiatric evaluation of the defendant, including a written report provided to a court under Article 16.22(a)(1)(B) or an evaluation prepared for the juvenile court before transferring the defendant to criminal court and contained in the criminal prosecutor's file, and available social or psychological background information relating to the defendant and may deliver to the designated officer any additional information upon which the judge or jury bases the punishment decision.

SECTION 5. Amends Section 511.0085(a), Government Code, as follows:

(a) Requires the Texas Commission on Jail Standards (TCJS) to develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under TCJS's jurisdiction. Requires the set of risk factors to include:

(1)–(8) makes no changes to these subdivisions; and

(9) whether the jail is in compliance with TCJS rules, standards developed by TCOOMMI, and the requirements of Article 16.22, Code of Criminal Procedure, regarding screening and assessment protocols for the early identification of and reports concerning persons with mental illness or an intellectual disability, rather than persons with mental illness.

SECTION 6. Amends the heading to Section 614.0032, Health and Safety Code, to read as follows:

Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 7. Amends Section 614.0032, Health and Safety Code, by adding Subsection (c) to require TCOOMMI to approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

SECTION 8. Makes application of this Act prospective. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 9. Provides that, to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. Effective date: September 1, 2019.