By:  Price, et al. (Senate Sponsor - Zaffirini) H.B. No. 601

(In the Senate - Received from the House April 11, 2019; April 15, 2019, read first time and referred to Committee on Criminal Justice; May 16, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 0; May 16, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Buckingham      X

Flores                    X

Hughes                    X

Miles           X

Perry           X

COMMITTEE SUBSTITUTE FOR H.B. No. 601 By:  Whitmire

A BILL TO BE ENTITLED

AN ACT

relating to procedures and reporting requirements regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.

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

SECTION 1.  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, is reenacted and amended to read as follows:

(a)(1)  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, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. The notice must 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. 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, the magistrate, except as provided by Subdivision (2), shall 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 and developmental 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, Health and Safety Code, or is a person with an intellectual disability as defined by Section 591.003, 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 [~~assessment~~] of an interview described by Paragraph (A) and the other information collected under that paragraph [~~Paragraph (A)~~] on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(c) [~~614.0032(b)~~], Health and Safety Code.

(2)  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 and developmental disability expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3)  If the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as 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. If applicable, the county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental disability authority for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

SECTION 2.  Article 16.22, Code of Criminal Procedure, is amended by adding Subsections (a-1), (a-2), (a-3), (a-4), and (f) and amending Subsections (b), (b-1), (c), (d), and (e) to read as follows:

(a-1)  If a magistrate orders a local mental health authority, a local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to conduct an interview or collect information under Subsection (a)(1), the commissioners court for the county in which the magistrate is located shall reimburse the local mental health authority, local intellectual and developmental disability authority, or qualified mental health or intellectual and developmental disability expert for the cost of performing those duties in the amount provided by the fee schedule adopted under Subsection (a-2) or in the amount determined by the judge under Subsection (a-3), as applicable.

(a-2)  The commissioners court for a county may adopt a fee schedule to pay for the costs to conduct an interview and collect information under Subsection (a)(1). In developing the fee schedule, the commissioners court shall consider the generally accepted reasonable cost in that county of performing the duties described by Subsection (a)(1). A fee schedule described by this subsection must be adopted in a public hearing and must be periodically reviewed by the commissioners court.

(a-3)  If the cost of performing the duties described by Subsection (a)(1) exceeds the amount provided by the applicable fee schedule or if the commissioners court for the applicable county has not adopted a fee schedule, the authority or expert who performed the duties may request that the judge who has jurisdiction over the underlying offense determine the reasonable amount for which the authority or expert is entitled to be reimbursed under Subsection (a-1). The amount determined under this subsection may not be less than the amount provided by the fee schedule, if applicable. The judge shall determine the amount not later than the 45th day after the date the request is made. The judge is not required to hold a hearing before making a determination under this subsection.

(a-4)  An interview under Subsection (a)(1) may be conducted in person in the jail, by telephone, or through a telemedicine medical service or telehealth service.

(b)  Except as otherwise permitted by the magistrate for good cause shown, a written report [~~assessment~~] of an interview described by Subsection (a)(1)(A) and the other information collected under that paragraph [~~Subsection (a)(1)(A)~~] shall be provided to the magistrate:

(1)  for a defendant held in custody, not later than 96 hours after the time an order was issued under Subsection (a); or

(2)  for a defendant released from custody, not later than the 30th day after the date an order was issued under Subsection (a).

(b-1)  The magistrate shall provide copies of the written report [~~assessment~~] to the defense counsel, the attorney representing the state, and the trial court.  The written report [~~assessment~~] must include a description of the procedures used in the interview and collection of other information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1)  whether the defendant is a person who has a mental illness or is a person with an intellectual disability;

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

(3)  any appropriate or recommended treatment or service.

(c)  After the trial court receives the applicable expert's written report [~~assessment~~] relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (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 if the defendant is being held in custody;

(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 and developmental disability services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code;

(3)  consider the written report [~~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; or

(4)  refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code.

(d)  This article does not prevent the applicable court from, before, during, or after the interview and collection of other information regarding the defendant as described by this article:

(1)  releasing a defendant who has a mental illness or is a person with an intellectual disability from custody on personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

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

(e)  The Texas Judicial Council shall adopt rules to require the reporting of [~~The magistrate shall submit to the Office of Court Administration of the Texas Judicial System on a monthly basis~~] the number of written reports [~~assessments~~] provided to a [~~the~~] court under Subsection (a)(1)(B). The rules must require submission of the reports to the Office of Court Administration of the Texas Judicial System on a monthly basis.

(f)  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.  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, are reenacted and amended to read as follows:

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

(1)  the defendant is not charged with and has not been previously convicted of a violent offense;

(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 and developmental disability expert under Article 16.22;

(3)  the applicable expert, in a written report [~~assessment~~] submitted to the magistrate under Article 16.22:

(A)  concludes that the defendant has a mental illness or is a person with an intellectual disability and is nonetheless competent to stand trial; and

(B)  recommends mental health treatment or intellectual and developmental disability services for the defendant, as applicable;

(4)  the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual and developmental disability services for the defendant are available in accordance with Section 534.053 or 534.103, Health and Safety Code, or through another mental health or intellectual and developmental disability services provider; and

(5)  the magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

(c)  The magistrate, unless good cause is shown for not requiring treatment or services, shall 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 and developmental 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 and developmental disability expert if the defendant's:

(1)  mental illness or intellectual disability is chronic in nature; or

(2)  ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services [~~is not treated~~].

SECTION 4.  Section 8(c), Article 42.09, Code of Criminal Procedure, is amended to read as follows:

(c)  A county that transfers a defendant to the Texas Department of Criminal Justice under this article shall 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.  Section 511.0085(a), Government Code, is amended to read as follows:

(a)  The commission shall develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under the commission's jurisdiction. The set of risk factors must include:

(1)  a history of the jail's compliance with state law and commission rules, standards, and procedures;

(2)  the population of the jail;

(3)  the number and nature of complaints regarding the jail, including complaints regarding a violation of any required ratio of correctional officers to inmates;

(4)  problems with the jail's internal grievance procedures;

(5)  available mental and medical health reports relating to inmates in the jail, including reports relating to infectious disease or pregnant inmates;

(6)  recent turnover among sheriffs and jail staff;

(7)  inmate escapes from the jail;

(8)  the number and nature of inmate deaths at the jail, including the results of the investigations of those deaths; and

(9)  whether the jail is in compliance with commission rules, standards developed by the Texas Correctional Office on Offenders with Medical or Mental Impairments, 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.

SECTION 6.  The heading to Section 614.0032, Health and Safety Code, is amended to read as follows:

Sec. 614.0032.  SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [~~COMPETENCY OR FITNESS TO PROCEED~~].

SECTION 7.  Section 614.0032, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c)  The office shall 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.  The changes in law made by this Act apply only to a defendant charged with an offense committed on or after the effective date of this Act. A defendant charged with an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. 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.  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.  This Act takes effect September 1, 2019.

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