

1-1 By: Price, et al. (Senate Sponsor - Zaffirini) H.B. No. 601
1-2 (In the Senate - Received from the House April 11, 2019;
1-3 April 15, 2019, read first time and referred to Committee on
1-4 Criminal Justice; May 16, 2019, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 16, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13			X	
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 601 By: Whitmire

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to procedures and reporting requirements regarding
1-20 criminal defendants who are or may be persons with a mental illness
1-21 or an intellectual disability.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Article 16.22(a), Code of Criminal Procedure, as
1-24 amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the
1-25 85th Legislature, Regular Session, 2017, is reenacted and amended
1-26 to read as follows:

1-27 (a)(1) Not later than 12 hours after the sheriff or
1-28 municipal jailer having custody of a defendant for an offense
1-29 punishable as a Class B misdemeanor or any higher category of
1-30 offense receives credible information that may establish
1-31 reasonable cause to believe that the defendant has a mental illness
1-32 or is a person with an intellectual disability, the sheriff or
1-33 municipal jailer shall provide written or electronic notice to the
1-34 magistrate. The notice must include any information related to the
1-35 sheriff's or municipal jailer's determination, such as information
1-36 regarding the defendant's behavior immediately before, during, and
1-37 after the defendant's arrest and, if applicable, the results of any
1-38 previous assessment of the defendant. On a determination that
1-39 there is reasonable cause to believe that the defendant has a mental
1-40 illness or is a person with an intellectual disability, the
1-41 magistrate, except as provided by Subdivision (2), shall order the
1-42 service provider that contracts with the jail to provide mental
1-43 health or intellectual and developmental disability services, the
1-44 local mental health authority, the local intellectual and
1-45 developmental disability authority, or another qualified mental
1-46 health or intellectual and developmental disability expert to:

1-47 (A) interview the defendant if the defendant has
1-48 not previously been interviewed by a qualified mental health or
1-49 intellectual and developmental disability expert on or after the
1-50 date the defendant was arrested for the offense for which the
1-51 defendant is in custody and otherwise collect information regarding
1-52 whether the defendant has a mental illness as defined by Section
1-53 571.003, Health and Safety Code, or is a person with an intellectual
1-54 disability as defined by Section 591.003, Health and Safety Code,
1-55 including, if applicable, information obtained from any previous
1-56 assessment of the defendant and information regarding any
1-57 previously recommended treatment or service; and

1-58 (B) provide to the magistrate a written report
1-59 [assessment] of an interview described by Paragraph (A) and the
1-60 other information collected under that paragraph [Paragraph (A)] on

2-1 the form approved by the Texas Correctional Office on Offenders
 2-2 with Medical or Mental Impairments under Section 614.0032(c)
 2-3 [614.0032(b)], Health and Safety Code.

2-4 (2) The magistrate is not required to order the
 2-5 interview and collection of other information under Subdivision (1)
 2-6 if the defendant in the year preceding the defendant's applicable
 2-7 date of arrest has been determined to have a mental illness or to be
 2-8 a person with an intellectual disability by the service provider
 2-9 that contracts with the jail to provide mental health or
 2-10 intellectual and developmental disability services, the local
 2-11 mental health authority, the local intellectual and developmental
 2-12 disability authority, or another mental health or intellectual and
 2-13 developmental disability expert described by Subdivision (1). A
 2-14 court that elects to use the results of that previous determination
 2-15 may proceed under Subsection (c).

2-16 (3) If the defendant fails or refuses to submit to the
 2-17 interview and collection of other information regarding the
 2-18 defendant as required under Subdivision (1), the magistrate may
 2-19 order the defendant to submit to an examination in a jail, or in
 2-20 another place determined to be appropriate by the local mental
 2-21 health authority or local intellectual and developmental
 2-22 disability authority, for a reasonable period not to exceed 72
 2-23 hours. If applicable, the county in which the committing court is
 2-24 located shall reimburse the local mental health authority or local
 2-25 intellectual and developmental disability authority for the
 2-26 mileage and per diem expenses of the personnel required to
 2-27 transport the defendant, calculated in accordance with the state
 2-28 travel regulations in effect at the time.

2-29 SECTION 2. Article 16.22, Code of Criminal Procedure, is
 2-30 amended by adding Subsections (a-1), (a-2), (a-3), (a-4), and (f)
 2-31 and amending Subsections (b), (b-1), (c), (d), and (e) to read as
 2-32 follows:

2-33 (a-1) If a magistrate orders a local mental health
 2-34 authority, a local intellectual and developmental disability
 2-35 authority, or another qualified mental health or intellectual and
 2-36 developmental disability expert to conduct an interview or collect
 2-37 information under Subsection (a)(1), the commissioners court for
 2-38 the county in which the magistrate is located shall reimburse the
 2-39 local mental health authority, local intellectual and
 2-40 developmental disability authority, or qualified mental health or
 2-41 intellectual and developmental disability expert for the cost of
 2-42 performing those duties in the amount provided by the fee schedule
 2-43 adopted under Subsection (a-2) or in the amount determined by the
 2-44 judge under Subsection (a-3), as applicable.

2-45 (a-2) The commissioners court for a county may adopt a fee
 2-46 schedule to pay for the costs to conduct an interview and collect
 2-47 information under Subsection (a)(1). In developing the fee
 2-48 schedule, the commissioners court shall consider the generally
 2-49 accepted reasonable cost in that county of performing the duties
 2-50 described by Subsection (a)(1). A fee schedule described by this
 2-51 subsection must be adopted in a public hearing and must be
 2-52 periodically reviewed by the commissioners court.

2-53 (a-3) If the cost of performing the duties described by
 2-54 Subsection (a)(1) exceeds the amount provided by the applicable fee
 2-55 schedule or if the commissioners court for the applicable county
 2-56 has not adopted a fee schedule, the authority or expert who
 2-57 performed the duties may request that the judge who has
 2-58 jurisdiction over the underlying offense determine the reasonable
 2-59 amount for which the authority or expert is entitled to be
 2-60 reimbursed under Subsection (a-1). The amount determined under
 2-61 this subsection may not be less than the amount provided by the fee
 2-62 schedule, if applicable. The judge shall determine the amount not
 2-63 later than the 45th day after the date the request is made. The
 2-64 judge is not required to hold a hearing before making a
 2-65 determination under this subsection.

2-66 (a-4) An interview under Subsection (a)(1) may be conducted
 2-67 in person in the jail, by telephone, or through a telemedicine
 2-68 medical service or telehealth service.

2-69 (b) Except as otherwise permitted by the magistrate for good

3-1 cause shown, a written report [~~assessment~~] of an interview
 3-2 described by Subsection (a)(1)(A) and the other information
 3-3 collected under that paragraph [~~Subsection (a)(1)(A)~~] shall be
 3-4 provided to the magistrate:

3-5 (1) for a defendant held in custody, not later than 96
 3-6 hours after the time an order was issued under Subsection (a); or

3-7 (2) for a defendant released from custody, not later
 3-8 than the 30th day after the date an order was issued under
 3-9 Subsection (a).

3-10 (b-1) The magistrate shall provide copies of the written
 3-11 report [~~assessment~~] to the defense counsel, the attorney
 3-12 representing the state, and the trial court. The written report
 3-13 [~~assessment~~] must include a description of the procedures used in
 3-14 the interview and collection of other information under Subsection
 3-15 (a)(1)(A) and the applicable expert's observations and findings
 3-16 pertaining to:

3-17 (1) whether the defendant is a person who has a mental
 3-18 illness or is a person with an intellectual disability;

3-19 (2) whether there is clinical evidence to support a
 3-20 belief that the defendant may be incompetent to stand trial and
 3-21 should undergo a complete competency examination under Subchapter
 3-22 B, Chapter 46B; and

3-23 (3) any appropriate or recommended treatment or
 3-24 service.

3-25 (c) After the trial court receives the applicable expert's
 3-26 written report [~~assessment~~] relating to the defendant under
 3-27 Subsection (b-1) or elects to use the results of a previous
 3-28 determination as described by Subsection (a)(2), the trial court
 3-29 may, as applicable:

3-30 (1) resume criminal proceedings against the
 3-31 defendant, including any appropriate proceedings related to the
 3-32 defendant's release on personal bond under Article 17.032 if the
 3-33 defendant is being held in custody;

3-34 (2) resume or initiate competency proceedings, if
 3-35 required, as provided by Chapter 46B or other proceedings affecting
 3-36 the defendant's receipt of appropriate court-ordered mental health
 3-37 or intellectual and developmental disability services, including
 3-38 proceedings related to the defendant's receipt of outpatient mental
 3-39 health services under Section 574.034, Health and Safety Code;

3-40 (3) consider the written report [~~assessment~~] during
 3-41 the punishment phase after a conviction of the offense for which the
 3-42 defendant was arrested, as part of a presentence investigation
 3-43 report, or in connection with the impositions of conditions
 3-44 following placement on community supervision, including deferred
 3-45 adjudication community supervision; or

3-46 (4) refer the defendant to an appropriate specialty
 3-47 court established or operated under Subtitle K, Title 2, Government
 3-48 Code.

3-49 (d) This article does not prevent the applicable court from,
 3-50 before, during, or after the interview and collection of other
 3-51 information regarding the defendant as described by this article:

3-52 (1) releasing a defendant who has a mental illness or
 3-53 is a person with an intellectual disability from custody on
 3-54 personal or surety bond, including imposing as a condition of
 3-55 release that the defendant submit to an examination or other
 3-56 assessment; or

3-57 (2) ordering an examination regarding the defendant's
 3-58 competency to stand trial.

3-59 (e) The Texas Judicial Council shall adopt rules to require
 3-60 the reporting of [~~The magistrate shall submit to the Office of~~
 3-61 ~~Court Administration of the Texas Judicial System on a monthly~~
 3-62 ~~basis~~] the number of written reports [~~assessments~~] provided to a
 3-63 [~~the~~] court under Subsection (a)(1)(B). The rules must require
 3-64 submission of the reports to the Office of Court Administration of
 3-65 the Texas Judicial System on a monthly basis.

3-66 (f) A written report submitted to a magistrate under
 3-67 Subsection (a)(1)(B) is confidential and not subject to disclosure
 3-68 under Chapter 552, Government Code, but may be used or disclosed as
 3-69 provided by this article.

4-1 SECTION 3. Articles 17.032(b) and (c), Code of Criminal
 4-2 Procedure, as amended by Chapters 748 (S.B. 1326) and 950 (S.B.
 4-3 1849), Acts of the 85th Legislature, Regular Session, 2017, are
 4-4 reenacted and amended to read as follows:

4-5 (b) Notwithstanding Article 17.03(b), or a bond schedule
 4-6 adopted or a standing order entered by a judge, a magistrate shall
 4-7 release a defendant on personal bond unless good cause is shown
 4-8 otherwise if:

4-9 (1) the defendant is not charged with and has not been
 4-10 previously convicted of a violent offense;

4-11 (2) the defendant is examined by the service provider
 4-12 that contracts with the jail to provide mental health or
 4-13 intellectual and developmental disability services, the local
 4-14 mental health authority, the local intellectual and developmental
 4-15 disability authority, or another qualified mental health or
 4-16 intellectual and developmental disability expert under Article
 4-17 16.22;

4-18 (3) the applicable expert, in a written report
 4-19 [~~assessment~~] submitted to the magistrate under Article 16.22:

4-20 (A) concludes that the defendant has a mental
 4-21 illness or is a person with an intellectual disability and is
 4-22 nonetheless competent to stand trial; and

4-23 (B) recommends mental health treatment or
 4-24 intellectual and developmental disability services for the
 4-25 defendant, as applicable;

4-26 (4) the magistrate determines, in consultation with
 4-27 the local mental health authority or local intellectual and
 4-28 developmental disability authority, that appropriate
 4-29 community-based mental health or intellectual and developmental
 4-30 disability services for the defendant are available in accordance
 4-31 with Section 534.053 or 534.103, Health and Safety Code, or through
 4-32 another mental health or intellectual and developmental disability
 4-33 services provider; and

4-34 (5) the magistrate finds, after considering all the
 4-35 circumstances, a pretrial risk assessment, if applicable, and any
 4-36 other credible information provided by the attorney representing
 4-37 the state or the defendant, that release on personal bond would
 4-38 reasonably ensure the defendant's appearance in court as required
 4-39 and the safety of the community and the victim of the alleged
 4-40 offense.

4-41 (c) The magistrate, unless good cause is shown for not
 4-42 requiring treatment or services, shall require as a condition of
 4-43 release on personal bond under this article that the defendant
 4-44 submit to outpatient or inpatient mental health treatment or
 4-45 intellectual and developmental disability services as recommended
 4-46 by the service provider that contracts with the jail to provide
 4-47 mental health or intellectual and developmental disability
 4-48 services, the local mental health authority, the local intellectual
 4-49 and developmental disability authority, or another qualified
 4-50 mental health or intellectual and developmental disability expert
 4-51 if the defendant's:

4-52 (1) mental illness or intellectual disability is
 4-53 chronic in nature; or

4-54 (2) ability to function independently will continue to
 4-55 deteriorate if the defendant does not receive the recommended
 4-56 treatment or services [~~is not treated~~].

4-57 SECTION 4. Section 8(c), Article 42.09, Code of Criminal
 4-58 Procedure, is amended to read as follows:

4-59 (c) A county that transfers a defendant to the Texas
 4-60 Department of Criminal Justice under this article shall also
 4-61 deliver to the designated officer any presentence or postsentence
 4-62 investigation report, revocation report, psychological or
 4-63 psychiatric evaluation of the defendant, including a written report
 4-64 provided to a court under Article 16.22(a)(1)(B) or an evaluation
 4-65 prepared for the juvenile court before transferring the defendant
 4-66 to criminal court and contained in the criminal prosecutor's file,
 4-67 and available social or psychological background information
 4-68 relating to the defendant and may deliver to the designated officer
 4-69 any additional information upon which the judge or jury bases the

5-1 punishment decision.

5-2 SECTION 5. Section 511.0085(a), Government Code, is amended
5-3 to read as follows:

5-4 (a) The commission shall develop a comprehensive set of risk
5-5 factors to use in assessing the overall risk level of each jail
5-6 under the commission's jurisdiction. The set of risk factors must
5-7 include:

5-8 (1) a history of the jail's compliance with state law
5-9 and commission rules, standards, and procedures;

5-10 (2) the population of the jail;

5-11 (3) the number and nature of complaints regarding the
5-12 jail, including complaints regarding a violation of any required
5-13 ratio of correctional officers to inmates;

5-14 (4) problems with the jail's internal grievance
5-15 procedures;

5-16 (5) available mental and medical health reports
5-17 relating to inmates in the jail, including reports relating to
5-18 infectious disease or pregnant inmates;

5-19 (6) recent turnover among sheriffs and jail staff;

5-20 (7) inmate escapes from the jail;

5-21 (8) the number and nature of inmate deaths at the jail,
5-22 including the results of the investigations of those deaths; and

5-23 (9) whether the jail is in compliance with commission
5-24 rules, standards developed by the Texas Correctional Office on
5-25 Offenders with Medical or Mental Impairments, and the requirements
5-26 of Article 16.22, Code of Criminal Procedure, regarding screening
5-27 and assessment protocols for the early identification of and
5-28 reports concerning persons with mental illness or an intellectual
5-29 disability.

5-30 SECTION 6. The heading to Section 614.0032, Health and
5-31 Safety Code, is amended to read as follows:

5-32 Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY
5-33 RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS
5-34 OR INTELLECTUAL DISABILITY [~~COMPETENCY OR FITNESS TO PROCEED~~].

5-35 SECTION 7. Section 614.0032, Health and Safety Code, is
5-36 amended by adding Subsection (c) to read as follows:

5-37 (c) The office shall approve and make generally available in
5-38 electronic format a standard form for use by a person providing a
5-39 written report under Article 16.22(a)(1)(B), Code of Criminal
5-40 Procedure.

5-41 SECTION 8. The changes in law made by this Act apply only to
5-42 a defendant charged with an offense committed on or after the
5-43 effective date of this Act. A defendant charged with an offense
5-44 committed before the effective date of this Act is governed by the
5-45 law in effect on the date the offense was committed, and the former
5-46 law is continued in effect for that purpose. For purposes of this
5-47 section, an offense was committed before the effective date of this
5-48 Act if any element of the offense occurred before that date.

5-49 SECTION 9. To the extent of any conflict, this Act prevails
5-50 over another Act of the 86th Legislature, Regular Session, 2019,
5-51 relating to nonsubstantive additions to and corrections in enacted
5-52 codes.

5-53 SECTION 10. This Act takes effect September 1, 2019.

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