

By: Zaffirini

S.B. No. 432

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures for identifying or releasing on personal
3 bond criminal defendants suspected of having a mental illness or
4 intellectual disability.

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

6 SECTION 1. Article 16.22(a), Code of Criminal Procedure, as
7 amended by Chapters 748 (S.B. 1326) and 950 (S.B. 1849), Acts of the
8 85th Legislature, Regular Session, 2017, is reenacted and amended
9 to read as follows:

10 (a)(1) Not later than 12 hours after the sheriff or
11 municipal jailer having custody of a defendant for an offense
12 punishable as a Class B misdemeanor or any higher category of
13 offense receives credible information that may establish
14 reasonable cause to believe that the defendant has a mental illness
15 or is a person with an intellectual disability, the sheriff or
16 municipal jailer shall provide written or electronic notice to the
17 magistrate. The notice must include any information related to the
18 sheriff's or municipal jailer's determination, such as information
19 regarding the defendant's behavior immediately before, during, and
20 after the defendant's arrest and, if applicable, the results of any
21 previous assessment of the defendant. On a determination that
22 there is reasonable cause to believe that the defendant has a mental
23 illness or is a person with an intellectual disability, the
24 magistrate, except as provided by Subdivision (2), shall order the

1 local mental health authority, local intellectual and
2 developmental disability authority, or another qualified mental
3 health or intellectual disability expert to:

4 (A) interview the defendant and otherwise
5 collect information regarding whether the defendant has a mental
6 illness as defined by Section 571.003, Health and Safety Code, or is
7 a person with an intellectual disability as defined by Section
8 591.003, Health and Safety Code, including, if applicable,
9 information obtained from any previous assessment of the defendant
10 and information regarding any previously recommended treatment or
11 service; and

12 (B) provide to the magistrate a written report
13 [~~assessment~~] of the interview and other information collected under
14 Paragraph (A) on the form approved by the Texas Correctional Office
15 on Offenders with Medical or Mental Impairments under Section
16 614.0032(c) [~~614.0032(b)~~], Health and Safety Code.

17 (2) The magistrate is not required to order the
18 interview and collection of other information under Subdivision (1)
19 if the defendant in the year preceding the defendant's applicable
20 date of arrest has been determined to have a mental illness or to be
21 a person with an intellectual disability by the local mental health
22 authority, local intellectual and developmental disability
23 authority, or another mental health or intellectual disability
24 expert described by Subdivision (1). A court that elects to use the
25 results of that previous determination may proceed under Subsection
26 (c).

27 (3) If the defendant fails or refuses to submit to the

1 interview and collection of other information regarding the
2 defendant as required under Subdivision (1), the magistrate may
3 order the defendant to submit to an examination in a jail or in
4 another place determined to be appropriate by the local mental
5 health authority or local intellectual and developmental
6 disability authority for a reasonable period not to exceed 72
7 hours. If applicable, the county in which the committing court is
8 located shall reimburse the local mental health authority or local
9 intellectual and developmental disability authority for the
10 mileage and per diem expenses of the personnel required to
11 transport the defendant, calculated in accordance with the state
12 travel regulations in effect at the time.

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

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

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

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

25 (b-1) The magistrate shall provide copies of the written
26 report [~~assessment~~] to the defense counsel, the attorney
27 representing the state, and the trial court. The written report

1 ~~[assessment]~~ must include a description of the procedures used in
2 the interview and collection of other information under Subsection
3 (a)(1)(A) and the applicable expert's observations and findings
4 pertaining to:

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

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

11 (3) any appropriate or recommended treatment or
12 service.

13 (c) After the trial court receives the applicable expert's
14 written report ~~[assessment]~~ relating to the defendant under
15 Subsection (b-1) or elects to use the results of a previous
16 determination as described by Subsection (a)(2), the trial court
17 may, as applicable:

18 (1) resume criminal proceedings against the
19 defendant, including any appropriate proceedings related to the
20 defendant's release on personal bond under Article 17.032 if the
21 defendant is being held in custody;

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

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

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

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

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

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

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

27 (f) A written report submitted to a magistrate under

1 Subsection (a)(1)(B) is confidential and not subject to disclosure
2 under Chapter 552, Government Code, but may be used or disclosed as
3 provided by this article.

4 SECTION 3. Articles 17.032(b) and (c), Code of Criminal
5 Procedure, as amended by Chapters 748 (S.B. 1326) and 950 (S.B.
6 1849), Acts of the 85th Legislature, Regular Session, 2017, are
7 reenacted and amended to read as follows:

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

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

14 (2) the defendant is examined by the local mental
15 health authority, local intellectual and developmental disability
16 authority, or another qualified mental health or intellectual
17 disability expert under Article 16.22;

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

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

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

25 (4) the magistrate determines, in consultation with
26 the local mental health authority or local intellectual and
27 developmental disability authority, that appropriate

1 community-based mental health or intellectual disability services
2 for the defendant are available in accordance with Section 534.053
3 or 534.103, Health and Safety Code, or through another mental
4 health or intellectual disability services provider; and

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

12 (c) The magistrate, unless good cause is shown for not
13 requiring treatment or services, shall require as a condition of
14 release on personal bond under this article that the defendant
15 submit to outpatient or inpatient mental health treatment or
16 intellectual disability services as recommended by the local mental
17 health authority, local intellectual and developmental disability
18 authority, or another qualified mental health or intellectual
19 disability expert if the defendant's:

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

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

25 SECTION 4. Section 511.0085(a), Government Code, is amended
26 to read as follows:

27 (a) The commission shall develop a comprehensive set of risk

1 factors to use in assessing the overall risk level of each jail
2 under the commission's jurisdiction. The set of risk factors must
3 include:

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

6 (2) the population of the jail;

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

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

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

15 (6) recent turnover among sheriffs and jail staff;

16 (7) inmate escapes from the jail;

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

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

26 SECTION 5. The heading to Section 614.0032, Health and
27 Safety Code, is amended to read as follows:

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

4 SECTION 6. Section 614.0032, Health and Safety Code, is
5 amended by adding Subsection (c) to read as follows:

6 (c) The office shall approve and make generally available in
7 electronic format a standard form for use by a person providing a
8 written report under Article 16.22(a)(1)(B), Code of Criminal
9 Procedure.

10 SECTION 7. The changes in law made by this Act apply only to
11 a defendant charged with an offense committed on or after the
12 effective date of this Act. A defendant charged with an offense
13 committed before the effective date of this Act is governed by the
14 law in effect on the date the offense was committed, and the former
15 law is continued in effect for that purpose. For purposes of this
16 section, an offense was committed before the effective date of this
17 Act if any element of the offense occurred before that date.

18 SECTION 8. To the extent of any conflict, this Act prevails
19 over another Act of the 86th Legislature, Regular Session, 2019,
20 relating to nonsubstantive additions to and corrections in enacted
21 codes.

22 SECTION 9. This Act takes effect September 1, 2019.