

By: Morales Shaw

H.B. No. 5238

A BILL TO BE ENTITLED

1 AN ACT
2 relating to procedures for identifying defendants suspected of
3 having a mental illness or intellectual disability.

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

5 SECTION 1. Article 16.22(a)(1), Code of Criminal Procedure,
6 is amended to read as follows:

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

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

3 (A) interview the defendant if the defendant has
4 not previously been interviewed by a qualified mental health or
5 intellectual and developmental disability expert on or after the
6 date the defendant was arrested for the offense for which the
7 defendant is in custody and otherwise collect information regarding
8 whether the defendant has a mental illness as defined by Section
9 571.003, Health and Safety Code, or is a person with an intellectual
10 disability as defined by Section 591.003, Health and Safety Code,
11 including, if applicable, information obtained from any previous
12 assessment of the defendant and information regarding any
13 previously recommended treatment or service; and

14 (B) provide to the magistrate a written report of
15 an interview described by Paragraph (A) and the other information
16 collected under that paragraph on the form approved by the Texas
17 Correctional Office on Offenders with Medical or Mental Impairments
18 under Section 614.0032(c), Health and Safety Code.

19 SECTION 2. Articles 16.22(b-2) and (d), Code of Criminal
20 Procedure, are amended to read as follows:

21 (b-2) The written report must include a description of the
22 procedures used in the interview and collection of other
23 information under Subsection (a)(1)(A) and the applicable expert's
24 observations and findings pertaining to:

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

27 (2) subject to Article 46B.022, whether there is

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

4 (3) any appropriate or recommended treatment or
5 service.

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

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

14 (2) subject to Article 46B.002, ordering an
15 examination regarding the defendant's competency to stand trial.

16 SECTION 3. The change in law made by this Act applies only
17 to a person who is arrested on or after the effective date of this
18 Act. A person arrested before the effective date of this Act is
19 governed by the law in effect on the date the person was arrested,
20 and the former law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect September 1, 2023.