

By: Duncan

S.B. No. 1557

A BILL TO BE ENTITLED

AN ACT

relating to the early identification of criminal defendants who are or may be persons with mental illness or mental retardation.

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

SECTION 1. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION ~~[EXAMINATION—AND TRANSFER]~~ OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION. (a)(1) Not later than 72 hours after receiving credible information ~~[evidence or a statement]~~ that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the ~~[notify a]~~ magistrate ~~[of that fact]~~. ~~[A defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment must be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation.]~~ On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation, the magistrate, except as

1 provided by Subdivision (2), shall order ~~[an examination of the~~
2 ~~defendant by]~~ the local mental health or mental retardation
3 authority or another qualified mental health or mental retardation
4 expert to:

5 (A) collect information regarding ~~[determine]~~
6 whether the defendant has a mental illness as defined by Section
7 571.003, Health and Safety Code, or is a person with mental
8 retardation as defined by Section 591.003, Health and Safety Code,
9 including information obtained from any previous assessment of the
10 defendant; and

11 (B) provide to the magistrate a written
12 assessment of the information collected under Paragraph (A).

13 (2) The magistrate is not required to order the
14 collection of information under ~~[an examination described by]~~
15 Subdivision (1) if the defendant in the year preceding the
16 defendant's applicable date of arrest has been ~~[evaluated and]~~
17 determined to have a mental illness or to be a person with mental
18 retardation by the local mental health or mental retardation
19 authority or another mental health or mental retardation expert
20 described by Subdivision (1). A court that elects to use the
21 results of that previous determination ~~[evaluation]~~ may proceed
22 under Subsection (c).

23 (3) If the defendant fails or refuses to submit to the
24 collection of information regarding the defendant as ~~[an~~
25 ~~examination]~~ required under Subdivision (1), the magistrate may
26 order the defendant to submit to an examination in a mental health
27 facility determined to be appropriate by the local mental health or

1 mental retardation authority for a reasonable period not to exceed
2 21 days. The magistrate may order a defendant to a facility
3 operated by the Department of State Health Services or the
4 Department of Aging and Disability Services for examination only on
5 request of the local mental health or mental retardation authority
6 and with the consent of the head of the facility. If a defendant
7 who has been ordered to a facility operated by the Department of
8 State Health Services or the Department of Aging and Disability
9 Services for examination remains in the facility for a period
10 exceeding 21 days, the head of that facility shall cause the
11 defendant to be immediately transported to the committing court and
12 placed in the custody of the sheriff of the county in which the
13 committing court is located. That county shall reimburse the
14 facility for the mileage and per diem expenses of the personnel
15 required to transport the defendant calculated in accordance with
16 the state travel regulations in effect at the time.

17 (b) A written assessment of the information collected under
18 Subsection (a)(1)(A) [~~report of the examination~~] shall be provided
19 [~~submitted~~] to the magistrate not later than the 30th day after the
20 date of any order [~~of examination~~] issued under Subsection (a) in a
21 felony case and not later than the 10th day after the date of any
22 order [~~of examination~~] issued under that subsection in a
23 misdemeanor case, and the magistrate shall provide copies of the
24 written assessment [~~report~~] to the defense counsel, [and] the
25 prosecuting attorney, and the trial court. The written assessment
26 [~~report~~] must include a description of the procedures used in the
27 collection of information under Subsection (a)(1)(A) [~~examination~~]

1 and the applicable expert's ~~[examiner's]~~ observations and findings
2 pertaining to:

3 (1) whether the defendant is a person who has a mental
4 illness or is a person with mental retardation;

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

9 (3) recommended treatment.

10 (c) After the trial court receives the applicable
11 ~~[examining]~~ expert's written assessment ~~[report]~~ relating to the
12 defendant under Subsection (b) or elects to use the results of a
13 previous determination as ~~[an evaluation]~~ described by Subsection
14 (a)(2), the trial court may, as applicable:

15 (1) resume criminal proceedings against the
16 defendant, including any appropriate proceedings related to the
17 defendant's release on personal bond under Article 17.032; ~~[or]~~

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

24 (3) consider the written assessment during the
25 punishment phase after a conviction of the offense for which the
26 defendant was arrested, as part of a presentence investigation
27 report, or in connection with the impositions of conditions

1 following placement on community supervision, including deferred
2 adjudication community supervision.

3 (d) This article does not prevent [~~Nothing in this article~~
4 ~~prevents~~] the applicable court from, before, during, or after the
5 collection of information regarding the defendant [~~pending an~~
6 ~~evaluation of the defendant~~] as described by this article:

7 (1) releasing a mentally ill or mentally retarded
8 defendant from custody on personal or surety bond; or

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

11 SECTION 2. Article 17.032(b), Code of Criminal Procedure,
12 is amended to read as follows:

13 (b) A magistrate shall release a defendant on personal bond
14 unless good cause is shown otherwise if the:

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

17 (2) defendant is examined by the local mental health
18 or mental retardation authority or another mental health expert
19 under Article 16.22 of this code;

20 (3) applicable [~~examining~~] expert, in a written
21 assessment [~~report~~] submitted to the magistrate under Article
22 16.22:

23 (A) concludes that the defendant has a mental
24 illness or is a person with mental retardation and is nonetheless
25 competent to stand trial; and

26 (B) recommends mental health treatment for the
27 defendant; and

1 (4) magistrate determines, in consultation with the
2 local mental health or mental retardation authority, that
3 appropriate community-based mental health or mental retardation
4 services for the defendant are available through the Texas
5 Department of Mental Health and Mental Retardation under Section
6 534.053, Health and Safety Code, or through another mental health
7 or mental retardation services provider.

8 SECTION 3. Section 11(d), Article 42.12, Code of Criminal
9 Procedure, is amended to read as follows:

10 (d) If the judge places a defendant on community supervision
11 and the defendant is determined to have a mental illness or be a
12 person with mental retardation as provided by ~~[an examining expert~~
13 ~~under]~~ Article 16.22 or Chapter 46B or in a psychological
14 evaluation conducted under Section 9(i) of this article, the judge
15 may require the defendant as a condition of community supervision
16 to submit to outpatient or inpatient mental health or mental
17 retardation treatment if the:

18 (1) defendant's:

19 (A) mental impairment is chronic in nature; or

20 (B) ability to function independently will
21 continue to deteriorate if the defendant does not receive mental
22 health or mental retardation services; and

23 (2) judge determines, in consultation with a local
24 mental health or mental retardation services provider, that
25 appropriate mental health or mental retardation services for the
26 defendant are available through the Texas Department of Mental
27 Health and Mental Retardation under Section 534.053, Health and

1 Safety Code, or through another mental health or mental retardation
2 services provider.

3 SECTION 4. The change in law made by this Act applies only
4 to a defendant charged with an offense committed on or after the
5 effective date of this Act. A defendant charged with an offense
6 committed before the effective date of this Act is covered by the
7 law in effect when the offense was committed, and the former law is
8 continued in effect for that purpose. For purposes of this section,
9 an offense was committed before the effective date of this Act if
10 any element of the offense occurred before that date.

11 SECTION 5. This Act takes effect September 1, 2009.