

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 601  
By: Price et al. (Zaffirini)  
Criminal Justice  
5/15/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2017 the legislature passed S.B. 1326 by Zaffirini, relating to procedures regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability and to certain duties of the Office of Court Administration of the Texas Judicial System related to persons with mental illness. During the interim the Office of Court Administration received feedback from court staff and stakeholders indicating that the bill's procedures and statutory language needed some tweaking.

Specifically, S.B. 1326 contained multiple references to the performance of an "assessment" if there is reasonable cause to believe that a defendant has a mental illness or is a person with an intellectual or developmental disability (IDD). The phrases "collect," "collection of information," and "information collected" also were used in the bill. A single uniform term should be used in place of "assessment" or "collection of information" to convey that a full-blown examination and mental illness or IDD diagnosis is not required before the defendant goes before a magistrate. The intent was to require only an interview to identify potential indicators of mental illness or intellectual disability.

Accordingly, H.B. 601 would clarify that the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert collecting information, as directed by a magistrate, regarding a defendant's potential mental illness or intellectual disability must simply interview the defendant and collect related information. What's more, H.B. 601 would remove the confusing reference to the preparation of a "written assessment" and replace it with "written report."

Another issue identified by stakeholders is the lack of express authority for the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) to promulgate the "written assessment" form that is supposed to be used for the intake of criminal defendants and the lack of legal confidentiality of this form to protect sensitive medical information. H.B. 601 would provide this authority and keep sensitive information confidential. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 601 amends current law relating to procedures and reporting requirements regarding criminal defendants who are or may be persons with a mental illness or an intellectual disability.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Judicial Council in SECTION 2 (Article 16.22, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Reenacts 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, and amends it to read as follows:

- (a)(1) Requires a magistrate, on a determination that there is reasonable cause to believe that a defendant has a mental illness or is a person with an intellectual disability, except as provided by Subdivision (2), to 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, rather than order the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual 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 certain information, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment or service, rather than requiring a magistrate, upon a certain determination, to order certain parties to collect certain information, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment; and

(B) provide to the magistrate a written report of an interview described by Paragraph (A) and the other information collected under that paragraph on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) under Section 614.0032(c), Health and Safety Code, rather than a written assessment of the information collected under Paragraph (A) on the form approved by TCOOMMI under Section 614.0032(b) (relating to requiring TCOOMMI to approve and make generally available in electronic format a certain standard form for use by experts in reporting competency examination results), Health and Safety Code.

(2) Provides that 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), rather than providing that the magistrate is not required to order the collection of information under Subdivision (1) if 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 local mental health authority, local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert under Subdivision (1).

(3) Authorizes the magistrate, if the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), rather than fails or refuses to submit to the collection of information regarding the defendants required under Subdivision (1), to 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. Makes a nonsubstantive change to this subdivision.

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

(a-1) Requires the commissioners court for the county in which the magistrate is located, 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), to 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) Authorizes the commissioners court for a county to adopt a fee schedule to pay for the costs to conduct an interview and collect information under Subsection (a)(1). Requires the commissioners court, in developing the fee schedule, to consider the generally accepted reasonable cost in that county of performing the duties described by Subsection (a)(1). Requires a fee schedule described by this subsection to be adopted in a public hearing and to be periodically reviewed by the commissioners court.

(a-3) Authorizes the authority or expert who performed the duties, 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, to 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). Prohibits the amount determined under this subsection from being less than the amount provided by the fee schedule, if applicable. Requires the judge to determine the amount not later than the 45th day after the date the request is made. Provides that the judge is not required to hold a hearing before making a determination under this subsection.

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

(b) Requires a written report of an interview described by Subsection (a)(1)(A) and the other information collected under that paragraph, rather than requiring a written assessment of the information collected under Subsection (a)(1)(A), to be provided to the magistrate for certain defendants not later than certain dates.

(b-1), (c), and (d) Makes conforming changes to these subsections.

(e) Requires the Texas Judicial Council to adopt rules to require the reporting of the number of written reports provided to a court under Subsection (a)(1)(B), rather than requiring the magistrate to submit to the Office of Court Administration of the Texas Judicial System (OCA) on a monthly basis the number of written assessments provided to the court under Subsection (a)(1)(B). Requires the rules to require submission of the reports to OCA on a monthly basis.

(f) Provides that a written report submitted to a magistrate under Subsection (a)(1)(B) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, but may be used or disclosed as provided by this article.

SECTION 3. Reenacts 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, and amends it as follows:

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

(1) makes no change to this subdivision;

(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 (Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability);

(3) makes a conforming change to this subdivision;

(4) and (5) makes no changes to these subdivisions.

(c) Requires the magistrate, unless good cause is shown for not requiring treatment or services, to 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, rather than requiring the magistrate, unless good cause is shown for not requiring treatment, to 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 disability services as recommended by the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert, if the defendant's:

(1) makes no change to this subdivision; or

(2) ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services, rather than if the defendant is not treated.

SECTION 4. Amends Section 8(c), Article 42.09, Code of Criminal Procedure, to require a county that transfers a defendant to the Texas Department of Criminal Justice under this article (Commencement of Sentence; Status During Appeal; Pen Packet) to also deliver to the designated officer certain information, including a written report provided to a court under Article 16.22(a)(1)(B).

SECTION 5. Amends Section 511.0085(a), Government Code, as follows:

(a) Requires the Texas Commission on Jail Standards (TCJS) to develop a comprehensive set of risk factors to use in assessing the overall risk level of each jail under TCJS's jurisdiction. Requires the set of risk factors to include:

(1)–(8) makes no changes to these subdivisions; and

(9) whether the jail is in compliance with TCJS rules, standards developed by TCOOMMI, 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, rather than persons with mental illness.

SECTION 6. Amends the heading to Section 614.0032, Health and Safety Code, to read as follows:

Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 7. Amends Section 614.0032, Health and Safety Code, by adding Subsection (c) to require TCOOMMI to 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. Makes application of this Act prospective. Provides that 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. Provides that, 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. Effective date: September 1, 2019.