

# Texas Mental Health and Intellectual and Developmental Disabilities Law Bench Book

Judicial Commission on Mental Health

May 2019



This Bench Book is intended for educational and informational purposes only. It should not be construed as legal advice from the JCMH, or as an advisory opinion or ruling by the Texas Court of Criminal Appeals or the Supreme Court of Texas on specific cases or legal issues. Readers are responsible for consulting the statutes, rules, and cases pertinent to their issue or proceeding.

# Acknowledgments

The Judicial Commission on Mental Health (JCMH) would like to recognize the leadership and support of Justice Jeff Brown and Judge Barbara Hervey, Chairs of the JCMH; the Supreme Court of Texas; and the Texas Court of Criminal Appeals. The JCMH extends special thanks to the Supreme Court Children’s Commission, the Texas Municipal Court Education Center, the Texas Association of Counties, the Texas Justice Court Training Center, and the Texas Center for the Judiciary. The JCMH would also like to recognize the following contributing authors and editors who collaborated to produce this Bench Book:

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## Tabs

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| (1) Notification of Emergency Detention                                     | (6) Article 16.22 Sheriff/Jailer Notice   |
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| (5) Screening Form for Suicide and Medical/Mental/Developmental Impairments | (10) SB 1326 Reporting Guidance (OCA)   |

# Introduction

People with mental illness, intellectual disabilities, and developmental disabilities are greatly overrepresented in the criminal justice system compared to their prevalence in the general population.<sup>1</sup> These individuals often cycle in and out of our justice system with little, if any, treatment. These Texans and the communities in which they live must navigate the challenges of mental health issues in jails, hospital emergency departments, adult criminal and juvenile justice agencies, schools, and child protective services.

The challenges are as big as Texas itself. Of the 27 million people who live in Texas, approximately 1 million adults experience serious mental illness; roughly half of these adults have serious and persistent mental illnesses including schizophrenia, bipolar disorder, major depression, and post-traumatic stress disorder.<sup>2</sup> Approximately 500,000 children aged 17 or younger have severe emotional disturbance.<sup>3</sup> An estimated 1.6 million adult Texans and 181,000 children aged 12 to 17 have substance use disorders, which frequently accompany mental illness and further complicate management of mental health issues in the justice systems.<sup>4</sup> Nearly 25 percent of the inmate population in Texas has a mental health need; adults with untreated mental health conditions are eight times more likely to be incarcerated than the general population.<sup>5</sup>

These issues are most acutely felt at the local level. In Houston, approximately 2,200 inmates received psychotropic medications and mental health services at the Harris County jail in 2013 at a cost of \$26 million.<sup>6</sup> Total jail costs related to mental illness in Harris County in 2013 were estimated at more than \$49 million. In Dallas County in 2013, these costs were more than \$47 million.<sup>7</sup> Rural counties face a host of unique challenges including limited personnel and infrastructure for addressing mental health needs; lack of community-based mental health expertise and resources; and long travel distances for defendants to access supervision and treatment appointments, as well as to attend court.

People with intellectual and developmental disabilities (IDD) also face significant barriers in our criminal justice system. Texas is home to more than 485,000 adults and children with IDD.<sup>8</sup> People with IDD include individuals with autism, cerebral palsy, fetal alcohol spectrum disorder, and many other disabilities that affect a person's intellectual ability or daily living. According to reports by the Bureau of Justice Statistics, less than 4 percent of the US population has IDD, yet up to 10 percent of the prison and jail population have been identified as having such disabilities.<sup>9</sup> Individuals with IDD are more likely than their non-disabled peers to be arrested, convicted, incarcerated,

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<sup>1</sup> See CMHS National GAINS Center. (2007). Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center, available at <https://www.prainc.com/wp-content/uploads/2015/10/practical-advice-jail-diversion-ten-years-learnings-cmhs-national-gains-center.pdf>; American Association on Intellectual and Developmental Disabilities (AAIDD). (December 2015). Justice and People with IDD Issue Brief, available at [https://aaid.org/docs/default-source/National-Goals/justice-and-people-with-idd.pdf?sfvrsn=683b7f21\\_0](https://aaid.org/docs/default-source/National-Goals/justice-and-people-with-idd.pdf?sfvrsn=683b7f21_0).

<sup>2</sup> Texas Health and Human Services Commission (HHSC). (May 2016). Texas Statewide Behavioral Health Strategic Plan Fiscal Years 2017-2021 at 10, available at <https://hhs.texas.gov/sites/default/files/050216-statewide-behavioral-health-strategic-plan.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 11.

<sup>5</sup> Meadows Mental Health Policy Institute. (December 2014). Texas Behavioral Health Landscape at 3, available at <https://texasstateofmind.org/wp-content/themes/texasstateofmind/assets/MediaDownloads/Texas+Behaviorial+Health+Landscape+-+December+2014.pdf>.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> Texas Council of Community Centers, available at <https://txcouncil.com/intellectual-developmental-disabilities/>.

<sup>9</sup> AAIDD, *supra* note 1.

and serve longer sentences.<sup>10</sup> People with IDD are more likely to be persuaded to confess; more likely to be refused bail, probation, or parole; and are more frequently exploited and abused when incarcerated.<sup>11</sup>

The judiciary is one stakeholder in a highly fragmented system intended to meet the needs and facilitate the recovery of those experiencing or affected by mental health and IDD issues. Judges are well positioned to convene stakeholders and help communities address these challenges. In some localities, there has been effective collaboration among judges, mental health and IDD authorities, and law enforcement to reduce fragmentation and create innovative programs. The following discussion recognizes that no one-size-fits-all approach works in a state as big as Texas because resources, availability of treatment options, and local practices vary widely. This Bench Book provides immediate information to help address mental health and IDD issues as they arise in your courtroom and community.

Even with variations in resources, options, and local practices, the statutes discussed in this Bench Book provide a baseline for procedures aimed at identifying and addressing the needs of persons with mental health challenges or IDD.

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<sup>10</sup> *Id.*

<sup>11</sup> Davis, L. (2009). People with Intellectual Disability in the Criminal Justice System: Victims and Suspects, available at <http://www.thearc.org/page.aspx?pid=2458>.

# Definitions

## **Developmental Disability (DD):**

Manifests before age of 22; severe chronic disability that involves impairments of general mental abilities resulting in at least three out of six of the following functional limitations:

- self-care;
- understanding & use of receptive and expressive language;
- learning;
- mobility;
- self-direction; and/or
- capacity for independent living, including economic self-sufficiency.

Examples of such disabilities include autism-spectrum disorder, fetal alcohol spectrum disorder, and cerebral palsy.

## **Emergency Medical Services Personnel (EMS):**

EMS refers to any of the following:

- emergency care attendant;
- emergency medical technicians;
- advanced emergency medical technicians;
- emergency medical technicians—paramedic; or
- licensed paramedic.

[Tex. Health & Safety Code § 773.003\(10\)](#).

## **Home and Community-Based Services (HCS) Program:**

HCS is a Medicaid waiver program approved by the Centers for Medicare & Medicaid Services (CMS) pursuant to section 1915(c) of the Social Security Act. [42 U.S.C. 1396n](#). It provides community-based services and support to eligible individuals as an alternative to an intermediate care facility for individuals with an intellectual disability or related conditions program. The HCS Program is operated by the authority of the Health and Human Services Commission (HHSC). [40 Tex. Admin. Code §§ 9.153\(36\), 9.154\(a\)](#).

## **Home and Community-based Services Adult Mental Health (HCBS-AMH):**

A state plan amendment operated by HHSC Behavioral Health Services, not to be confused with HCS waiver programming for the IDD population. This service is for persons who meet eligibility criteria for the program. The purpose of this program is to provide home and community-based services to adults with extended tenure in psychiatric hospitals (or persons at high risk for recurring inpatient hospitalizations) in lieu of them remaining as long-term residents in those facilities. This program also serves to divert individuals from emergency rooms as well as to divert

them from jails into more appropriate, community-based care. The HCBS-AMH program provides an array of services, appropriate to each individual's needs, to enable individuals to live and experience successful tenure in his or her community.

### **Inpatient Mental Health Facility:**

Refers to a mental health facility that can provide 24-hour residential and psychiatric services and that is:

- a facility operated by the Health and Human Services Commission (HHSC);
- a private mental hospital licensed by HHSC;
- a community center, facility operated by or under contract with a community center or other entity HHSC designates to provide mental health services;
- a local mental health authority or a facility operated by or under contract with a local mental health authority;
- an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or
- a hospital operated by a federal agency.

[Tex. Health & Safety Code § 571.003\(9\)](#).

### **Intellectual Disability (ID):**

ID means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period. [Tex. Health & Safety Code § 591.003](#).

### **Intellectual and Developmental Disabilities (IDD):**

IDD is a broader category than ID: it includes people with ID, DD, or both. DD are often lifelong disabilities that can be cognitive, physical, or both. **Texas statutes on early identification, screening, and assessment do not currently address developmental disabilities**, but developmental disabilities are important to consider as they often co-occur with mental illness and ID. Further, people with IDD are more likely than their peers without disabilities to be involved in the justice system, both as victims and suspects.<sup>12</sup>

### **Local Intellectual and Developmental Disability Authority (LIDDA):**

LIDDAs are units of government that provide services to a specific geographic area of the state, called the local service area. LIDDAs serve as the point of entry for publicly funded intellectual and developmental disability programs, whether the program is provided by a public or private entity. LIDDA responsibilities are delineated in section 533.035 of the Texas Health and Safety Code. See [Tex. Health & Safety Code § 531.002](#).

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<sup>12</sup> See AAIDD Frequently Asked Questions on Intellectual Disability, available at <https://aidd.org/intellectual-disability/definition/faqs-on-intellectual-disability>.

**Local Mental Health Authority (LMHA or LMHA/LBHA):**

LMHAs—also referred to as community centers, community mental health centers, or MHMRs—are units of local government that provide services to a specific geographic area of the state called the local service area. HHSC contracts with the 39 LMHAs/LBHAs to deliver mental health services in communities across Texas. Their responsibilities in this capacity are set out in Title 25, Chapter 412 of the Texas Administrative Code. See [Tex. Health & Safety Code §§ 533.035, 533.0356, 571.003\(15\)](#).

**Long Term Services and Supports (LTSS):**

LTSS enable people age 65 and over and those with physical, psychological, intellectual, or developmental disabilities to experience productive lives in safe living environments through a continuum of services and supports ranging from in-home and community-based services to institutional services. LTSS, in contrast to medical care, are meant to support an individual with ongoing, day-to-day activities, rather than treat or cure a disease or condition.

**Magistrate:**

As used in the Texas Code of Criminal Procedure, a magistrate refers to any of the following:

- justices of the Supreme Court and judges of the Court of Criminal Appeals;
- justices of the courts of appeals;
- judges of the district courts;
- judges of constitutional county courts (“county judges”);
- judges of the county courts at law;
- judges of the county criminal courts;
- judges of statutory probate courts;
- other magistrates appointed in various counties;
- justices of the peace; and
- mayors, recorders, and judges of the municipal courts of incorporated cities or towns.

See [Code of Criminal Procedure art. 2.09](#); [Tex. Gov’t Code § 21.009](#).

**Mental Health Facility:**

A mental health facility refers to:

- an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;
- a community center or a facility operated by a community center;
- that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or

- with respect to a reciprocal agreement entered into under section 571.0081 of the Texas Health and Safety Code, any hospital or facility designated as a place of commitment by HHSC, a local mental health authority, and the contracting state or local authority.

[Tex. Health & Safety Code § 571.003\(12\)](#).

**Mental Illness (MI):**

Mental illness is an illness, disease, or condition that either:

- substantially impairs a person’s thoughts, perception of reality, emotional process, or judgment; or
- grossly impairs behavior as demonstrated by recent disturbed behavior.

The term, as statutorily defined, does not include epilepsy, dementia, substance abuse, or intellectual disability. [Tex. Health & Safety Code § 571.003](#).

**Office of Court Administration (OCA):**

OCA is a state agency in the Judicial Branch of Texas that operates under the direction and supervision of the Supreme Court of Texas and the Chief Justice. OCA is responsible for providing resources and information for the efficient administration of the judicial branch. See [Tex. Gov’t Code § 72.011](#).

**People-First Language:**

People-first language refers to language used to speak appropriately and respectfully about an individual with a disability. People-first language emphasizes the person first, not the disability. Examples from the National Center on Birth Defects and Developmental Disabilities are listed in the chart below:

People-First Language	Language to Avoid
Person with a disability	The handicapped, the disabled
Person without a disability	Normal person, healthy person
Person with an intellectual, cognitive, developmental disability	Retarded, slow, simple, moronic, defective or retarded, afflicted, special person
Person with an emotional or behavioral disability, person with a mental health or a psychiatric disability	Insane, crazy, psycho, maniac, nuts

**Qualified Mental Health Professional—Community Services (QMHP-CS):**

A QMHP-CS is a staff member who (1) is credentialed as a QMHP-CS, (2) has demonstrated and documented competency in the work to be performed, and (3) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or LBHA) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special

education, educational psychology, early childhood education, or early childhood intervention.  
[25 Tex. Admin. Code § 412.303\(48\)](#).

**Qualified Professional:**

“Qualified professional” is the term used in this Bench Book to describe a person who may perform an assessment under Article 16.22, as discussed in Intercept 2, Part I, section 2 of this Bench Book.

**State Hospital:**

A state hospital is a state-operated hospital inpatient mental health facility operated by the HHSC that provides 24-hour residential and psychiatric services to persons civilly and forensically admitted. [Tex. Health and Safety Code § 571.003\(9\)](#).

**State-Supported Living Center (SSLC):**

A SSLC is a state-supported and structured residential facility operated by Health and Human Services to provide clients with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills. [Tex. Health & Safety Code § 531.002\(19\)](#).

**Texas Commission on Jail Standards (TCJS):**

TCJS is the regulatory agency for all county jails and privately-operated municipal jails in the state. TCJS is responsible for developing and implementing a declared state policy for minimum standards of construction, maintenance, and operation of jail facilities. Its mission is to assist local governments in providing safe, secure and suitable local jail facilities through the provision of various services. See [37 Tex. Admin. Code § 251.1](#).

**Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI):**

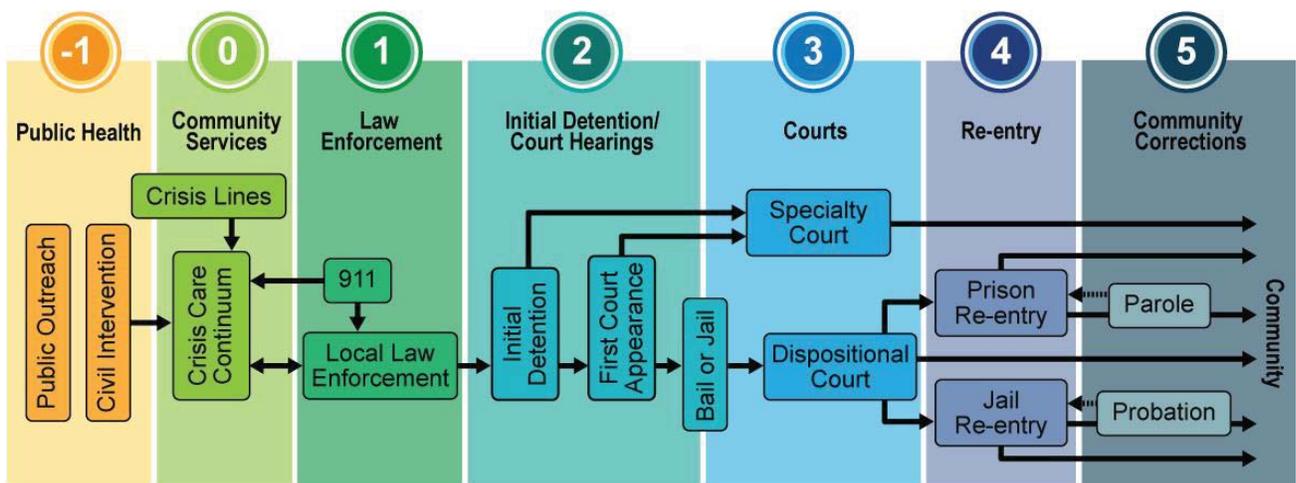
TCOOMMI is the agency responsible for providing a formal structure for criminal justice, health and human services, and other affected organizations to communicate and coordinate on policy, legislative, and programmatic issues affecting offenders with special needs, including those with MI and ID. The TCOOMMI program monitors, coordinates, and implements a continuity of care system through collaborative efforts with the 39 LMHAs throughout the state. Outpatient levels of service include Intensive Case Management, Transitional Case Management, and Continuity of Care for individuals on probation or parole. See [Tex. Health & Safety Code Ch. 614](#).

# Using This Bench Book

**This Bench Book is a procedural guide organized around the Sequential Intercept Model.**

This Bench Book is a procedural guide for Texas judges hearing cases regarding persons with mental illness and/or IDD. Each section contains applicable statutory processes, relevant guidance, and cross-references to mandatory and sample forms. Statutory language is simplified where possible, and practice notes are included in text boxes.

The procedures discussed below are organized according to the widely recognized Sequential Intercept Model (SIM). This model was developed as a “conceptual framework for communities to organize targeted strategies for justice-system involved individuals with behavioral health disorders.”<sup>13</sup>



Appropriate responses at identified intercepts can prevent entry or divert an individual from the criminal justice system. Using the SIM can help communities transform fragmented systems, identify local resources and gaps, and develop strategies for intervention. The most effective responses will engage community collaborators early and often.

<sup>13</sup> SAMHSA GAINS Center (2013) Developing a Comprehensive Plan for Behavioral Health and Criminal Justice Collaboration: The Sequential Intercept Model (3rd ed.) Delmar, NY Policy Research Associates, Inc.; Munetz, M. & Griffin, P. (2006) Use of the Sequential Intercept Model as an Approach to Decriminalization of People with Serious Mental Illness, 57 Psych. Services 544-49, available at <https://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2006.57.4.544>. This SIM adopts the traditional model but also expands it to include new intercepts that allow for a better understanding of early intervention to effectively address those with mental health issues before they enter the criminal justice system. See also National Center for State Courts, (August 2018) Fair Justice for Persons with Mental Illness: Improving the Courts Response at 6.

## What this First Edition of the JCMH Bench Book Covers

The ultimate aim of the JCMH Bench Book is to provide guidance to the judiciary for handling issues pertaining to mental health and intellectual disabilities across all intercepts and systems. Specifically, this Bench Book will cover:



The first section of this Bench Book—Early Identification, Assessment, and Diversion—spans Intercepts 0 through 3, which includes the earliest diversion points in which the justice system is involved. This First Edition of the JCMH Bench Book contains that section: it describes procedures relating to community-based services, emergency detention, initial contact with law enforcement, jail, bail, and pre-adjudicatory diversion programs and strategies. It details both criminal and civil statutory and regulatory procedures relating to early identification and diversion, as well as immediate strategies for consistency and improved decision-making.

Future editions of the Bench Book will address important topics that arise in other SIM Intercepts. Incompetency, for example, is a significant issue which routinely confronts judges. Because of its scope and complexity, discussion of that issue will be included in the next edition of this Bench Book.

Similarly, there are many additional topics related to mental illness and IDD, such as substance use disorder, poverty, inadequate low-income housing, veterans, trauma (e.g., child abuse, domestic violence, natural disasters), human trafficking, race, and other health conditions (e.g., dementia or epilepsy). These issues frequently overlap with mental illness and IDD issues and, while critical to a thorough understanding of mental illness and IDD, are not the focus of this first edition.

### Stakeholder Input is Essential

Finally, this Bench Book represents a collaborative effort among stakeholders from across disciplines. It is a dynamic publication that will be regularly updated to incorporate legislative changes, provide current practice tips and other practical information, and highlight matters about which stakeholders disagree. If you are reading this book, you are a stakeholder, and we value your opinion. If you would like to provide feedback on any part of this book, please email us at [JCMHBenchBook@txcourts.gov](mailto:JCMHBenchBook@txcourts.gov). Thank you for your service and for your interest in these issues.

# Early Identification and Diversion Procedures

## The Judiciary's Role in Breaking the Cycle of Recidivism

Breaking the cycle of recidivism for people with mental illness or IDD does not begin with the justice system, but the justice system is where individuals with mental illness or IDD often find themselves. Early identification allows for diversion from the criminal justice system when the criminal acts are clearly attributable to the illness or disability. Diversion processes help break the cycle by using community-based treatment and services as an alternative to jail.<sup>14</sup> Jail-diversion program interventions can occur before or after booking. These programs may be court-based, jail-based, or community-based.

## Legislation Promoting Early Identification

Although statutes requiring early identification of individuals with mental illness or intellectual disabilities have been on the books for decades, the issue received renewed attention in the 85<sup>th</sup> Texas Legislative Session. In response to the tragic suicide of Sandra Bland in a Texas jail three days after a traffic stop in 2015, the 85<sup>th</sup> Legislature passed Senate Bill 1849 amending early-intake and bail procedures for those with a mental illness or intellectual disabilities. The Sandra Bland Act aims to improve and correct Texas' criminal justice system for both law enforcement and the public and prevent future tragedies.

The bill addressed a variety of criminal justice topics and identified areas of improvement in officer training, jail safety, bail reform, and behavioral health and data collection. In relevant part, the amendments made the following changes:

- shortened the periods for the notice by the jail of possible MI or ID to the magistrate and for completing the assessment;
- mandated release on personal bond for a defendant with a mental illness or intellectual disability if certain criteria are met;
- required law enforcement to make a good-faith effort to divert to treatment a person suffering a mental health crisis or from the effects of substance abuse;
- required training by law enforcement and jail personnel in the areas of mental illness and intellectual disabilities; and
- required continuity of, and access to, mental health care, including availability of medication to persons incarcerated in Texas jails.

Similarly, the Texas Judicial Council—the policy-making body for the state judiciary—also passed resolutions that led to legislative changes in the 85<sup>th</sup> Session that promote early identification. Senate Bill 1326 revised the process of gathering and assessing information about an arrestee who may have a mental illness in the magistration process; streamlined the competency restoration process; and allowed counties to establish jail-based competency restoration programs.

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<sup>14</sup> See CMHS National GAINS Center, *supra* note 1.

As a result of these amendments, the procedures and strategies discussed in this Bench Book promote early identification and diversion of those individuals from the criminal justice system to more appropriate settings when it is safe to do so.

### **Civil Commitment as a Diversionary Tool**

Civil commitment can be an important diversionary tool, but it is utilized inconsistently and/or sporadically in many areas of the state. Ideally, civil interventions would occur before an individual ever enters the criminal justice system. Initiation of civil commitment orders and other court-ordered treatment can be enhanced with the expansion of innovative programs such as assisted outpatient treatment, advanced directives, and springing powers of attorney.

Civil commitment remains an option for diversion of some individuals with a mental illness or intellectual disability even after an individual enters the criminal justice system. The civil commitment provisions in the Health and Safety Code permit the county or district attorney to pursue an order of temporary or extended mental health services (45-day, 90-day, or 12-month commitments, as appropriate) for an individual who faces criminal charges, provided that the person has not been “charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.”<sup>15</sup> However, note that, with limited exceptions, mental health services may be ordered only by a court with probate jurisdiction.<sup>16</sup> Prior to a formal determination of competency, a magistrate may release a defendant on a mental health bond so that the court with probate jurisdiction may order services as appropriate under applicable law.<sup>17</sup> This alternative has been little utilized but has been authorized since 1995.

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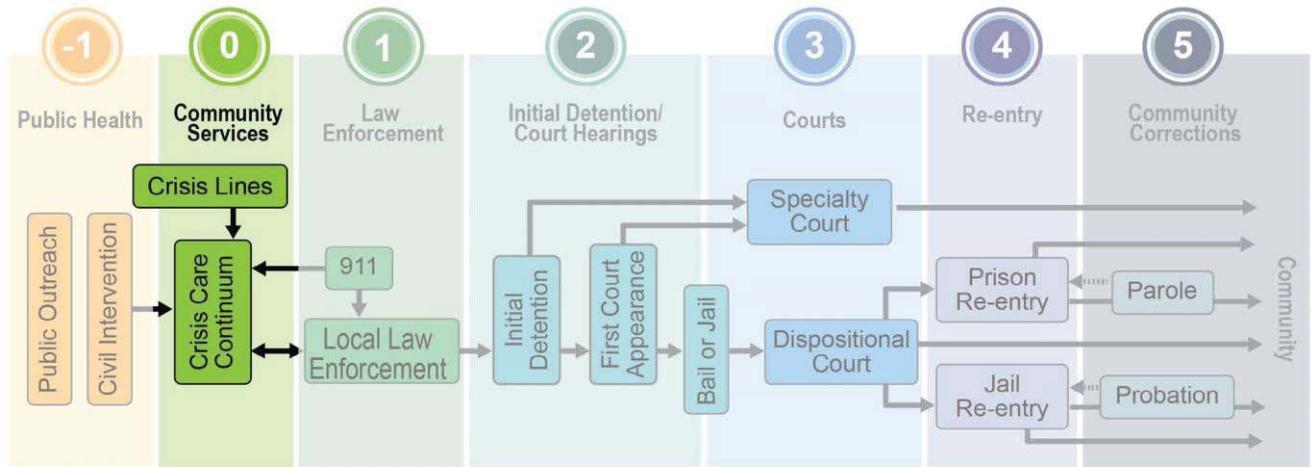
<sup>15</sup> Tex. Health & Safety Code §§ 574.034(h), 574.035(i); see also Brian D. Shannon, Daniel H. Benson, *Texas Criminal Procedure and the Offender with Mental Illness*, (2016).

<sup>16</sup> Tex. Health & Safety Code § 574.008(a).

<sup>17</sup> See Tex. Code Crim. Proc. art. 17.032.

# 0

## Intercept 0: Community Services



**Intercept 0: Community Services** encompasses the early-intervention points for people with mental illness or intellectual or developmental disabilities before they are placed under arrest by law enforcement. It captures systems and services designed to connect individuals in need with treatment before a mental health crisis begins or at the earliest possible stage of system interaction. In Texas, these include services such as crisis hotlines, screening and assessment, crisis-response teams, and specially trained law enforcement.

### Quick Section Overview

1. Community-based Mental Health Services
2. Community-based IDD Services

## 1. Community-based Mental Health Services

Community-based mental health services are available for individuals with intellectual disabilities, other developmental disabilities, serious mental illnesses, and substance use disorders. As a judge and community leader, it is advantageous to have a general understanding of those resources.

### 1.1. Services Provided by LMHAs/LBHAs

Each of the 39 LMHAs/LBHAs is required to provide:

- crisis-response services for all individuals in the service area; and

- ongoing outpatient mental health services for individuals who meet diagnostic and need-based eligibility requirements.

## **1.2. Crisis Services**

A crisis is defined as a situation in which:

- an individual presents an immediate danger to self or others;
- an individual’s mental or physical health is at risk of serious deterioration; or
- an individual believes either that:
  - he or she presents an immediate danger to self or others; or
  - his or her mental or physical health is at risk of serious deterioration.

[25 Tex. Admin. Code § 412.303\(13\)](#).

All providers of crisis services must be available 24 hours a day, every day of the year, to perform immediate screenings and assessments of individuals in crisis, including assessments to determine risk of deterioration and immediate danger to self or others. Crisis assessments cannot be delegated to law enforcement officials. [25 Tex. Admin. Code § 412.321](#).

### **1.2.1. What Crisis Response Services Include**

Crisis response services include three services:

- a crisis screening;
- a crisis assessment; and
- a recommendation about the level of care required to resolve the crisis.

An LMHA/LBHA shall ensure immediate screenings and assessments of any person found in the LMHA/LBHA’s local service area who is experiencing a crisis in accordance with Texas Administrative Code, Title 25, Part 1, Chapter 412, Subchapter G, Division 2, section 412.314, which governs access to mental health community services. [25 Tex. Admin. Code § 412.161](#).

### **1.2.2. Crisis Screening and Response System**

The LMHA/LBHA must have a crisis screening and response system in operation 24/7 that is available to individuals throughout its contracted service delivery area. The telephone system to access the crisis screening and response system must include a toll-free crisis hotline number. The crisis hotline number is prominently placed on each LMHA/LBHA website and is typically the primary point of contact for a county jail that does not have mental health professionals available on staff or through a local contract.

### **1.2.3. Crisis Hotline**

The crisis hotline is a continuously available telephone service staffed by trained and competent QMPC-CSs who provide information, screening and intervention, support, and referrals to callers 24 hours a day, seven days a week. The hotline facilitates referrals to 911, a Mobile Crisis Outreach Team (discussed below), or other crisis services and conducts follow-up contacts to ensure that callers successfully accessed the referred services. If an emergency is not evident after further

screening, the hotline includes referral to other appropriate resources within or outside the LMHA/LBHA local service area. The hotline works in close collaboration with local law enforcement, 211, and 911 systems.

#### **1.2.4. Mobile Crisis Outreach Team (MCOT)**

When the crisis hotline is called, the crisis hotline staff member provides a crisis screening, and determines if the crisis situation requires deployment of the LMHA/LBHA MCOT. If the crisis situation is determined to be emergent or urgent, at least one trained MCOT member shall respond to the site of the crisis situation and conduct a crisis assessment. Immediately upon arrival, a face-to-face screening shall be completed by at least a QMPC-CS if a telephone screening has not been previously completed. MCOTs provide a combination of crisis services including emergency care, urgent care, and crisis follow-up and relapse prevention to the child, youth, or adult in the community. Some local intellectual and developmental disability authorities operate integrated teams to include staff with IDD expertise but may not always have a professional available for the crisis call.

**Note:** Some counties, such as Travis County, have Expanded Mobile Crisis Outreach Teams (EMCOT) that respond to law enforcement when a crime has been committed, but there is a diversion agreement with law enforcement.

#### **1.2.5. What a Crisis Assessment Includes**

A crisis assessment shall include an evaluation of risk of harm to self or others, presence or absence of cognitive signs suggesting delirium, need for immediate full crisis assessment, need for emergency intervention, and an evaluation of the need for an immediate medical screening/assessment by a physician (preferably a psychiatrist), psychiatric advanced practice nurse, physician assistant or registered nurse.<sup>18</sup>

After the crisis assessment is conducted, the LMHA/LBHA will make a recommendation about the treatment necessary to resolve the crisis.

#### **1.2.6. Emergency Care Services: LMHA/LBHA Shall Respond Within One Hour**

If, during a crisis screening, it is determined that an individual is experiencing a crisis that may require emergency care services, the QMHP-CS must:

- take immediate action to address the emergency situation to ensure the safety of all parties involved;
- activate the immediate screening and assessment processes as described in title 25, section 412.321 of the Texas Administrative Code; and
- provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

[25 Tex. Admin. Code § 412.314\(1\)\(B\)](#).

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<sup>18</sup> HHSC Performance Contract, Excerpts from Information Item V, Crisis Services Standards.

For emergency calls, a face-to-face crisis response (or telehealth based on policies and procedures approved by the medical director) shall be provided within one hour. After crisis intervention services are provided, and if the individual is still in need of emergency care services, then the individual shall be assessed by a physician (preferably a psychiatrist) within 12 hours.

### **1.2.7. Urgent Care Services: LMHA/LBHA Shall Respond Within Eight Hours**

If the crisis screening indicates that an individual needs urgent care services, a QMHP-CS shall, within eight hours of the initial incoming hotline call or notification of a potential crisis situation:

- perform a face-to-face assessment; and
- provide or obtain mental health community services or other necessary interventions to stabilize the crisis.

[25 Tex. Admin. Code § 412.314\(1\)\(C\)](#).

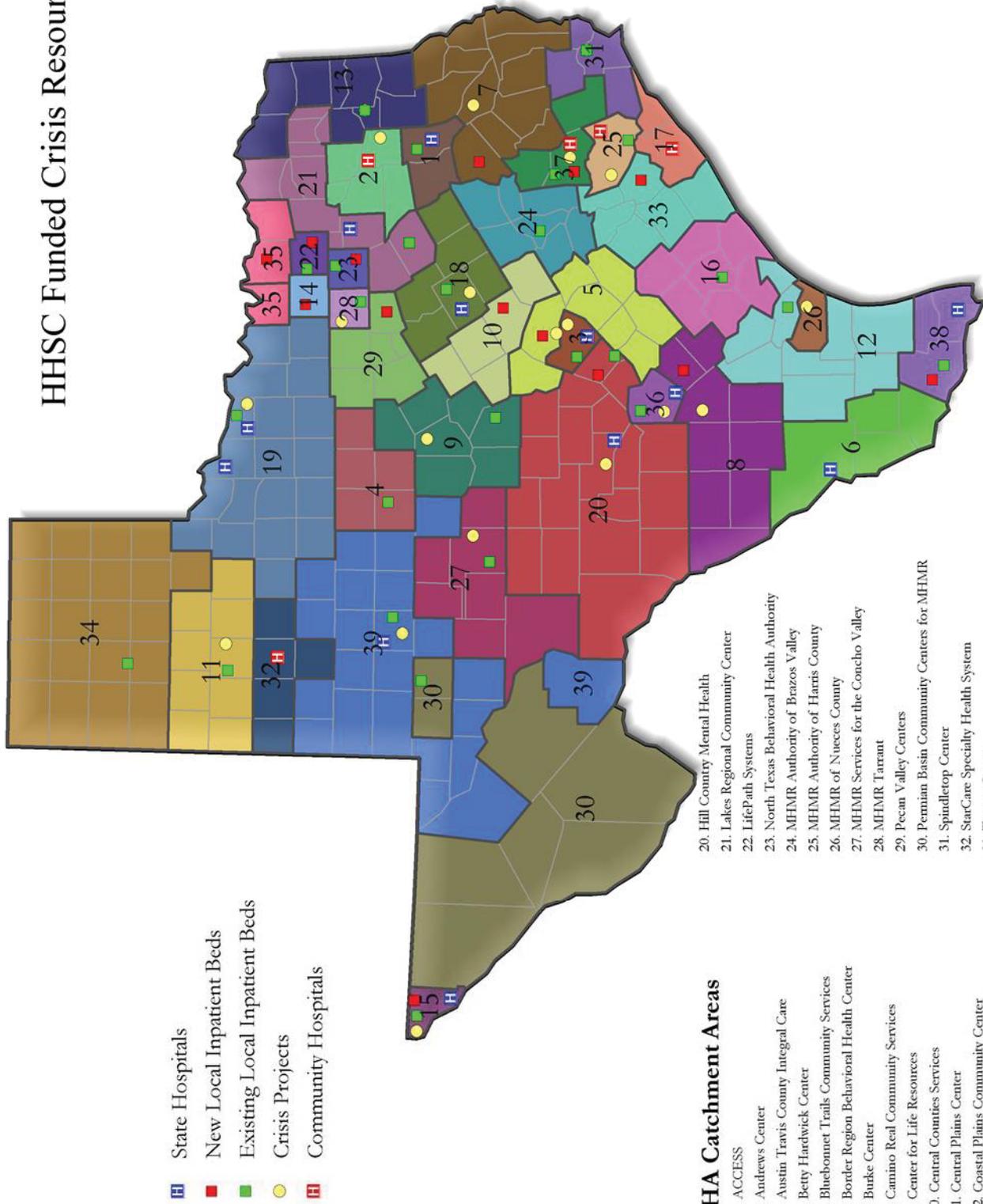
### **LMHAs/LBHAs Conduct Crisis Response for Both MI and ID**

For persons with MI and IDD, crisis response will be conducted by the LMHA/LBHA. However, it is recommended that the LMHA/LBHA consult with the LIDDA. For persons with IDD who are NOT in crisis are, the LIDDA will serve as the point of access for services. In all but two Texas counties (Bexar and Dallas) the LMHA and LIDDA functions are performed by one local agency. See [Tex. Health & Safety Code § 533.035\(a\)](#).

**Note:** In Bexar County, the Alamo Area Council of Government serves as the LIDDA. In Dallas County, Metrocare serves as the LIDDA.

<b>Local Mental Health/Behavioral Health Authorities</b>
ACCESS
Andrews Center Behavioral Healthcare System
Behavioral Health Center of Nueces County
Betty Hardwick Center
Bluebonnet Trails Community Services
Border Region Behavioral Health Center
Burke
Camino Real Community Services
Central Counties Services
Center for Life Resources
Central Plains Center
Coastal Plains Community Center
Community Healthcore
Denton County MHMR Center
Emergence Health Network
Gulf Bend Center
Gulf Coast Center
Heart of Texas Region MHMR Center
Helen Farabee Centers
Hill Country Mental Health & Developmental Disabilities Centers
Integral Care
Lakes Regional Community Center
LifePath Systems
MHMR Authority of Brazos Valley
MHMR Services for the Concho Valley
MHMR Tarrant
North Texas Behavioral Health Authority
Pecan Valley Centers for Behavioral & Developmental Healthcare
Permian Basin Community Centers
Spindletop Center
StarCare Specialty Health System
Texana Center
Texas Panhandle Centers
Texoma Community Center
The Center for Health Care Services
The Harris Center for Mental Health and IDD
Tri-County Behavioral Healthcare
Tropical Texas Behavioral Health
West Texas Centers

# HHSC Funded Crisis Resources



- State Hospitals
- New Local Inpatient Beds
- Existing Local Inpatient Beds
- Crisis Projects
- Community Hospitals

## LMHA Catchment Areas

1. ACCESS
2. Andrews Center
3. Austin Travis County Integral Care
4. Betty Hardwick Center
5. Bluebonnet Trails Community Services
6. Border Region Behavioral Health Center
7. Burke Center
8. Camino Real Community Services
9. Center for Life Resources
10. Central Counties Services
11. Central Plains Center
12. Coastal Plains Community Center
13. Community Healthcare
14. Denton County MHMR Center
15. Emergence Health Network
16. Gulf Bend Center
17. Gulf Coast Center
18. Heart of Texas Region MHMR Center
19. Helen Farabee Centers
20. Hill Country Mental Health
21. Lakes Regional Community Center
22. LifePath Systems
23. North Texas Behavioral Health Authority
24. MHMR Authority of Brazos Valley
25. MHMR Authority of Harris County
26. MHMR of Nueces County
27. MHMR Services for the Concho Valley
28. MHMR Tarrant
29. Pecan Valley Centers
30. Permian Basin Community Centers for MHMR
31. Spindletop Center
32. StarCare Specialty Health System
33. Texana Center
34. Texas Panhandle Centers
35. Texoma Community Center
36. The Center for Health Care Services
37. Tri-County Behavioral Healthcare
38. Tropical Texas Behavioral Health
39. West Texas Centers

### **1.3. Ongoing Non-crisis Outpatient Mental Health Services**

Individuals who meet diagnostic- and need-based requirements will be assigned a level of care to determine which services they may be eligible to receive. Section 534.53 of the Texas Health and Safety Code describes the required community-based mental health services that:

- (A) HHSC shall ensure at a minimum, are available in each LMHA/LBHA service area:
  - (1) 24-hour emergency screening and rapid crisis stabilization services;
  - (2) community-based crisis residential services or hospitalization;
  - (3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
  - (4) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and
  - (5) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.
- (B) HHSC shall arrange for appropriate community-based services to be available in each service area for each person discharged from a department facility who is in need of care.
- (C) To the extent that resources are available, HHSC shall:
  - (1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;
  - (2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and
  - (3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Texas Code of Criminal Procedure articles 17.032 (Personal Bond for Person with MI or ID, discussed in Intercept 2, section II of this Bench Book) or 42A.104 or 42A.506 (Community Supervision of Person with MI or ID, discussed in Intercept 3 of this Bench Book).

Eligibility for ongoing outpatient mental health treatment is a diagnosis- and need-based determination governed by state and federal requirements and the HHSC performance contract with LMHAs/LBHAs and section 534.053 of the Texas Health and Safety Code.

The Adult Mental Health Priority Population are people age 18 or older who have a diagnosis of severe and persistent MI with the application of significant functional impairment and the highest need for intervention. This would include people who have severe and persistent MI such as schizophrenia, major depression, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, bulimia nervosa, anorexia nervosa, or other severely disabling mental disorders that require crisis resolution or ongoing and long-term support and treatment.

The Child and Youth Mental Health Priority Population are children ages 3-17 with serious emotional disturbance (excluding a single diagnosis of substance abuse, IDD, or autism spectrum disorder) who have a serious functional impairment or who are at risk of disruption of a preferred

living or child care environment due to psychiatric symptoms or are enrolled in special education because of a serious emotional disturbance.

[Tex. Health & Safety Code § 534.053.](#)

## 2. Community-based IDD Services

### 2.1. How People with IDD Receive Services and Supports

#### 2.1.1. Waiver Services

Waiver services include the following:

- **Home and Community-based Services (HCS)** is a Medicaid waiver program approved by Centers for Medicare & Medicaid Services (CMS) pursuant to section 1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with an intellectual disability or related conditions program. The HCS Program is operated by the Texas Health and Human Services Commission (HHSC), formerly the Department of Aging and Disabilities Services. [40 Tex. Admin. Code §§ 9.153\(36\), 9.154\(a\).](#)
- **Texas Home Living (TxHmL)** supplies essential services and supports to Texans with ID or a related condition so that they can continue to live in the community.
- **Community Living Assistance and Support Services (CLASS)** provides home- and community-based services to people with related conditions as a cost-effective alternative to placement in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).
- **Deaf-blind with Multiple Disabilities (DBMD)** focuses on increasing opportunities for people who are deaf-blind with multiple disabilities to communicate and interact with their environment, providing a cost-effective alternative to institutional placement.

#### 2.1.2. State Plan Services

**Community First Choice (CFC)** is a state plan option that allows states to provide home- and community-based attendant services and supports to eligible Medicaid enrollees under their state plan.

### 2.2. How Programs are Funded

**Medicaid Waivers** are federal funds that help provide services to people who would otherwise be in an institution, nursing home, or hospital to receive long-term care in the community.

**General Revenue (GR) Funded Services** are state funds from the GR that are primarily intended to help people remain in their own or their family's homes. Not all GR funded services are available in all areas of the state. GR services are provided by or directly through a LIDDA.

### 2.3. Where Services are Provided

- Intermediate Care Facilities for Individuals with an ID or Related Condition (ICF/IID)
- State Supported Living Centers (SSLC)
- Nursing Facilities

### 2.4. LIDDAs Serve Individuals with IDD

#### 2.4.1. The Role of LIDDAs

A LIDDA's role is to serve as the single point of access to certain publicly funded services and supports for the residents within the LIDDA's local service area. A LIDDA's responsibilities include:

- providing information about services and supports;
- ensuring an individual's access into services and supports by:
  - conducting intake and eligibility activities for an individual seeking services and supports; and
  - enrolling or assisting an eligible individual to access long-term services and supports or GR revenue services;
- performing safety net functions ensuring the provision and oversight of general revenue services by:
  - developing and managing a network of general revenue services providers; and
  - establishing processes to monitor the performance of general revenue services providers;
- conducting service coordination for individuals in HCS, TxHml, and GR;
- conducting planning for the local service area, including ensuring involvement by a local advisory committee and other stakeholders;
- conducting permanency planning for certain individuals under 22 years of age; and
- protecting the rights of an individual.

<sup>40</sup> Tex. Admin. Code §§ 2.305, 9.154; see also *LIDDA Performance Contract*.<sup>19</sup>

#### 2.4.2. Types of Services Offered or Contracted

**Service coordination** helps people access medical, social, educational, and other services and supports that will help them achieve an acceptable quality of life and community participation.

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<sup>19</sup> HHSC Statement of Work, available at <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/providers/long-term-care/lidda/performance-contract/performance-contract-attach-a1.pdf>.

**Community supports** are individualized activities that are provided in the person's home and at community locations, such as libraries and stores. Supports may include:

- habilitation and support activities that foster improvement of, or facilitate, the person's ability to perform daily living activities;
- activities for the person's family that help preserve the family unit and prevent or limit out-of-home placement of the person;
- transportation for the person between home and his or her community employment site or day habilitation site; and
- transportation to facilitate the person's employment opportunities and participation in community activities.

**Respite** is either planned or emergency short-term relief provided by trained staff to the person's unpaid caregiver when the caregiver is temporarily unavailable. If enrolled in other services, the person continues to receive those services as needed during the respite period.

**Employment assistance** helps people locate paid jobs, and includes helping them:

- identify employment preferences, skills, and work requirements and conditions; and
- identify prospective employers who offer appropriate employment.

**Supported employment** is provided to a person who has paid employment to help him or her sustain that employment. It includes individualized support services, supervision, and training.

**Nursing** is provided to people who require treatment and monitoring of health care procedures that are prescribed by a physician or medical practitioner or that are required by standards of professional practice or state law to be performed by licensed nursing personnel.

**Behavioral supports** are specialized interventions to help people increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with their inclusion in home and family life or community life. Supports include:

- assessing and analyzing assessment findings so that an appropriate behavior support plan can be designed;
- developing an individualized behavior support plan consistent with the outcomes identified in the person-directed plan;
- training and consulting with family members or other providers and, as appropriate, to the person; and
- monitoring and evaluating the success of the behavior support plan and modifying it as necessary.

**Specialized therapies** include assessment and treatment by licensed or certified professionals for social work services, counseling services, occupational therapy, physical therapy, speech and language therapy, audiology services, dietary services, and behavioral health services other than those provided by an LMHA, as well as training and consulting with family members or other providers.

**Vocational training** is a service provided to people in industrial enclaves, work crews, sheltered workshops or affirmative industry settings to help them get a job.

**Day habilitation** is assistance with getting, keeping, or improving self-help, socialization, and adaptive skills necessary to live successfully in the community and to participate in home and community life. Day habilitation is normally provided regularly in a group setting (not in the person's residence) and includes personal assistance for those who cannot manage their personal care needs during day habilitation and need assistance with medications and performing tasks delegated by a registered nurse.

**Medicaid Program Enrollment:** LIDDAs are responsible for enrolling eligible individuals into the following Medicaid programs:

- Intermediate Care Facilities for Individuals with Intellectual Disabilities (a 24-hour residential setting including state-supported livingcenters);
- Home and Community-based Services (HCS);<sup>20</sup> and
- Texas Home Living.<sup>21</sup>

**Transition Support Teams (TST)** were originally developed to assist people in the transition from an institutional setting (e.g., SSLCs and nursing facilities) into a community setting, but these TSTs have since expanded their reach. Because individuals with complex needs often require more experienced staff, HHSC has contracted with eight LIDDAs across Texas to provide support to other LIDDAs and community waiver providers in designated service areas.

The eight contracted LIDDAs have teams that offer educational activities, technical assistance, and case review. The teams have licensed medical staff such as physicians, registered nurses, psychiatrists, and psychologists with experience working with people with IDD.

These programs are currently funded through the Money Follows the Person (MFP) Grant which is distributed by CMS to Texas and passed on to the LIDDAs. Because MFP rebalancing funds are evaluated yearly, uncertainty of ongoing funding affects the existence of the TST Program. LIDDAs are aware that funding is subject to change based on guidance from CMS which impacts whether or not the TST program is an available resource.

## 2.2. Housing through the HCS Program

The HCS Program can be an important diversionary program because it can provide housing to prevent an individual's admission to institutional services. Providers offering services under the HCS program maintain three- to four-bed group homes where individuals reside. When residing in an HCS group home, individuals are entitled to many services, including:

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<sup>20</sup> Available at <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/home-community-based-services-hcs>.

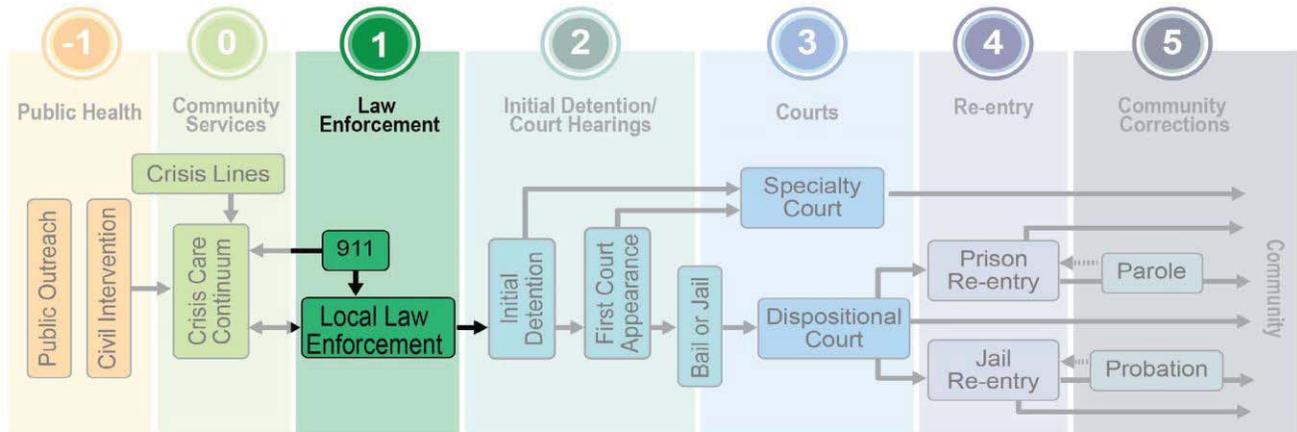
<sup>21</sup> Available at <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/texas-home-living-txhtml>.

- supervised and supported home living 24 hours a day, seven days a week;
- direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);
- assistance with meal planning and preparation;
- securing and providing transportation;
- assistance with housekeeping;
- day habilitation;
- supported employment;
- financial management services;
- assistance with medications and the performance of tasks delegated by a registered nurse;
- social worker;
- behavioral support by a licensed professional;
- physicians;
- dietary services; and
- dental treatment.

Those interested in receiving HCS services are placed on an interest list by the LIDDA until funding becomes available. An offer from the HCS program to provide services depends on individual need and one's date of placement on the interest list. Further, funding each individual placement depends on the outcome of HHSC's Legislative Appropriations Request (LAR) where HHSC outlines its funding requirements and/or needs for the upcoming biennium.

# 1

## Intercept 1: Initial Contact with Law Enforcement



**Intercept 1: Initial Contact with Law Enforcement** is the gateway to the criminal justice system. Officers have considerable discretion in responding to a situation in the community involving a person with a mental illness or intellectual disability who may be engaging in criminal conduct, experiencing a mental health crisis, or both. New practices and programs are emerging across the state which recognize the gatekeeper role that law enforcement plays.

While arrest may be legally permissible, there may be alternatives that would better serve the individual and the community. It is important that judges (1) are informed of alternatives to incarceration and (2) encourage the provision of training and resources for law enforcement on these issues.

### Quick Section Overview

1. Law Enforcement Must Divert When Appropriate
2. Emergency Detention and Protective Custody of Persons with MI
3. Emergency Admission of, and Services for, Persons with ID
4. Arrest

### **Distinguish: Emergency Detention and Emergency Admission**

Note that the emergency detention provisions discussed in this section apply only to persons with MI. Emergency admission of persons with ID is discussed in Intercept 1, section 3 of this Bench Book.

# 1. Law Enforcement Must Divert When Appropriate

## 1.1. Good-faith Effort Required

Every law enforcement agency must make a good-faith effort to divert a person (1) suffering a mental health crisis or (2) suffering from the effects of substance abuse, to a proper treatment center in the agency's jurisdiction. This provision applies if:

- a treatment center is available;
- diversion is reasonable;
- the offense is a non-violent misdemeanor; and
- the mental health or substance abuse issue is suspected to be the reason for the offense.

[Tex. Code Crim. Proc. art. 16.23\(a\)](#).

## 1.2. Scope of Provision

This provision applies to all persons described above except for persons accused of certain intoxication offenses. See [Tex. Code Crim. Proc. art. 16.23\(b\)](#). Note that the statute does not specify when the dictates of this provision begin or end.

The statute also does not specify which law enforcement agencies are subject to this provision. Absent a definition or limiting language, that term should be given its commonly understood meaning. See [Tex. Code Crim. Proc. art. 3.01](#); see also [Tex. Code Crim. Proc. art. 59.01\(5\)](#) (“Law enforcement agency’ means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.”) & [Tex. Code Crim. Proc. art. 2.12](#) (defining “peace officer”).

# 2. Emergency Detention and Protective Custody of Persons with MI

## 2.1. What is an Emergency Detention?

An emergency detention is not an arrest. Emergency detention is the legal procedure by which a person experiencing a severe mental health crisis may be detained for a preliminary examination and crisis stabilization, if appropriate. Law enforcement officers have significant discretion to make a warrantless apprehension for an emergency detention if the statutory criteria are met rather than choosing to make an arrest. This is frequently referred to as an “APOWW” (Apprehension by Police Officer Without a Warrant).

Emergency detention may be necessary and appropriate when a person will not submit to voluntary services. The person must be placed in the least restrictive, most appropriate setting, while safeguarding the person's legal rights to a subsequent judicial determination of their need for involuntary mental health services. See [Tex. Health & Safety Code §§ 571.004, 576.021\(a\)\(1\)](#).

## Overview of Emergency Mental Health Procedures

### I. Emergency Detention (ED) Under Tex. Health & Safety Code (HSC) Chapter 573

#### A. Transporting Person to, or Holding Person Currently at, a Facility

##### 1. Law Enforcement—No Warrant (no initial court involvement required) (“APOWW”)

- **Apprehension:** a peace officer believes that the person has MI, and because of the MI, there is a substantial risk of serious harm to self or others (demonstrated by behavior or evidence of severe emotional distress and deterioration) unless the person is immediately restrained, and there is no time to get a warrant. [Health & Safety § 573.001\(a\)](#).
- **Notice to Facility:** officer must give notice of detention to facility, [Health & Safety § 573.002](#); without notice, the facility may not detain the person involuntarily.
- **Notice to Court:** only if guardianship exists. [Health & Safety § 573.0021](#).

##### 2. Guardian—No Warrant (must notify court)

- **Apprehension:** same as law enforcement apprehension but not required to show insufficient time to get a warrant. [Health & Safety § 573.003](#).
- **Notice to Court:** immediately to court that granted guardianship. [Health & Safety § 573.002\(c\)](#).
- **Application:** substantial risk of serious harm to self or others; risk of harm is imminent unless the person is immediately restrained. [Health & Safety § 573.004\(a\), \(b\)](#).

##### 3. Any adult—Warrant (must apply to court)

- **Application:** [same as guardian application standard] + application must be presented in person. [Health & Safety § 573.011\(b\)](#). Exception: a physician applicant may present the application by email or secure electronic transmission. [Health & Safety § 573.011\(h\)](#).
- **Warrant:** reasonable cause to believe that [same as application standard] + the necessary restraint cannot be accomplished without ED. [Health & Safety § 573.012](#).
- **Important Note:** any adult who is not a guardian or law enforcement, such as family members, friends, or EMS, must apply for a warrant or obtain an APOWW notice. *A facility has no legal right to hold an individual if that individual refuses preliminary examination or treatment.*

##### 4. Facility (must apply to court)

- **Application:** [same as guardian application standard] + ED is the least restrictive means by which the necessary restraint may be accomplished. [Health and Safety § 573.022\(a\)](#).
- **Warrant:** [same as warrant standard for any adult]

## **B. Preliminary Examination at Facility**

### **1. When it Must Occur**

- The exam must be performed by a physician within **12 hours** after the person is apprehended or transported by guardian. [Health & Safety § 573.021\(c\)](#).

### **2. Standard for ED Admission**

- Preliminary examination must show that person (1) has MI and (2) is a substantial risk of serious and imminent harm to self or others. [Health & Safety § 573.022\(a\)](#).

### **3. Order of Protective Custody (OPC) Required**

- The physician has **48 hours** from the time of person's arrival at facility to seek an OPC. [Health & Safety § 573.021\(b\)](#).

### **4. Person Must be Released if the Person Does Not Meet the Above Criteria.**

### **5. Transportation After Release**

- The person must be returned to the location of apprehension, residence in Texas, or another suitable location. This does not apply if person was arrested or objects to transportation. If the person was apprehended by peace officer, immediate transport is required; otherwise, it must be reasonably prompt. [Health & Safety § 573.024](#).

## **II. Protective Custody and Probable Cause Under HSC Chapter 574**

### **A. Motion for Protective Custody Order** (filed with 574 commitment application)

1. Trial court may issue order for protective custody if the person presents a substantial risk of serious harm to self or others if not immediately restrained pending the hearing. [Health & Safety § 574.022\(a\)\(2\)](#).
2. If person is charged with criminal offense, facility administration must agree to the detention. [Health & Safety § 574.022\(e\)](#).

### **B. Probable Cause Hearing to Determine Continued Detention** (within 72 hours)

- Trial court may order continued detention if it finds probable cause to believe that the person presents a substantial risk of serious harm to self or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services. [no immediacy requirement] [Health & Safety § 574.026\(a\)](#).

## 2.2. Peace Officer: Transport to a Facility Without a Warrant

Law enforcement provides the fastest intervention to begin deescalating a crisis and obtain the necessary early information to evaluate, stabilize, and safeguard the individual. On-site law-enforcement intervention provides an immediate trained response with appropriate support and access to emergency medical services that would be further delayed during the time necessary to obtain a warrant.

### 2.2.1. Standard: A Substantial Risk of Serious Harm

A peace officer may take a person into custody without a warrant if the officer has reason to believe and does believe that:

- the person has MI;
- because of that MI, there is a substantial risk of serious harm to the person or others unless the person is immediately restrained; and
- there is insufficient time to obtain a warrant before taking the person into custody.

[Tex. Health & Safety Code § 573.001\(a\)](#).

A substantial risk of serious harm may be demonstrated by:

- the person's behavior; or
- evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

[Tex. Health & Safety Code § 573.001\(b\)](#).

### 2.2.2. What May Support an Officer's Belief

The officer must be able to cite specific recent behavior, overt acts, attempts, or threats in support of his belief. [Tex. Health & Safety Code § 573.002\(b\)\(5\)](#).

The officer's belief may be based on:

- the representation of a credible person;
- the person's conduct; or
- the circumstances under which the person is found.

[Tex. Health & Safety Code § 573.001\(c\)](#).

### **Officer's Personal Observations Not Required**

Note that the statute does not require an officer's personal observations of conduct or behavior suggesting a substantial risk of serious harm. An officer's belief may be based on credible information given to the officer by a witness, such as a family member.

### 2.2.3. An Officer Must Investigate

A peace officer must “investigate the circumstances surrounding a mental health call prior to taking the subject into custody and before transporting the subject to a mental health facility.” *Trevino v. State*, 512 S.W.3d 587, 595 (Tex. App.—El Paso 2017, no pet.).

#### Demonstrating a Substantial Risk of Serious Harm

There is no case law discussing the “substantial risk of serious harm” standard for emergency detention set forth in section 573.001 of the Texas Health and Safety Code. However, there are cases discussing the standard for civil commitment under section 574.034, which contains similar language regarding deterioration of a person’s ability to function. Such signs and symptoms can include, but are not limited to, the following:

- malnutrition
- poor hygiene arising to a level of dangerousness
- an inability to administer necessary medications
- failure to provide for adequate shelter
- failure to maintain their own safety
- disorientation
- delusional thinking
- responding to visual and auditory hallucinations
- responding to an officer’s questions with grunting noises
- soiling one’s self regularly

See, e.g., *In re A.T.*, No. 02-18-00197-CV, 2018 WL 3385701 (Tex. App.—Fort Worth July 12, 2018, no pet.) (not designated for publication); *State for Best Interest & Prot. of H.S.*, 484 S.W.3d 546, 551 (Tex. App.—Texarkana 2016, no pet.); *In re M.R.*, No. 02-15-00221-CV, 2015 WL 6759249 (Tex. App.—Fort Worth Nov. 3, 2015, no pet.) (not designated for publication).

Be advised that the burden of proof required for an emergency detention is reasonable cause, which is a lesser burden than the clear-and-convincing standard required for civil commitment under Chapter 574 of the Texas Health and Safety Code. See *Tex. Health & Safety Code* §§ 573.012(b), 574.034, 574.035.

### 2.2.4. Transport to a Facility

An officer must transport the person:

- to the nearest appropriate inpatient mental health facility;

- if such a facility is unavailable, to another mental health facility<sup>22</sup> deemed suitable by the LMHA; or
- to EMS personnel in accordance with a memorandum of understanding (MOU) for transport to an appropriate facility as described in section 2.2.5 of this Bench Book below.

Tex. Health & Safety Code § 573.001(d).

The jail must not be used except in an extreme emergency, and the person must be kept separate from inmates charged with or convicted of a crime. Tex. Health & Safety Code § 573.001(e), (f).

### **2.2.5. Memorandum of Understanding (MOU) Regarding Transportation for Emergency Detention**

A law enforcement agency and an EMS provider may execute an MOU under which EMS personnel employed by the provider may transport a person taken into custody under an emergency detention by a peace officer employed by the law enforcement agency. The MOU must:

- address responsibility for the cost of transporting the person taken into custody; and
- be approved by the county in which the law enforcement agency is located and the LMHA that provides services in that county with respect to provisions of the MOU that address the responsibility for the cost of transporting the person.

Tex. Health & Safety Code § 573.005(b).

### **2.2.6. Person's Rights**

An officer must immediately inform the person orally in simple, nontechnical terms:

- of the reason for the detention; and
- that a staff member of the facility will inform the person of their rights within 24 hours.

Tex. Health & Safety Code § 573.001(g).

### **2.2.7. Firearms**

An officer may immediately seize any firearms in the person's possession. Tex. Health & Safety Code § 573.001(h). Note that specific procedures for seizure and return of firearms will vary by jurisdiction.

### **2.2.8. Notice of Detention to Facility**

After taking the person to a facility, the officer must immediately file with the facility a notification of detention on the statutorily required form. [See Tab 1 of this Bench Book](#). The facility must honor the statutorily prescribed form and cannot require use of a different form. The facility must include the notice in the person's clinical file. Tex. Health & Safety Code § 573.002(a) & (c).

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<sup>22</sup> The definition of mental health facility includes "that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided." Tex. Health & Safety Code § 571.003(12). Pursuant to their obligations under the federal Emergency Medical Treatment and Active Labor Act or otherwise, hospital emergency departments often diagnose, treat, and care for persons with mental illness.

If emergency medical personnel transport the person at the request of a peace officer, they must immediately file with the facility the notification of detention completed by the peace officer who made the request. [Tex. Health & Safety Code Sec. 573.002\(a\)](#).

### **2.3. Guardian: Transport to a Facility Without a Warrant**

A guardian may transport an adult ward under their guardianship to a mental health facility under the standard set forth at Intercept 1, section 2.2.1. of this Bench Book. [Tex. Health & Safety Code § 573.003](#).

This does not give the guardian the right to commit the ward, but rather the ability to obtain a preliminary examination, as described at Intercept 1, section 2.5.1. below. [Tex. Est. Code § 1151.053](#).

#### **2.3.1. Guardian's Application for Emergency Detention**

The guardian must immediately file an application for detention with the facility. [Tex. Health & Safety Code § 573.004\(a\)](#). [See Tab 2 of this Bench Book](#).

The application must contain:

- (1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;
- (2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;
- (3) a specific description of the risk of harm;
- (4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is immediately restrained;
- (5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and
- (6) a detailed description of the specific behavior, acts, attempts, or threats.

[Tex. Health & Safety Code § 573.004\(b\)](#).

The guardian shall immediately provide written notice of the application filing to the court that granted the guardianship. [Tex. Health & Safety Code § 573.004\(c\)](#).

### **2.4. Any Adult: Application for Emergency Detention Order and Warrant**

Any adult may file an application for the emergency detention of another person. See [Tab 3 of this Bench Book](#). The application must include:

- the contents required for the guardian application (see Intercept 1, section 2.3.1. of this Bench Book); and
- a detailed description of the applicant's relationship to the person.

[Tex. Health & Safety Code § 573.011\(b\)](#). The application may be accompanied by any relevant information. *Id.* at [§ 573.011\(c\)](#).

An applicant for emergency detention must present the application personally to a magistrate or judge,<sup>23</sup> who (1) must examine the application and (2) may interview the applicant. [Tex. Health & Safety Code § 573.012\(a\)](#).

### **When Personal Presentment of an Application is Not Required**

**Physician.** If the applicant is a physician, the magistrate may permit electronic presentation of the application following the procedure described in section 573.012(h) of the Texas Health and Safety Code.

**Administrative order.** The judge of a court with probate jurisdiction by administrative order may provide that the application must be retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented. [Health & Safety § 573.012\(a\)](#). Note that if there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts. [Health & Safety § 573.012\(g\)](#).

#### **2.4.1. When the Magistrate Must Issue a Warrant**

The magistrate must deny the application and refuse to issue a warrant unless the magistrate finds that there is reasonable cause to believe that:

- the person evidences mental illness;
- the person evidences a substantial risk of serious harm to self or others as described in Intercept 1, section 2.2.1. of this Bench Book;
- the risk of harm is imminent unless the person is immediately restrained; and
- the necessary restraint cannot be accomplished without emergency detention.

[Tex. Health & Safety Code § 573.012\(b\)](#).

If the magistrate finds reasonable cause, the magistrate must issue a warrant to an on-duty peace officer<sup>24</sup> for the person's immediate apprehension, detention, and transportation to an appropriate treatment facility for a preliminary examination under section 573.021 of the Texas Health and Safety Code. [Tex. Health & Safety Code § 573.012\(d\)](#). [See Tab 4 of this Bench Book.](#)

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<sup>23</sup> Note that the terms "judge" and "magistrate" are not always interchangeable; however, they are used interchangeably in provisions governing emergency detention in Chapter 573 of the Texas Health and Safety Code. Note that any magistrate has authority to issue a warrant for emergency detention. *See* [Tex. Health & Safety Code § 573.012](#).

<sup>24</sup> A 2018 Attorney General Opinion concluded that "a magistrate may direct the emergency detention warrant to any on-duty peace officer listed in article 2.12 of the Code of Criminal Procedure, regardless of the apprehended person's location within the county." *Tex. Att'y Gen. Op. KP-0206*, at \*1 (May 16, 2018) (internal footnote omitted).

## Examine the Application and Interview the Applicant on the Record

To better ensure the provision of reliable information, consider swearing in the applicant in the presence of a peace officer and securing a court reporter to record the hearing.

### 2.4.2. The Warrant is the Application for Detention

The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility. [Tex. Health & Safety Code § 573.012\(f\)](#).

### 2.5. Temporary Acceptance Required

A facility must temporarily accept a person for whom:

- an application for detention is filed; or
- an officer or EMS personnel under an MOU provides a notice of detention completed by the officer under section 573.002(a) of the Texas Health and Safety Code.

[Tex. Health & Safety Code § 573.021\(a\)](#).

**Exception:** A person may not be detained in a private mental health facility without the consent of the facility administrator. [Tex. Health & Safety Code § 573.021\(e\)](#).

### 2.5.1. Within 12 Hours of Apprehension, a Physician Must Perform a Preliminary Examination

Regardless of whether a person was transported to a facility with or without a warrant, the person must be evaluated by at least one physician within 12 hours *after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian*. [Tex. Health & Safety Code § 573.021\(c\)](#).

A “physician,” for purposes of the statute, need not be a psychiatrist, but means:

- a person licensed to practice medicine in this state;
- a person employed by a federal agency who has a license to practice medicine in any state; or
- a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

[Tex. Health & Safety Code § 571.003\(18\)](#).

### 2.6. When a Person May be Admitted to a Facility After a Preliminary Exam

The person can be admitted to a facility only if the physician who performed the preliminary examination makes a written statement that:

- (1) is acceptable to the facility;
- (2) states that after a preliminary examination it is the physician's opinion that:
  - (a) the person is a person with MI;
  - (b) the person evidences a substantial risk of serious harm to self or to others;
  - (c) the risk of harm is imminent unless the person is immediately restrained; and
  - (d) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and
- (3) includes:
  - (a) a description of the nature of the person's MI;
  - (b) a specific description of the risk of harm, which may be demonstrated by
    - the person's behavior or
    - evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and
  - (c) the specific detailed information from which the physician formed the opinion in Subdivision (2).

Tex. Health & Safety Code § 573.022.

### **Distinguish: Certificate of Medical Examination for Mental Illness (CME)**

A physician's "written statement" documenting a preliminary examination under section 573.022 of the Texas Health and Safety Code is not a "certificate of medical examination for mental illness" under section 574.011 of the Texas Health and Safety Code. The former is required for a facility to hold a person under Chapter 573 after a preliminary examination is performed; the latter must accompany a motion for protective custody under Chapter 574 as discussed in section 2.7.4 of this Bench Book.

#### **2.6.1. Release**

The person must be released on completion of the preliminary examination unless the person is admitted to a facility as described in Intercept 1, section 2.6 of this Bench Book. If the person is admitted, the person must be released if the facility administrator determines at any time during the emergency detention period that one of the criteria described above no longer applies. [Tex. Health & Safety Code § 573.022\(a\), \(b\)](#).

#### **2.6.2. Transport**

After admission, the admitting facility may transport the person to a facility deemed suitable by the LMHA. At the LMHA's request, the judge may order that the person be detained in a department mental health facility. Either the admitting facility or the facility where the person is detained may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator. [Tex. Health & Safety Code § 573.022\(b\), \(c\)](#); *see also* [Tex. Health & Safety Code § 574.045](#) (detailing more requirements pertaining to transportation of a patient).

### **2.6.3. Within 48 Hours of Initial Detention, the Person Must be Released if No Protective Custody Order is Obtained**

Unless a written order of protective custody (OPC) is obtained under Texas Health and Safety Code section 574.022 as discussed in Intercept 1, section 2.7. of this Bench Book, a person accepted for a preliminary examination may be detained in custody for no more than 48 hours *after the time the person is presented to the facility*. That includes any time the person spends waiting in the facility for medical care before the person receives the preliminary examination. [Tex. Health & Safety Code § 573.021\(b\)](#).

If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. [Tex. Health & Safety Code § 573.021\(b\)](#).

#### **Subsequent Applications for Emergency Detention**

There are statutory limits on the allowable period for an emergency detention. Texas Health & Safety Code § 573.021(b) provides that “[a] person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained.” (Note, however, that this subsection extends the 48-hour period until 4:00 p.m. on the first succeeding business day if “the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4:00 p.m. on the first succeeding business day.”)

The statute contemplates that, if after a preliminary examination, additional involuntary inpatient mental health services are required, the state must take steps to seek and obtain an order for protective custody during the emergency detention period. The legislative intent of 573.021 bolsters the interpretation that a second consecutive emergency detention order arising out of the same nexus of events would not be authorized. In contrast, however, a subsequent emergency detention order following the expiration of the statutory period would be permissible if supported by a new or different nexus of events that meet the statutory criteria. Similarly, sequential warrants should not be issued on the basis of a single nexus of events.

## **2.7. Order of Protective Custody**

### **2.7.1. Where to File an OPC Motion**

In contrast to an application for emergency detention, which may be presented to any judge or magistrate, a motion for OPC may be filed only in the court in which an application for court-ordered mental health services is pending. *Compare* [Tex. Health & Safety Code § 573.012](#) with [§ 574.008\(a\)](#). An application for court-ordered mental health services must be filed in the statutory or constitutional county court that has jurisdiction of a probate court in mental health proceedings. *See* [Tex. Health & Safety Code § 574.021\(a\)](#).

### **2.7.2. Who May File an OPC Motion**

The motion may be filed by the county or district attorney or on the motion of the court with probate jurisdiction. [Tex. Health & Safety Code § 574.021\(b\)](#).

### **2.7.3. Contents**

The motion must state that:

- (1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and
- (2) the belief is derived from:
  - (a) the representations of a credible person;
  - (b) the proposed patient's conduct; or
  - (c) the circumstances under which the proposed patient is found.

[Tex. Health & Safety Code § 574.021\(c\)](#).

### **2.7.4. Certificate of Medical Examination Required**

The motion must be accompanied by a certificate of medical examination (CME) for MI prepared by a physician who has examined the proposed patient. The physician must have prepared the CME not earlier than the third day before the day the motion is filed (in other words, the CME must be very recent). [Tex. Health & Safety Code § 574.011, 574.021\(d\)](#).

### **2.7.5. Judge May Appoint a Magistrate**

The judge of the court in which the application is pending may designate a magistrate to issue OPCs. That includes a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. [Tex. Health & Safety Code § 574.021\(e\)](#).

### **2.7.6. When the Judge or Designated Magistrate May Issue an OPC**

The judge or designated magistrate may issue an OPC if the judge or magistrate determines:

- (1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with MI; and
- (2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

[Tex. Health & Safety Code § 574.022\(a\)](#).

**Note:** The judge or magistrate may issue an OPC for a proposed patient charged with a criminal offense if:

- the proposed patient meets the requirements of section 574.022 of the Texas Health and Safety Code, and
- the facility administrator designated to detain the proposed patient agrees to the detention.

[Tex. Health & Safety Code § 574.022\(e\)](#).

### 2.7.7. Apprehension Under an OPC

An OPC shall direct a person authorized to transport patients under section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the LMHA. On the LMHA's request, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by HHSC. The proposed patient shall be detained in the facility until a probable cause hearing is held under section 574.025 as discussed in Intercept 1, section 2.8 of this Bench Book. [Tex. Health & Safety Code § 574.022](#).

**Note:** A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services. [Tex. Health & Safety Code § 574.022\(c\)](#).

### 2.8. Within 72 Hours of OPC Detention, Court Must Hold Probable Cause Hearing

Not later than 72 hours after the time that the proposed patient was detained under an OPC, the court must hold a hearing to determine if:

- (1) there is probable cause to believe that a proposed patient under an OPC presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and
- (2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.

[Tex. Health & Safety Code § 574.025](#). If the court determines that the above criteria are met, the court may order that the proposed patient remain in protective custody pending a hearing on an application for court-ordered services. [Tex. Health & Safety Code § 574.026](#).<sup>25</sup>

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<sup>25</sup> The next edition of this Bench Book will detail the procedures for civil commitment under Chapter 574 of the Texas Health and Safety Code beyond obtaining an OPC and the probable-cause hearing. Please consult the *Texas Association of Counties' Bench Book on Mental Health and Mental Retardation* for more information on these procedures, available at [http://www.easylawlookup.com/downloads/benchbook/pdf/d\\_mhmr.pdf](http://www.easylawlookup.com/downloads/benchbook/pdf/d_mhmr.pdf).

## Emergency Detention and Commitment Hearing Timeline

**TD** = time detained by peace officer or transported by guardian to facility

### **TD + 12 Hours:**

- Preliminary examination must be completed by a physician. [Tex. Health & Safety Code § 573.021\(c\)](#).

### **TD + 48 Hours:**

- Person must be released unless an order of protective custody (OPC) is obtained. May be extended until 4:00 p.m. on the first succeeding business day if 48-hour period ends on a Saturday, Sunday, or legal holiday. [Health & Safety § 573.021\(b\)](#).
- Motion for OPC may be filed only in the court in which an application for court-ordered mental health services is pending. [Health & Safety § 574.021\(a\)](#).
- Application for court ordered mental health services must also be filed and pending in the court issuing the OPC. [Health & Safety § 574.001](#).

**Note:** *There is no requirement in Chapter 574 that the specific facility in which the patient will be detained be named in the OPC nor any requirement that a "bed letter" be obtained prior to or in conjunction with issuing an OPC.*

### **TD + HSC 574 Application Filed + 24 Hours:**

- Judge shall appoint an attorney to represent the person.

### **TD + 120 Hours:**

- Probable cause hearing: if there is probable cause to believe a person under an OPC presents a substantial risk of serious harm to the person or others such that the person may not remain at liberty pending a hearing on the application for court ordered mental health services. **Must be held within 72 hours of OPC being issued.** May be extended to the first succeeding business day if 72-hour period ends on a Saturday, Sunday, or legal holiday. [Health & Safety § 574.025](#).
- This is a hearing to determine if probable cause exists at the time of the hearing for further detention and restriction of a person's liberty, *not a confirmation of the peace officer's original decision*. Note that by this time the patient has been in treatment at a mental health facility for 24 to 120 hours depending on county procedures.

### **TD + HSC 574 Application Filed + 14 Days:**

- Full evidentiary hearing on application for court-ordered mental health services. [Health & Safety § 574.005](#).
- May not be held during the first three days after the application has been filed if either the person or attorney objects.
- Court may grant one or more continuances on motion by a party and for good cause shown or on agreement of the parties. Hearing must be held within 30 days of when original application was filed. [Health & Safety § 574.005\(c\)](#).

## 3. Emergency Admission of, and Services for, Persons with ID

### 3.1. Emergency Admission Without an ID Determination

An emergency admission to a residential care facility is permitted without a determination of an intellectual disability and an interdisciplinary team recommendation if:

- (1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;
- (2) space is available at the facility for which placement is requested;
- (3) the proposed resident has an urgent need for services that the facility director determines the facility provides; and
- (4) the facility can provide relief for the urgent need within a year after admission.

Tex. Health & Safety Code § 593.027(a).

#### 3.1.1. ID Determination Shall be Performed Within 30 Days

A determination of an intellectual disability and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

Tex. Health & Safety Code § 593.027(b).

### 3.2. Emergency Services Without ID Determination

An emergency admission to a residential care facility is permitted without a determination of an intellectual disability if:

- (1) there is persuasive evidence that the person is a person with an intellectual disability;
- (2) emergency services are available; and
- (3) the person has an urgent need for emergency services.

Tex. Health & Safety Code § 593.0275(a).

#### 3.2.1. ID Determination Shall be Performed Within 30 Days

A determination of an intellectual disability for the person served under this section shall be performed within 30 days after the date the services begin. Tex. Health & Safety Code § 593.0275(b).

### 3.3. Respite Care

Respite care provides temporary help or relief to a person with a developmental disability or his or her family. Respite can be provided for up to 30 days with one 30-day extension. Respite admission is considered voluntary and requires the consent of the proposed resident, if he or she is capable of giving legally adequate consent; the guardian of an adult who cannot give consent; or the parent of a minor. Tex. Health & Safety Code § 593.028.

## 4. Arrest

### 4.1. Arrest is Usually Discretionary

A peace officer may arrest a person who:

- has committed an offense in the officer's view [Tex. Code Crim. Proc. art.14.01\(b\)](#);
- is found in a suspicious place if the circumstances reasonably show that the person has committed or is about to commit certain offenses [Tex. Code Crim. Proc. art.14.03\(a\)](#);
- the officer has probable cause to believe has committed certain offenses [Tex. Code Crim. Proc. art. 14.03\(a\)](#); or
- has made an admissible statement to the officer that establishes probable cause to believe that the person has committed a felony.

[Tex. Code Crim. Proc. art. 14.03\(a\)](#)

### 4.2. When Arrest is Mandatory

A peace officer must arrest a person whom the officer has probable cause to believe has committed an offense under section 25.07 of the Texas Penal Code (Violations of Certain Court Orders or Conditions of Bond) in the presence of the officer. [Tex. Code Crim. Proc. art. 14.03\(b\)](#).

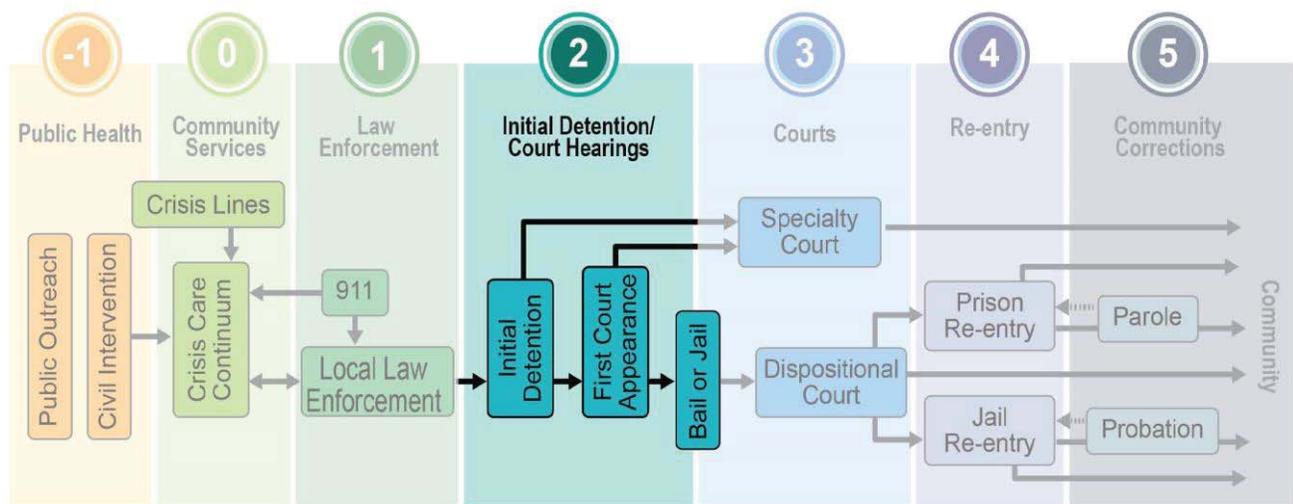
### 4.3. Notice to the Magistrate May Be Required

If the arresting officer is a sheriff or deputy sheriff and the officer suspects the person has MI or ID, the officer must notify the magistrate within 12 hours as discussed in Intercept 2, section 4.1. of this Bench Book. [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#).

# 2

## Intercept 2: Initial Detention and Court Hearings

**Intercept 2: Initial Detention and Court Hearings** focuses on initial detention and court hearings. This intercept will frequently be the first opportunity for judicial involvement. This includes matters such as intake screening, early assessment, and pretrial release of those with mental illness or intellectual disabilities. Identification at this stage can facilitate informed decision making around an individual’s care, treatment continuation, and pretrial orders. Diversion and data sharing continue to be a focus in this intercept.



### Recent Legislative Changes

The 85th Legislature passed two bills in 2017 amending article 16.22, the statute affecting procedures in this intercept (S.B. 1326 and S.B. 1849). Statutory amendments have been harmonized when possible, and footnotes indicate provisions that contain substantive relevant changes made by one bill but not the other.

## Part I: Jail

Article 16.22 of the Texas Code of Criminal Procedure details a procedure for identifying a person’s possible MI or ID at the earliest stages of—and throughout—a criminal proceeding. Under article 16.22, a magistrate must, under certain circumstances discussed below, order a collection of information regarding an inmate to determine whether the person may have MI or ID in order to alert the necessary stakeholders if the assessment does indicate possible MI or ID. The statute describes this collection of information as an “assessment,” which is often referred to colloquially (and herein) as a “16.22 assessment.”

## Quick Section Overview

1. **A 16.22 Assessment**
2. **Who May Perform a 16.22 Assessment**
3. **The Standard for Ordering a 16.22 Assessment**
4. **Types of Information that Can Prompt a Magistrate to Order an Assessment**
5. **When a Defendant Refuses to Submit to an Assessment**
6. **What to do with the Assessment**
7. **Information Sharing is Mandatory**

## 1. A 16.22 Assessment

Since the passage of article 16.22 of the Texas Code of Criminal Procedure in 1993, much confusion has surrounded the question of what an assessment under article 16.22 is, particularly in light of other, similar-sounding concepts in mental health and ID law. It is thus helpful to consider what a 16.22 assessment is, and what a 16.22 assessment is not.

### 1.1. What a 16.22 Assessment Is

An assessment provided to the magistrate under article 16.22 is a limited-purpose tool: it is an assessment of information collected regarding a person's possible MI or ID. [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#). The assessment must be performed by a "qualified professional," which is described in section 2 below.

#### 1.1.2. Information the Assessment Must Include

The assessment must include:

- information from any previous assessment, if applicable;<sup>26</sup>
- previously recommended treatment, if applicable;
- a description of the procedures used in the collection of information; and
- the provider's observations and findings regarding:
  - whether the person has MI or ID,

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<sup>26</sup> Note, depending on who conducts the assessment, there may be records readily available. For example, the sheriff's office medical staff may have records from a previous incarceration or an LHMA may have records if the defendant is a client. article 16.22 does not require obtaining records that other entities may maintain.

- whether there is clinical evidence to support a belief that the person may be incompetent and should undergo a competency exam under Chapter 46B of the Texas Code of Criminal Procedure; and
- appropriate or recommended treatment or service (which is key to creating bond conditions under article 17.032 of the Texas Code of Criminal Procedure as discussed in Intercept 2, Part 2 of this Bench Book).

Tex. Code Crim. Proc. art. 16.22(a)(1)(A), (b-1).

### 1.1.3. Form that the Provider Must Use

The assessment must be submitted on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) entitled “COLLECTION OF INFORMATION FORM FOR MENTAL ILLNESS AND INTELLECTUALDISABILITY.”

Tex. Code Crim. Proc. art. 16.22(a)(1)(B).<sup>27</sup> [See Tab 9 of this Bench Book.](#)

### 1.1.4. 16.22 Assessments are Required

16.22 assessments are critical to proper case management. Early identification can affect case management in a variety of ways over the course of a criminal proceeding, including but not limited to the following:

- bail decisions;
- appointment of counsel;
- early involvement of local health provider (e.g., crisis stabilization, provision or continuation of treatment and services);
- charging decisions;
- diversion of the person from the criminal justice system;
- flagging potential incompetency issues or initiating incompetency proceedings;
- initiation of civil-commitment proceedings (with or without dismissing charges);
- consideration during punishment or as a basis for imposing treatment conditions as part of community supervision; and
- creating a record for future use and information sharing.

### 1.2. What a 16.22 Assessment is Not

A 16.22 assessment is not a diagnosis of MI or ID and need not be performed by a licensed medical or mental health professional. This is a common misconception and one that may make magistrates hesitant to order a 16.22 assessment. See Intercept 2, Part I, section 2 of this Bench Book for information on who may perform an assessment. Further, a magistrate does not need

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<sup>27</sup> The 85th Texas Legislature passed two bills in 2017 amending this statute: S.B. 1326 added the requirement that assessments be submitted on the TCOOMMI-approved form, but S.B. 1849 did not. Under applicable rules of statutory interpretation, the addition of this requirement must be given effect. See [Tex. Gov’t Code § 311.025\(b\)](#).

evidence that the person has been previously diagnosed with MI or ID before the magistrate may order a 16.22 assessment.

### **1.2.1. A 16.22 Assessment is NOT a Full Competency Evaluation**

A 16.22 assessment should not be confused with forensic evaluations described in Chapters 46B (Competency to Stand Trial) and 46C (Insanity Defense) of the Texas Code of Criminal Procedure.

The type of evaluation that is most frequently confused with a 16.22 assessment is a competency examination under Chapter 46B of the Texas Code of Criminal Procedure. Under Chapter 46B, a person is incompetent to stand trial if the person does not have (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person. [Tex. Crim. Proc. Code § 46B.003\(a\)](#).

A 16.22 assessment may flag the need for a full competency evaluation under Chapter 46B: "If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial." [Tex. Crim. Proc. Code § 46B.004\(b\)](#).<sup>28</sup> However, the court may have reasonable cause to believe that a person has MI or ID but not have evidence suggesting that the person may be incompetent to stand trial.

### **A Person Can Have MI or ID and Still be Competent Under Chapter 46B**

It is important to understand that a magistrate may receive information that may not suggest that a person is incompetent to stand trial under Chapter 46B of the Texas Code of Criminal Procedure, but that may suggest that the person may have MI or ID. Such a condition may not render the person incompetent to stand trial, but it may warrant special consideration and management of the person's criminal case.

### **1.2.2. A 16.22 Assessment is NOT the Mandatory Jail Screening**

A 16.22 assessment is not an "approved mental disabilities/suicide prevention screening instrument" under Texas Administrative Code, Title 37, Part 9, Chapter 273, section 273.5, which must be completed by a jail employee for all inmates immediately upon intake as discussed in Intercept 2, Part I, section 4.1.3. of this Bench Book. [See Tab 5 of this Bench Book.](#)

### **1.2.3. A 16.22 Assessment is NOT a Full Clinical Assessment**

A 16.22 assessment is not an "assessment" under Texas Administrative Code, Title 25, Part I, Chapter 441, Subchapter A, section 441.101, which contemplates a more rigorous and ongoing evaluation for purposes of developing a treatment plan and measuring progress.

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<sup>28</sup> Note that a competency examination may not be performed until the case is filed with the trial court. See [Tex. Code Crim. Proc. art. 46B.004](#).

## 2. Who May Perform a 16.22 Assessment

### 2.1. Article 16.22 Requirements

The statute provides that the assessment must be performed by:

- a LMHA,
- a LIDDA, or
- another qualified mental health or intellectual disability expert.

[Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#).

### 2.2. Article 16.22 Does Not Define “Another Qualified Mental Health or Intellectual Disability Expert”

Article 16.22 does not define “another qualified mental health or intellectual disability expert” either expressly or by reference or incorporation. Definitions of other similar terms may offer guidance but note that they are not expressly incorporated into article 16.22. A discussion of those terms follows.

#### 2.2.1. QMHP-CS

25 Texas Administrative Code section 412.303 defines “QMHP-CS” as a person who works or provides services for a LMHA/LBHA or provider as an employee, contractor, intern, or volunteer, who:

- is credentialed as a QMHP-CS;
- has demonstrated and documented competency in the work to be performed; and
  - has a bachelor’s degree in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;
  - is a registered nurse; or
  - completes an alternative credentialing process as determined by the LMHA or MCO.

[25 Tex. Admin. Code § 412.303](#).

#### 2.2.2. Non-physician Mental Health Professional

Section 571.003(15) of the Texas Health and Safety Code defines “non-physician mental health professional” as a licensed professional. Examples include:

- psychologist,
- registered nurse,
- clinical social worker, or
- licensed professional counselor.

### 2.2.3. Qualified Intellectual Disability Professional

42 Code of Federal Regulations (CFR) section 483.430 defines a “qualified intellectual disability professional” as one who:

- has at least one year of experience working directly with persons with ID or other developmental disabilities; and
- is one of the following:
  - a doctor of medicine or osteopathy;
  - a registered nurse or
  - an individual who holds at least a bachelor’s degree described in CFR 483.430(b)(5).

42 CFR § 483.430.

### 2.3. “Qualified Professional”

For simplicity, this Bench Book uses the term “qualified professional” to describe a person who may perform an assessment under article 16.22.

#### **Not an “Expert” as that Term is Typically Used**

The letter and spirit of article 16.22 suggest that the person who performs a 16.22 assessment need not qualify as an “expert” as that term is used in other contexts, such as article 46B.022 (Competency Evaluation) or 46C.102 (Insanity Evaluation) of the Texas Code of Criminal Procedure, or under the Texas Rules of Evidence and interpreting case law.

## 3. The Standard for Ordering a 16.22 Assessment

### 3.1. Reasonable Cause

The magistrate must determine whether there is reasonable cause to believe that the person has MI or ID. Magistrates might consider requesting the TCJS mandatory jail screening form if it was not included with the 16.22 notice. See [Tex. Health & Safety Code 614.017\(a\)\(2\)](#) (requiring disclosure of such information for purposes of continuity of care and services). Note again that a specific diagnosis is not required. See Bench Cards at the end of Intercept 2, Part I of this Bench Book for information on observations that indicate a defendant may have MI or ID.

#### **3.1.1. If Reasonable cause is NOT found, a 16.22 Assessment is Not Required**

If the magistrate determines that there is not reasonable cause, the magistrate is not required to order an assessment. But note that jail conditions frequently trigger decompensation of mental health conditions, so additional 16.22 assessments may be necessary over time.

## Symptoms May be Masked by the Effect of Substance Use

Be aware that, because many persons with MI also use and misuse substances, the need for an assessment may not come to light until the person is either sober or has detoxed.

### 3.1.2. If Reasonable Cause is Found, a 16.22 Assessment is Required

If the magistrate determines that there is reasonable cause, the magistrate must order a qualified professional to (1) collect information regarding whether the person has MI or ID and (2) submit a written assessment of that information on the TCOOMMI-approved form. [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#). [See Tab 7 of this Bench Book.](#)

**Exception:** If reasonable cause is found, a magistrate need not order an assessment if:

- the person has been assessed under article 16.22 in the past year, and
- the 16.22 assessment indicated that the person had MI or ID.

In the event of an exception, the magistrate may proceed with the results of the prior assessment. [Tex. Code Crim. Proc. Art. 16.22\(a\)\(2\)](#). A magistrate, however, is not prohibited from ordering a new assessment.

## Article 16.22 Does Not Limit When the Magistrate May Order an Assessment

Because the statute does not expressly limit when the magistrate may order an assessment, article 16.22 suggests that the magistrate may determine whether to order an assessment at any time—during magistration, arraignment, or any other time the magistrate receives credible information suggesting MI or ID. This is important to note, because jail conditions and the stress of criminal proceedings may cause a person to decompensate over time and demonstrate signs of MI that were not initially present.

## 4. Types of Information that Can Prompt a Magistrate to Order a 16.22 Assessment

### 4.1. Notice from Sheriff or Jailer of Possible MI or ID

For defendants held on Class B misdemeanors or higher,<sup>29</sup> sheriffs and municipal jailers must provide written or electronic notice of credible information that may establish reasonable cause to believe that a defendant is a person with MI or ID. [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#).

#### 4.1.1. The Notice Must Include

The notice must include any information related to the sheriff's or jailer's determination, such as:

- information regarding the defendant's behavior immediately before, during, and after the defendant's arrest; and
- the results of any previous assessment, if applicable.

[Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#). [See Tab 6 of this Bench Book.](#)

The sheriff or jailer may include with the notice other documents containing related information, such as the TCJS-mandated screening form discussed at section 4.1.3 below.

#### 4.1.2. Deadline for Providing Notice

The sheriff or jailer must provide notice to the magistrate within 12 hours of receiving the credible information. [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#).

### Duration of Article 16.22 Sheriff/Jailer Notice Requirement

Article 16.22 does not specify the duration of this notice requirement. Rather, it states broadly that the sheriff or jailer must provide notice within 12 hours when "the sheriff or municipal jailer [has] custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense . . . ." In the absence of an express limitation, the requirement should be read as extending beyond booking and magistration so that a sheriff or jailer must provide notice anytime he or she receives credible information under this provision. See [Tex. Code Crim. Proc. art. 16.22\(a\)\(1\)](#). This includes decompensation while in custody.

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<sup>29</sup> The 85th Texas Legislature passed two bills in 2017 amending this statute (S.B. 1326 and S.B. 1849). S.B. 1326 modified provisions of the statute by (1) adding municipal jailers and (2) limiting the notice requirement to cases involving Class B misdemeanors and higher. The other bill made no such modifications. Because statutory amendments must be harmonized when possible, the amendment that specifically modified these provisions should be given effect. See [Tex. Gov't Code § 311.025\(b\)](#).

Note that the statute, even as amended, does not expressly prohibit assessment of persons charged with Class C misdemeanors.

### 4.1.3. Possible Sources of “Credible Information”

#### 4.1.3.1. Mandatory Screening of Inmates for Suicide and MI and ID

The Texas Commission on Jail Standards (TCJS) requires that the TCJS-approved mental disabilities/suicide prevention screening instrument must be completed immediately for all inmates admitted. [See Tab 5 of this Bench Book.](#) That screening is part of a mental disabilities/suicide prevention plan that all sheriffs and operators must develop and implement to address various statutorily enumerated principles and procedures.<sup>30</sup> See [37 Tex. Admin. Code § 273.5](#).

#### 4.1.3.2. Mandatory Continuity of Care Query (CCQ)

With limited exceptions, every jail is required to conduct a CCQ check on each inmate upon intake into the jail. The CCQ is originated through the Department of Public Safety’s Texas Law Enforcement Telecommunications System, which initiates a data exchange with the HHSC’s Clinical Management for Behavioral Health Services system to determine if the inmate has previously received state mental healthcare. [37 Tex. Admin. Code §273.5](#).

#### **CCQ Check Does Not Include LIDDA or SSLC Services**

Note that a CCQ check will not reflect whether a person has received LIDDA or SSLC services. Thus, if a person is suspected of having ID, contact the LIDDA to determine whether the person has received or is receiving services. In addition to providing information to support a 16.22 assessment order, the person’s case coordinator may be able to recommend appropriate treatment of the person and help to develop a case-management plan.

#### 4.1.3.3. Mandatory Prescription Review

TCJS requires that a qualified medical professional review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody. [Tex. Gov’t Code § 511.009\(d\)](#); [37 Tex. Admin. Code Ch. 273.2\(12\)](#).

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<sup>30</sup> The owner/operator of each facility must also provide medical, mental, and dental services in accordance with the approved health services plan, which may include, but may not be limited to, the services of a licensed physician, professional and allied health personnel, hospital, or similar services. [37 Tex. Admin. Code § 273.1](#).

## Continuing Medication is Critical to Continuity of Care

Continuing a person's prescription medication is critical to preventing mental health deterioration. Intake officials should consult the person, family members, LMHA/LBHA, or a prior provider regarding current medications. Not all medications may be available in jail due to costs, availability, and concerns regarding their possible abuse.

Jails generally do not accept prescriptions provided by family members. However, it is not uncommon for family members to communicate mental health diagnoses with the jail, magistrate, or bond offices. This information may be considered, and the magistrate should order an assessment (or check for prior assessments) if the information is credible.

### 4.2. Notice from Another Source

If the magistrate receives written or electronic notice of credible information that may establish reasonable cause to believe that a person brought before the magistrate has MI or ID, the magistrate must conduct proceedings under Article 16.22 or bond proceedings under Article 17.032, as appropriate. [Tex. Code Crim. Proc. art. 15.17\(a-1\)](#).

### 4.3. When the Magistrate Observes Behavior Suggesting MI or ID

Although not expressly provided in the statute, the spirit of the statutory scheme suggests that the magistrate should order an assessment upon the magistrate's own observations of behavior that establishes reasonable cause to believe that a person has MI or ID, such as during magistration,<sup>31</sup> a probable cause hearing, or arraignment.

## 5. When a Defendant Refuses to Submit to an Assessment

The magistrate may order the person to jail or to another place determined to be appropriate by the LMHA or LIDDA for up to 72 hours.<sup>32</sup> [Tex. Code Crim. Proc. art. 16.22\(a\)\(3\)](#). [See Tab 8 of this Bench Book.](#)

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<sup>31</sup> "Magistration" is not a statutorily defined term but is a term that is widely used in the criminal justice system. It refers to the event in which the magistrate performs the duties set forth in article 15.17 of the Texas Code of Criminal Procedure after the arrest of an individual. It is also referred to as an "initial appearance" and "15.17 warnings." Magistration is not an arraignment. An arraignment occurs when formal charges are read to the defendant and the defendant enters a plea.

<sup>32</sup> The LMHA or LIDDA is entitled to reimbursement from the county for mileage and per diem expenses for transporting the defendant. [Tex. Code Crim. Proc. art. 16.22\(a\)\(3\)](#).

### **When a Person Refuses to be Assessed**

Some example strategies for obtaining an assessment from an unwilling person include:

- requesting the appropriate personnel to contact the person to discuss noncompliance, such as the:
  - LMHA, LIDDA, other mental health or ID provider,
  - case manager, or
  - peace officer;
- ordering the person to appear in court to discuss noncompliance; or
- ordering an emergency detention under Chapter 573 of the Texas Health and Safety Code as described in Intercept 1, section 2 of this Bench Book, if appropriate.

## **6. What to Do with the Assessment**

### **6.1. The Magistrate**

#### **6.1.1 When the Qualified Professional Must Submit the Assessment to the Magistrate**

Unless good cause is shown, after the magistrate orders the assessment, the qualified professional must submit the assessment to the magistrate:

- within 96 hours if the person is in jail; or
- within 30 days if the person has been released from custody;

[Tex. Code Crim. Proc. art. 16.22\(b\)](#).

#### **6.1.2 The Magistrate Must Send Copies**

Regardless of whether the assessment indicates MI or ID, the magistrate must send copies of the assessment to the:

- defense counsel;
- prosecutor; and
- the trial court of jurisdiction.<sup>33</sup>

[Tex. Code Crim. Proc. art. 16.22\(b-1\)](#).

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<sup>33</sup> If the case has not been filed when the magistrate receives the assessment, the magistrate must hold the assessment and send a copy to the trial court once the case is filed.

### **Multiple Assessments May be Necessary**

Depending on an inmate's behavior, multiple assessment orders may be necessary over the course of a criminal case. Consider leaving a copy of the assessment in the person's inmate file, along with the TCJS mandatory inmate screening form. See [37 Tex. Admin. Code § 273.4](#) (governing maintenance of inmate health records). Note that the trial court is authorized to order additional assessments, if appropriate.

## **6.2. The Trial Court**

### **6.2.1. What the Trial Court Must Do:**

When the trial court receives the assessment, if:

- the person is in custody, and
- the assessment indicates MI or ID,

the trial court must apply the criteria set forth in article 17.032 of the Texas Code of Criminal to determine whether the trial court must release the person on personal bond, as discussed in Intercept 2, Part II of this Bench Book. [Tex. Code Crim. Proc. art.17.032\(b\)](#).

### **6.2.2. What the Trial Court May Do:**

Regardless of whether the assessment indicates MI or ID, the trial court may, as applicable:

- continue criminal proceedings against the defendant;
- resume or initiate competency proceedings under Chapter 46B of the Texas Code of Criminal Procedure if the defendant has been charged with a felony or misdemeanor punishable by confinement;
- refer the person to a specialty court;
- consider the assessment at punishment;
- consider the assessment as part of the presentence investigation report; or
- consider the assessment in setting terms of community supervision, including the imposition of treatment conditions.

[Tex. Code Crim. Proc. art. 16.22\(c\)](#).

### Other Non-statutory Considerations

**Promptly appoint counsel.** Consider appointing counsel with specialized MI or ID legal training.

**Court-ordered services.** Resume, initiate, or refer the case for proceedings for court-ordered mental health or ID services under Chapters 573, 574, or 593 of the Texas Health and Safety Code. Note that the only instance in which a criminal court has jurisdiction to order civil commitment is following an incompetency determination under Texas Code of Criminal Procedure Chapter 46B, Subchapter E. Otherwise, only a court with probate jurisdiction may order commitment, as discussed in Intercept 3, section 5 of this Bench Book. See [Tex. Health & Safety Code § 574.008\(a\)](#); [Tex. Code Crim. Proc. arts. 46B.101-.103](#).

**Keep a record of the assessment.** Ensure that a copy of the assessment is kept in a sealed court file for potential future use and for purposes of OCA reporting.

### 6.3. Reporting to the Office of Court Administration (OCA) the Number of Assessments Received

Article 16.22 states that the magistrate must send OCA the number of assessments provided to the court each month. [Tex. Code Crim. Proc. art. 16.22\(e\)](#). Because magistrates have no formal mechanism of reporting to OCA, the magistrate should send the assessment to the custodian of the district or county court records—the district clerk or county clerk—for inclusion in the defendant’s case file. The number of written assessments will be captured from district and county courts on Judicial Council Monthly District and County Court Activity Reports, submitted by district clerks and county clerks. [See Tab 10 of this Bench Book.](#)

Please note that OCA requires only the 16.22 assessment and NOT the mandatory TCJS jail screening form. [See Tab 5 of this Bench Book.](#)

### Potential Changes to the Statute

Note that the Texas Judicial Council has proposed clarifying OCA reporting requirements in the 86th Legislative Session.

## 7. Information Sharing is Mandatory

Considerable confusion has surrounded the issue of sharing personal health information in proceedings involving persons who may have MI or ID. This subsection identifies some of the key state-law provisions governing that issue.

### **7.1. Information Regarding Special Needs Offenders**

State law requires that agencies share information for purposes of continuity of care and services for “special needs offenders,” which includes individuals:

- for whom criminal charges are pending; or
- who, after conviction or adjudication, are in custody or under any form of criminal justice supervision.

[Tex. Health & Safety Code § 614.017\(a\), \(c\)\(2\).](#)

### **7.2. What an Agency is Required to Do**

Specifically, an agency must:

- accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and
- disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender’s or juvenile’s identity; needs; treatment; social, criminal, and vocational history; supervision status and compliance with conditions of supervision; and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

[Tex. Health & Safety Code § 614.017\(a\).](#)

### **7.3. Agencies Must Safeguard Confidentiality**

An agency must manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information. A person commits an offense if the person releases or discloses confidential information obtained under section 614.017 of the Texas Health & Safety Code for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. [Tex. Health & Safety Code § 614.017\(d\),\(e\).](#)

### **7.4. Not for Use as Evidence**

Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means. [Tex. Health & Safety Code § 614.017\(b\).](#)

### **7.5. Agencies Required to Comply**

An “agency” includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

- (A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;
- (B) the Board of Pardons and Paroles;

- (C) the Department of State Health Services;
- (D) the Texas Juvenile Justice Department;
- (E) the Department of Assistive and Rehabilitative Services;
- (F) the Texas Education Agency;
- (G) the Commission on Jail Standards;
- (H) the Department of Aging and Disability Services;
- (I) the Texas School for the Blind and Visually Impaired;
- (J) community supervision and corrections departments and local juvenile probation departments;
- (K) personal bond pretrial release offices established under article 17.42 of the Code of Criminal Procedure;
- (L) local jails regulated by the Commission on Jail Standards;
- (M) a municipal or county health department;
- (N) a hospital district;
- (O) a judge of this state with jurisdiction over juvenile or criminal cases;
- (P) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;
- (Q) the Health and Human Services Commission;
- (R) the Department of Information Resources;
- (S) the Bureau of Identification and Records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and
- (T) the Department of Family and Protective Services.

Tex. Health & Safety Code § 614.017(c)(1).

## **7.6. Exempt from the Texas Medical Records Privacy Act (TMRPA)**

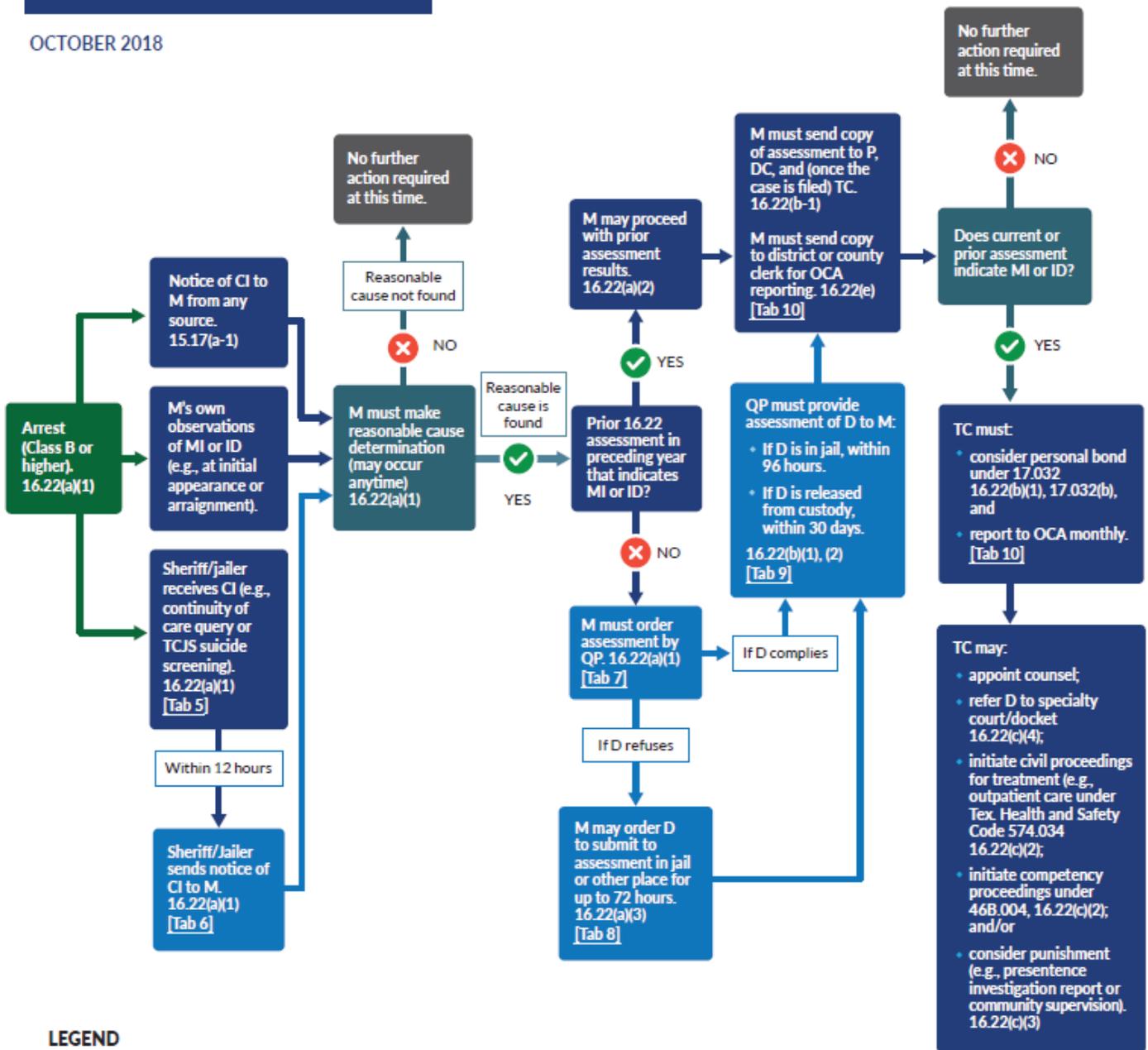
TMRPA, the state law governing privacy of medical records, expressly excludes an agency described by section 614.017 (set forth above) with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.<sup>34</sup> [Tex. Health & Safety Code § 181.057.](#)

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<sup>34</sup> Note that pre-booking diversion programs might not be included in this exemption if the individual is not in the custody of an agency or in community supervision.

# 16.22 Assessment

OCTOBER 2018



## LEGEND

CI – Credible information that may establish reasonable cause to believe that defendant has a mental illness or intellectual disability

D – Defendant

DC – Defense counsel

ID – Intellectual disability

M – Magistrate

MI – Mental illness

P – Prosecutor

QP – Qualified professional (LMHA, LIDDA, or qualified mental health or intellectual disability expert)

TC – Trial court

Unless otherwise noted, all citations are to the Texas Code of Criminal Procedure

## Information to Assist with a Reasonable Cause Determination for ID

An individual with ID will have significant limitations both in intellectual functioning and in adaptive behavior.

- Deficits in **intellectual functioning**:
  - reasoning
  - problem solving
  - planning
  - abstract thinking
  - judgment
  - academic learning
  - experiential learning
- Deficits in **adaptive functioning**:
  - communication
  - social skills
  - personal independence at home or in community settings
  - school or work functioning

Further examples of adaptive skills that might be affected by ID are as follows:

Conceptual	Social	Practical
<ul style="list-style-type: none"> <li>• Receptive and expressive language</li> <li>• Reading and writing</li> <li>• Money concepts</li> <li>• Self-direction</li> </ul>	<ul style="list-style-type: none"> <li>• Interpersonal Responsibility</li> <li>• Self-esteem</li> <li>• Gullibility (likelihood of being tricked or manipulated)</li> <li>• Naiveté</li> <li>• Following rules</li> <li>• Obeying laws</li> <li>• Avoiding victimization</li> </ul>	<ul style="list-style-type: none"> <li>• Personal activities of daily living such as eating, dressing, mobility, and using the restroom</li> <li>• Instrumental activities of daily living such as preparing meals, taking medication, using the telephone, managing money, using transportation, and doing housekeeping activities</li> </ul>

American Psychiatric Association (2013). Diagnostic and Statistical Manual of Mental Disorders (5th ed.). Arlington, VA: Author; see also American Association on Intellectual and Developmental Disabilities, "Frequently Asked Questions on Intellectual Disability and the AAIDD Definition," available at [https://aaid.org/docs/default-source/sis-ocs/aaidfaqonid\\_template.pdf?sfvrsn=9a63a874\\_2](https://aaid.org/docs/default-source/sis-ocs/aaidfaqonid_template.pdf?sfvrsn=9a63a874_2).

## Judges' Guide to Mental Illnesses in the Courtroom

### OBSERVATIONS THAT INDICATE A DEFENDANT MAY HAVE A MENTAL ILLNESS

#### When Mental Illness Seems to be a Factor, Consider:

**Prevalence:**

- **Serious Mental Illness:** 17% of adults booked into jails (31% of women; 15% of men)
- **Substance Use Disorder:** 65% of adults in U.S. corrections systems
- **Co-Occurring Mental Illness/Substance Use Disorder:** 72% of adults with serious mental illnesses in jail also had co-occurring substance use disorders

**Contextualizing Observations:** *While these categories of observation are provided to alert judges that an individual may have a mental illness that requires different judicial action and/or attention by a mental health professional, they are not definitive signs of mental illness. Certain contextual elements are important to remember:*

- Appearing in court is an anxiety-provoking experience for most people.
- Individuals may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- Individuals may bring to court skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g., toughness, argumentativeness, silence).

Categories of Observation: <i>Do you see something in one of the following areas <u>that does not make sense</u> in the court context?</i>	Courtroom Observations: <i>Examples of how behaviors in the observational areas can indicate that the individual may have a mental illness:</i>
<b>Appearance:</b> Age, hygiene, attire, ticks/twitches	<ul style="list-style-type: none"> <li>• Looks older/younger than the listed date of birth</li> <li>• Wears inappropriate attire (e.g., multiple layers of clothing in the summertime)</li> <li>• Trembles or shakes, is unable to sit or stand still</li> </ul>
<b>Cognition:</b> Understanding/appreciation of situation, memory, concentration	<ul style="list-style-type: none"> <li>• Does not understand where s/he is</li> <li>• Seems confused or disoriented</li> <li>• Has gaps in memory of events</li> <li>• Answers questions inappropriately</li> </ul>
<b>Attitude:</b> Cooperativeness, appropriate participation in court hearing	<ul style="list-style-type: none"> <li>• Stays distant from attorney or bench</li> <li>• Acts belligerent or disrespectful</li> <li>• Is not attentive to court proceedings</li> </ul>
<b>Affect/Mood:</b> Eye contact, outbursts of emotion/indifference	<ul style="list-style-type: none"> <li>• Does not make eye contact with judge or court staff</li> <li>• Appears sad/depressed, or too high-spirited</li> <li>• Switches emotions abruptly</li> <li>• Seems indifferent to severity of proceedings</li> </ul>
<b>Speech:</b> Pace, continuity, vocabulary <i>(Note: Can this be explained by discomfort with English language?)</i>	<ul style="list-style-type: none"> <li>• Speaks too quickly or too slowly</li> <li>• Misses words</li> <li>• Uses vocabulary inconsistent with level of education</li> <li>• Stutters or has long pauses in speech</li> </ul>
<b>Thought Patterns and Logic:</b> Rationality, tempo, grasp of reality	<ul style="list-style-type: none"> <li>• Seems to respond to voices/visions</li> <li>• Expresses racing thoughts that may not be connected to each other</li> <li>• Expresses bizarre or unusual ideas</li> </ul>

## JUDICIAL INTERACTIONS

### Before Interacting with a Defendant, Consider:

- **How the courtroom environment is affecting the defendant:**
  - Are there noises or distractions in the courtroom that are negatively affecting the defendant?
  - Is there a family member or defense attorney who can help calm the person?
- **Safety** for yourself, the court staff, and the individual.
- **What is being asked and said in open court** and how this may affect future proceedings.

### While Interacting with a Defendant, Consider:

<b>Courtroom Situations:</b> <i>Examples of commonly-observed scenarios</i>	<b>Immediate Responses:</b> <i>Recommendations for immediate situation management</i>
<b>When a mental illness is affecting a defendant's courtroom participation</b>	<ul style="list-style-type: none"> <li>• Speak slowly and clearly</li> <li>• Avoid jargon</li> <li>• Explain what's happening</li> <li>• Write instructions down if dates/address are involved</li> <li>• Treat individual with the respect you would give other adults</li> <li>• If appropriate, use principles of Motivational Interviewing:*                             <ul style="list-style-type: none"> <li>• Express empathy</li> <li>• Point out discrepancies between goals and current behavior</li> <li>• Roll with resistance</li> <li>• Support self-efficacy</li> </ul> </li> </ul>
<b>Loss of Reality:**</b> <i>When the defendant appears confused or disoriented</i>	<ul style="list-style-type: none"> <li>• Ground defendant in the here and now**</li> </ul>
<b>Loss of Hope:</b> <i>When the defendant appears sad, desperate</i>	<ul style="list-style-type: none"> <li>• As appropriate, instill hope in positive end result</li> <li>• To extent possible, establish a personal connection</li> </ul>
<b>Loss of Control:</b> <i>When the defendant appears angry, irritable</i>	<ul style="list-style-type: none"> <li>• Listen, defuse, deflect</li> <li>• Ask defendant about why s/he is upset</li> <li>• Avoid threats and confrontation</li> </ul>
<b>Loss of Perspective:</b> <i>When defendant appears anxious, panicky</i>	<ul style="list-style-type: none"> <li>• Seek to understand</li> <li>• Reassure and calm defendant</li> <li>• Deflect concerns</li> </ul>

### When Taking Action, Consider:

- **Having defendant approach the bench:** Would this de-escalate the situation or create a safety risk?
- **Re-calling the case later in the session/calendar:** Could this help the defendant calm down?
- **Determining whether to proceed:** Is a fitness or competency evaluation appropriate?
- **Setting conditions of release:**
  - Does defendant have capacity to understand conditions?
  - Does defendant have ability to adhere to conditions?
  - What effect will these conditions have on regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will conditions/time in jail affect the defendant's access to a primary caregiver?
- **Requesting mental health information:** What exactly do you need to make the decision facing you?
- **Making a referral (to mental health services provider or other services):**
  - What are the goals of the referral?
  - How might the defendant's cultural background and linguistic needs impact access to services?
  - What are the expectations for reporting back to the court?

\* Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.

\*\*The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Lilley.



THE NATIONAL JUDICIAL COLLEGE



# Bail

In 1993, the Texas Legislature added articles 16.22 and 17.032 to the Texas Code of Criminal Procedure to encourage diversion of defendants from jail and into mental health treatment when appropriate. Analysis of the original bill noted that, at that time, “Texas Law ha[d] no codified procedure allowing the transfer of suspected mentally ill . . . defendants who are in jail. These individuals await[ed] trial without the benefit of any treatment.” The bill analysis also stated that this creates “a grave injustice.”<sup>35</sup>

Article 17.032 provides courts an opportunity to pursue Policy Statement #11 from The Criminal Justice/Mental Health Consensus Project of the Council of State Governments: Maximize the use of pretrial release options in appropriate cases of defendants with mental illness so that no person is detained pretrial solely for the lack of information or option to address the person’s mental illness.<sup>36</sup>

## Quick Section Overview

- 1. Personal Bond Under Texas Code of Criminal Procedure Article 17.032**
- 2. Setting and Enforcing Bond Conditions**

## 1. Personal Bond Under Texas Code of Criminal Procedure Article 17.032

### 1.1. A Personal Bond is Required When

Unless good cause is shown, the magistrate must release the person on personal bond if all of the following criteria are met:

- (i) the person is not charged with and has not been previously convicted of certain violent offenses:<sup>37</sup>

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<sup>35</sup> Texas Appleseed, *Judicial Options: Personal Bond Statutes and Defendants with Mental Illness or Mental Retardation*, 2006, quoting original bill language for articles 16.22 and 17.032, HOUSE COMM. ON CRIM. JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 1605, 73rd Leg. (1993), available at <https://www.texasappleseed.org/sites/default/files/216-Monograph-JudicialOptions-PersonalBondStatutesandDefendantsMentalIllness.pdf>.

<sup>36</sup> The Council of State Governments, *The Criminal Justice/Mental Health Consensus Project*, 2002, page 90, available at <https://csgjusticecenter.org/mental-health-projects/report-of-the-consensus-project/>.

<sup>37</sup> A “conviction” as used here includes imposition of sentence, placement on community supervision, or deferred adjudication or disposition. Tex. Code Crim. Proc. art. 17.032(e). Further, although significant overlap exists, this list of offenses is different than the list of offenses in [article 42A .054 of the Texas Code of Criminal Procedure 42A.054](#) (formerly known as the “3g offenses”).

- murder, capital murder [Tex. Penal Code §§ 19.02, 19.03];
  - aggravated robbery [Tex. Penal Code § 29.03];
  - kidnapping, aggravated kidnapping [Tex. Penal Code §§ 20.03, 20.04]
  - assault [Tex. Penal Code § 22.01(a)(1)] (but only if the offense involved family violence as defined by section 71.004 of the Texas Family Code);
  - aggravated assault [Tex. Penal Code § 22.02];
  - injury to a child, elderly, or disabled individual [Tex. Penal Code § 22.04];
  - indecency with a child [Tex. Penal Code § 21.11];
  - sexual assault aggravated sexual assault [Tex. Penal Code §§ 22.011, 22.021];
  - continuous sexual abuse of young child [Tex. Penal Code § 21.02]; or
  - continuous trafficking of persons [Tex. Penal Code § 20A.03];
- (2) a qualified professional<sup>38</sup> has examined the person under article 16.22;
- (3) the qualified professional:
- concluded that the person has MI or ID;
  - concluded that the person is competent to stand trial;<sup>39</sup> and
  - recommended treatment;
- (4) after consulting with the LMHA or LIDDA, the magistrate determines that appropriate services are available through:
- HHSC under section 534.053 or 534.103 of the Texas Health and Safety Code; or
  - through another mental health or ID services provider; and
- (5) the magistrate finds that release on personal bond would reasonably ensure:
- the person’s appearance in court; and
  - the safety of the victim and the community.

Tex. Code Crim. Proc. art. 17.032(b).

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<sup>38</sup> See Intercept 2, Part I, section 2 of this Bench Book for an explanation of “qualified professional.”

<sup>39</sup> Although article 17.032(b)(3)(A) refers to a person who is “nonetheless competent to stand trial,” that language, when read together with article 16.22, does not require a finding of competency after a full evaluation under Chapter 46B. Rather, that phrase likely refers to the requirement in article 16.22(b-1)(2) that the qualified professional determine “whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B.” Presumably, the “competent to stand trial” requirement in article 17.032 simply means that the qualified professional found no such evidence to support a belief of incompetency.

### Bond Terminology

- **“Personal Recognizance Bond.”** The Texas Code of Criminal Procedure defines a “personal bond” as a bail bond with no sureties. [Tex. Code Crim. Proc. art. 17.04](#). Texas courts have recognized that although “personal recognizance bond” is a commonly used term, the relevant statutes use the term “personal bond.” *Ex parte Castellano*, 321 S.W.3d 760, 765 (Tex. App.—Fort Worth 2010, no pet.) (citing [Tex. Code Crim. Proc. arts. 17.03, .031, .032, .04](#)); *see also Lee v. State*, 641 S.W.2d 533, 534 n.1 (Tex. Crim. App. 1982) (“There is no form of bail known as a ‘personal recognizance bond’ in Texas criminal practice.”).
- **“Mental Health Bond.”** Note that personal bonds under article 17.032 of the Texas Code of Criminal Procedure are commonly referred to as “mental health bonds.”

#### 1.2. What the Magistrate Must Consider when Setting Bail

The magistrate must consider:

- all the circumstances;
- a pretrial risk assessment, if applicable; and
- any other credible information provided by defense counsel or the prosecutor.

[Tex. Code Crim. Proc. art. 17.032\(b\)\(5\)](#).

#### 1.3. When All of the Above Requirements are Not Met Ordinary Bail Provisions Apply

### Potential Changes in the Law

Be aware that (1) litigation is ongoing regarding bail procedures in certain locations, and (2) bail may be the subject of legislation in the 86th Legislative Session.

## 2. Setting and Enforcing Bond Conditions

#### 2.1. When the Magistrate Must Order Treatment as a Condition of Bond

Unless good cause is shown, if the above criteria are met for setting a personal bond under Texas Code of Criminal Procedure article 17.032, the magistrate must require inpatient or outpatient treatment as a condition of bond as recommended by the qualified professional if:

- the person’s MI or ID is chronic; or
- the person’s ability to function independently will continue to deteriorate if not treated.

[Tex. Code Crim. Proc. art. 17.032\(c\)](#).

## 2.2. Other Conditions That May be Imposed

The magistrate may impose other conditions to ensure:

- the person's appearance; and
- the safety of the victim and the community.

[Tex. Code Crim. Proc. art. 17.032\(d\)](#).

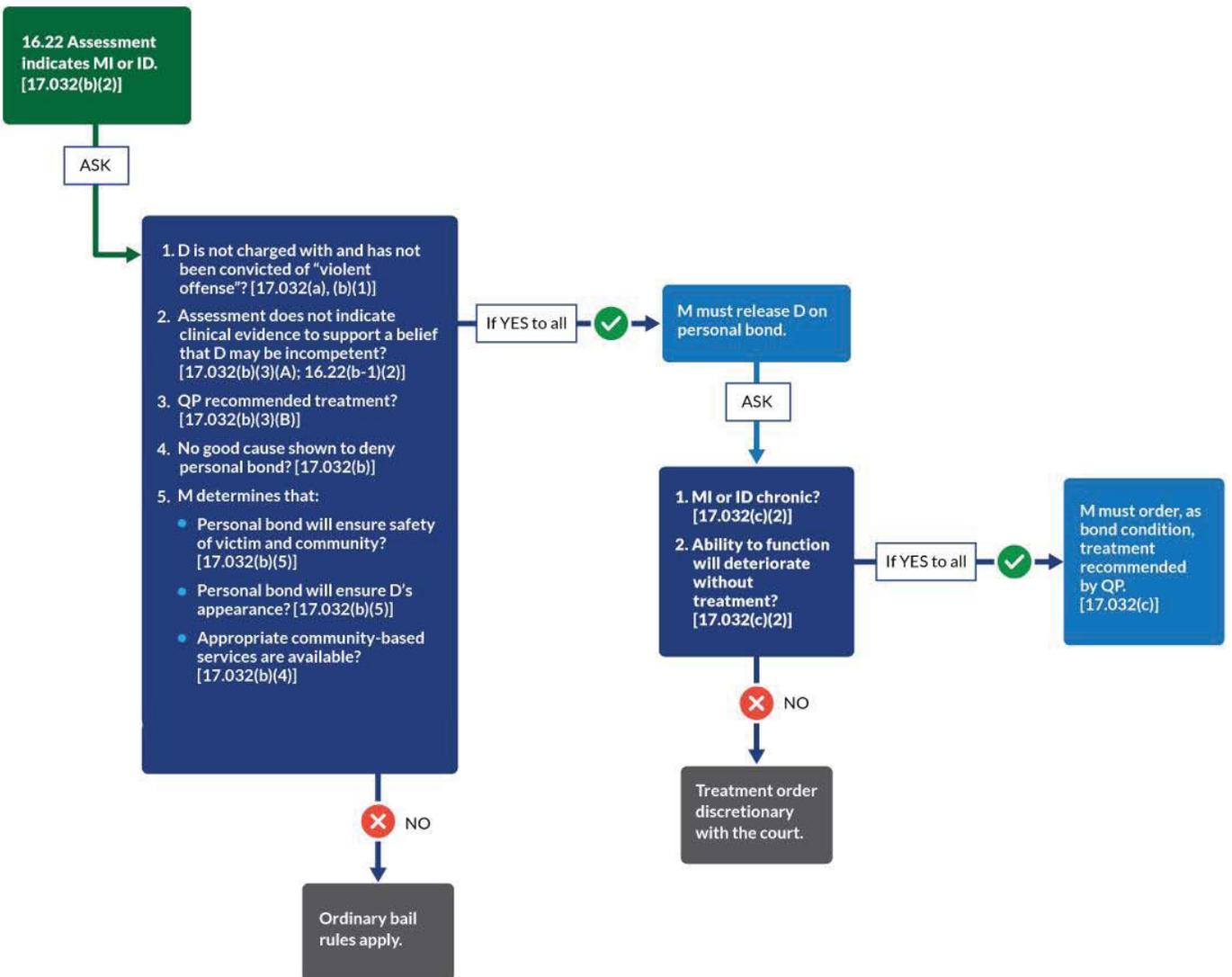
### Enforcing Bond Conditions

Some examples of strategies for enforcing bond conditions include:

- requesting the appropriate personnel to contact the person to discuss noncompliance, such as the:
  - LMHA, LIDDA, or other mental health or IDD provider;
  - case manager; or
  - peace officer;
- ordering the person to appear in court to discuss noncompliance;
- revoking bond and ordering treatment to be provided in a place other than jail;
- revoking bond and ordering treatment to be provided in jail; or
- ordering an emergency detention under Chapter 573 of the Texas Health and Safety Code.

# 17.032 Personal Bond

OCTOBER 2018



## LEGEND

D – Defendant

ID – Intellectual disability

M – Magistrate

MI – Mental illness

QP – Qualified professional (qualified mental health or intellectual disability expert)



## **LMHA/LBHA Required Services for Incarcerated Persons**

It is a common misunderstanding that LMHAs/LBHAs are required to provide mental health services to individuals in jail facilities. Owners/operators of facilities are responsible for providing medical, mental, and dental services to inmates. Some counties have contracted with their LMHA/LBHA to provide additional services, but if there is no such agreement, LMHAs/LBHAs are only required to provide the following:

### **Crisis Services**

- The LMHA/LBHA must have a crisis screening and response system in operation 24/7 that is available to individuals throughout its contracted service delivery area. The telephone system to access the crisis screening and response system must include a toll-free crisis hotline number. Calls to the crisis hotline are answered by a hotline staff member who is trained in mental health community services.
- When the crisis hotline is called, the crisis hotline staff member provides a crisis screening, and determines if the crisis situation requires deployment of the LMHA/LBHA Mobile Crisis Outreach Team (MCOT). If the crisis situation is determined to be emergent or urgent, at least one trained MCOT member shall respond to the site of the crisis situation and conduct a crisis assessment. After the crisis assessment is conducted, the LMHA/LBHA will make a recommendation about the treatment necessary to resolve the crisis.

### **16.22 Assessments**

- The LMHA/LBHA shall collect information regarding whether the defendant has a MI or ID and provide to the magistrate a written assessment of the information collected under Texas Code of Criminal Procedure article 16.22.

### **17.032 Recommendations**

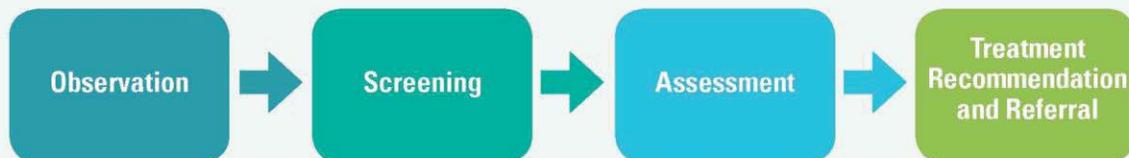
- The LMHA/LBHA will consult with the magistrate to help determine if there are appropriate and available services for the defendant.

## Practical Considerations Related to Release and Sentencing for Defendants Who Have Behavioral Health Needs

### A JUDICIAL BENCH CARD

#### Determining Behavioral Health Treatment Needs

Judges can benefit from information on treatment needs gleaned through four steps:



- Make **observations** from the bench based on several categories—the defendants’ appearance, cognition, thought patterns/processes, attitudes, speech, facial expressions—which may point to the presence of a behavioral health need.
- Refer people who may have a mental illness or substance use-related need for a formal **screening** conducted by a person trained to use a validated screening instrument.
- Have a trained clinician conduct full **assessments** of people who screen positive for a mental illness or substance use-related need in order to develop a diagnosis and treatment recommendations.
- Receive **recommendations for treatment and referrals** from the clinician that are tailored to the needs of the defendant.

#### Practical Considerations for Judicial Decision-Making Related to Conditions of Release and Sentencing for Defendants Who Have Behavioral Health Needs

**Collaborate** with court staff, behavioral health treatment providers, defendants, and their family members.

- DO**
- Allow defendants to have a voice in treatment decisions, when possible
  - Gather information from defendants’ support systems to inform decisions about release and sentencing
  - Ask defendants what has worked for them in the past
  - Consider calling complicated or time-consuming cases for people with known behavioral health needs at the beginning or end of the docket to minimize stress for defendants and court staff
  - Call defendants to the bench to discuss sensitive personal information quietly, after first alerting your bailiff and court staff of your plan to alleviate their security concerns
- DON’T**
- Question a defendant about sensitive behavioral health-related information in open court when the courtroom is filled with other litigants and attorneys

**Engage** with the defendant to promote treatment participation and compliance.

- DO**
- Set a calm and consistent tone in your courtroom, even when disruptive behavior occurs
  - Use inclusive and respectful language on the bench
  - Consider engaging peer specialists to assist with engagement and treatment connection
- DON’T**
- Use language on the bench that could be perceived as threatening, confrontational, or disrespectful
  - Use legal jargon that may not be understood by the defendant

**Use reliable information** provided by qualified professionals, as well as defendants and their support systems to inform decision making.

- DO**
  - Set a reasonable deadline for clinicians to submit treatment recommendations to the court that ensures sufficient time for their review and clarification (if needed) with minimal or no disruption to the expected case processing schedule
  - Incorporate assessments of criminogenic, mental health, and substance use-related needs prior to setting release conditions and/or sentencing
  - Consider what services are available in the community that match the specific needs of the defendant
- DON'T**
  - Rely on instinct alone to guide decision making

**Individualize** release and sentencing decisions to the defendant's unique needs and the resources that are available and accessible in the jurisdiction of residence.

- DO**
  - Identify defendants' specific needs prior to setting treatment-related conditions of release or making sentencing decisions
  - Maximize potential for success by setting treatment conditions that are relevant, reasonable, and achievable
- DON'T**
  - Set conditions that are difficult for defendants to achieve due to lack of resources, treatment availability, health insurance coverage, or other barriers
  - Adopt a "one-size-fits-all" approach to decision making

**Adapt** treatment and supervision requirements as needed based on changing legal circumstances and clinical recommendations.

- DO**
  - Set treatment conditions and sentencing parameters that are commensurate with the duration and severity of possible jail/prison case dispositions and community supervision expectations
  - Understand that behavioral health treatment is a dynamic process, rarely perfect, and temporary setbacks or relapses are part of the stabilization and recovery process
- DON'T**
  - Overcomplicate conditions or mandate the defendant attend many appointments in a short timeframe, which may lead to confusion or non-compliance from the defendant
  - Assume that a recommended change in treatment means that a defendant isn't being compliant

## Suggested Considerations and Tips at Judicial Points of Contact

### First appearance/arraignment/bail setting:

#### Considerations:

- Typically, this is the judicial point of contact where the least background information about the defendant is available.
- During first contact, the defendant may be under the influence of substances, withdrawing from substances, psychiatrically unstable, and/or under significant stress due to a recent arrest.

#### Tips:

- Review initial screening information, if available.
- Consider ordering a behavioral health evaluation, if behavioral health needs are suspected.
- After first appearance, attempt to access information about prior treatment.
- After first appearance, seek more information related to jail housing, observation, and possibly the results of a pre-trial risk assessment.
- After first appearance, utilize court staff and/or clinicians to contact and involve members of the defendant's family and support system.
- Be creative and flexible with condition setting during this pre-adjudication phase.

### Sentencing/Update/Hearing Appearances:

#### Considerations:

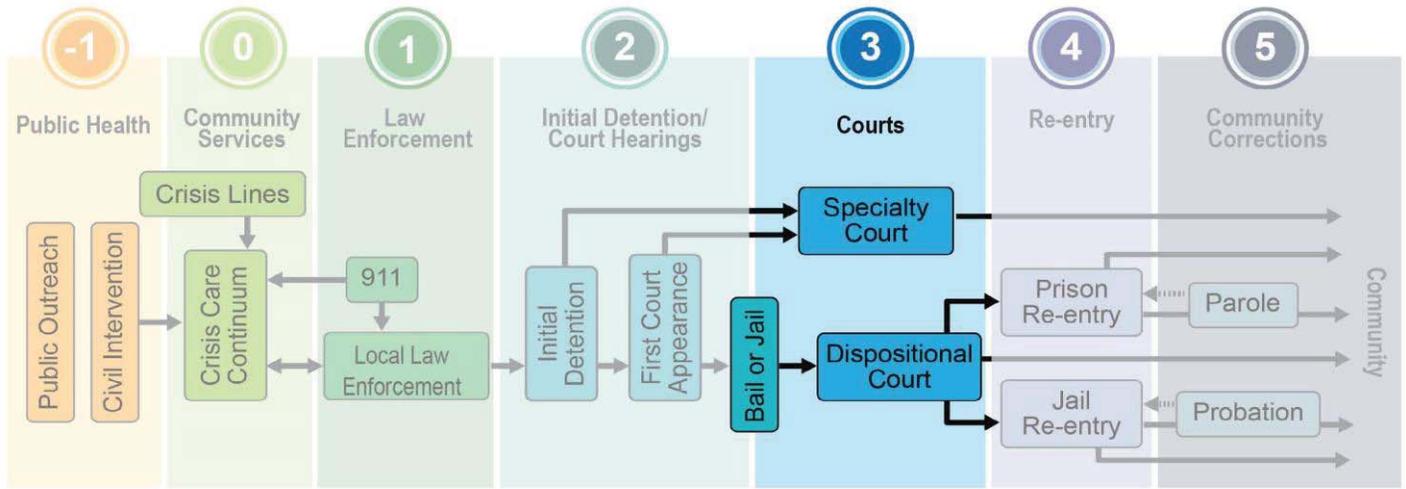
- You may be able to access treatment progress and compliance information and updates from community-based treatment providers if a behavioral health evaluation was conducted inside the correctional facility or has been conducted recently by court- or community-based treatment personnel.

#### Tips:

- Manage the logistics of the transition to mandated behavioral health treatment in the community to ensure that the defendant is successfully engaged in services.
- Rely on trained clinicians to provide assessment information.
- Consider input from clinicians to guide decision making related to treatment.

# 3

## Intercept 3: Courts



**Intercept 3: Courts** Step three is historically where the majority of criminal justice responses to mental health issues occur. At this intercept, the legal, practical, and health consequences for individuals with MI and ID are detrimental and life-changing. As a result, judicial support of community-based mental health responses and court-based interventions such as specialty courts and dockets are critical.

### Quick Section Overview

1. Specialty Courts
2. Pretrial Intervention Programs
3. Deferred Adjudication and Disposition
4. TCOOMMI Programs and Services
5. Court-ordered Mental Health Services When a Criminal Case is Pending

### 1. Specialty Courts

Specialty courts focus on treating the underlying issues that may be causing criminal behavior. Mental health courts are a type of specialty court. They combine accountability through judicial supervision with treatment and other support services to prevent recidivism and improve the lives of their participants.

## 1.1. Statutory Requirements

A “mental health court program” has the following essential characteristics:

- integrates and provides access to MI and ID treatment services in processing cases in the court system;
- uses a nonadversarial approach involving prosecutors and defense attorneys to (1) promote public safety and (2) protect the due process rights of program participants;
- promotes early identification and prompt placement of eligible participants in the program;
- requires ongoing judicial interaction with program participants;
- diverts people with MI or ID to needed services in lieu of prosecution;
- monitors and evaluates program goals and effectiveness;
- facilitates continuing interdisciplinary education on effective program planning, implementation, and operations; and
- develops partnerships with public agencies and community organizations, including LMHAs/LBHAs.

Tex. Gov't Code § 125.001.

## 2. Pretrial Intervention Programs

### 2.1. Pretrial Intervention Program

(A) A community supervision and corrections department established under Chapter 76 of the Government Code (“department”) may operate programs for:

- (1) the supervision and rehabilitation of persons in pretrial intervention programs;
- (2) the supervision of persons released on bail under:
  - (a) Chapter 11 of the Code of Criminal Procedure;
  - (b) Chapter 17 of the Code of Criminal Procedure;
  - (c) article 44.04 of the Code of Criminal Procedure; or
  - (d) any other law;
- (3) the supervision of a person subject to, or the verification of compliance with, a court order issued under:
  - (a) article 17.441 of the Code of Criminal Procedure, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;
  - (b) Chapter 123 of the Government Code or former law, issuing an occupational driver’s license;
  - (c) section 49.09(h) of the Penal Code, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or
  - (d) section 521.2462 of the Transportation Code, requiring supervision of a person granted an occupational driver’s license; and

- (4) the supervision of a person not otherwise described by Subdivision (1), (2), or (3), if a court orders the person to submit to the supervision of, or to receive services from, the department.
- (a) Except as otherwise provided by this subsection, programs operated by the department under Subsection (a) may include reasonable conditions related to the purpose of the program, including testing for controlled substances. If this subsection conflicts with a more specific provision of another law, the other law prevails.
- (b) A person in a pretrial intervention program operated by the department under Subsection (a) may be supervised for a period not to exceed two years.
- (c) The department may use money deposited in the special fund of the county treasury for the department under article 103.004(d), Code of Criminal Procedure, only for the same purposes for which state aid may be used under this chapter.

Tex. Gov't Code 76.011.

### 3. Deferred Adjudication and Deferred Disposition

#### 3.1. Requiring Treatment as a Condition of Community Supervision, Class B Misdemeanors and Higher

The judge may order a person placed on community supervision to submit to outpatient or inpatient MI or ID treatment if the following criteria are met:

- (1) the person is determined to have MI or ID in
- an assessment under article 16.22 of the Texas Code of Criminal Procedure
  - incompetency proceedings under Chapter 46B of the Texas Code of Criminal Procedure, or
  - a psychological evaluation as part of a PSI report under article 42A.253(a)(6) of the Texas Code of Criminal Procedure;
- (2) the person's
- mental impairment is chronic or
  - ability to function independently will deteriorate if the person does not receive MI or ID services; and
- (3) the judge consults with a local mental health or intellectual disability services provider and determines that services are available through:
- HHSC under section 534.053 of the Texas Health and Safety Code, or
  - another mental health or intellectual disability services provider, such as the LMHA or LIDDA.

Tex. Code Crim. Proc. art. 42A.506.

### 3.2. Deferred Disposition of Class C Misdemeanors

Texas Code of Criminal Procedure article 45.051(b) allows a judge to require the defendant to:

- submit to professional counseling;
- submit to a psychosocial assessment;
- present to the court satisfactory evidence that he or she has complied with each requirement imposed by the court; and
- comply with any other reasonable condition.

Tex. Code Crim. Proc. art. 42.051(b).

At the time the defendant is placed on deferred disposition, the court can impose requirements to continue treatment, participate in any assessments reasonably related to providing mental health/IDD services, and to comply with all prescribed medications and recommendations under the sections outlined above.

## 4. TCOOMMI Programs and Services

TCOOMMI programs provide pre-release screening and referral to aftercare treatment services for special needs offenders referred from correctional institutional divisions, substance-abuse felony punishment facilities, local jails, and other referral sources. TCOOMMI monitors, coordinates, and implements a continuity of care system for the targeted population through collaborative efforts with 39 LMHAs throughout the state.

Levels of outpatient services include, but are not limited to, Intensive Case Management, Transitional Case Management, and Continuity of Care. Components of case management include case management services, rehabilitation/psychological services, substance abuse treatment, psychiatric services, medication monitoring, and linkage to hospice and medical services.

All services offer collaborative partnerships between a mental health caseworker and criminal justice supervision partner to enhance access to care while promoting medication and supervision compliance at no cost to the client.

Target populations include those on parole, probation, and pre-trial supervision having moderate to high criminogenic risk and high clinical needs.

### 4.1. Program Service Overview

**Intensive Case Management (ICM)** focuses on high risk/high clinical needs of clients. This level of service utilizes the Texas Resiliency and Recovery (TRR) measure as well as the parole or probation risk measures. This level of service includes 3.5 hours of comprehensive team-oriented services and monthly contact with a supervising officer.

**Transitional Case Management (TCM)** focuses on moderate risk/moderate clinical need clients and utilizes the TRR measure as well as the parole or probation risk measures. This level of service includes 1.5 hours of transition/stepdown oriented services and monthly contact with a supervising officer.

**Continuity of Care Programs (COC)** are designed to provide a responsive system for local referrals from parole, probation, jail, family, and other related agencies.

**Pre-trial Services** are available in select counties across the state offering diversion opportunities through local collaborative partnerships to meet community-specific needs.

**Special Needs Diversionary Programs (SNDP)** provide case management services to identified juvenile offenders on probation. See [Tex. Health & Safety Code Chapter 614](#).

## 5. Court-ordered Mental Health Services When a Criminal Case is Pending<sup>40</sup>

### 5.1. Only When Person Charged with Non-violent Offense(s)

Proceedings for court-ordered mental health services may be initiated even when criminal charges are pending only if the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person. See [Tex. Health & Safety Code §§ 574.034\(h\), 574.035\(i\)](#).

### 5.2. Who May Initiate Proceedings

A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. [Tex. Health & Safety Code § 574.001\(a\)](#).

Only the district or county attorney may file an application that is not accompanied by a CME. [Tex. Health & Safety Code §§ 574.001\(a\), 574.011](#).

### 5.3. Jurisdiction

#### 5.3.1. Generally Only Court with Probate Jurisdiction

A proceeding for court-ordered mental health services may be conducted only in a court that has the jurisdiction of a probate court to hear mental illness matters. [Tex. Health & Safety Code § 574.008\(a\)](#).

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<sup>40</sup> Future editions of this Bench Book will detail procedures discussed in this subsection that have not been addressed elsewhere in this edition, such as specific procedures that relate to ordering mental health services under section 574 of the Texas Health and Safety Code or residential-care services under section 593 of the Texas Health and Safety Code and the detailed statutes and process for determining competency to stand trial under Chapter 46B of the Texas Code of Criminal Procedure. Please consult the Texas Association of Counties' Bench Book on Mental Health and Mental Retardation for more information on procedures relating to court-ordered mental health and ID services, available at [http://www.easylawlookup.com/downloads/benchbook/pdf/d\\_mhmr.pdf](http://www.easylawlookup.com/downloads/benchbook/pdf/d_mhmr.pdf).

### **Release on Personal Bond is Necessary**

As a practical matter, the magistrate must release a person from custody on a personal bond before a court with probate jurisdiction may order mental health services, as the court with probate jurisdiction may not order the release or transfer to a mental health facility of a person who is incarcerated. However, a person subject to arrest could be held in jail—and receive mental health services—during the pendency of the hearing on the civil matter **if** the person could not be released on bond and treated safely in the community, or in the absence of a local mental health facility.

#### **5.3.2. Exception: Magistrate May Order Services as Condition of Mental Health Bond**

If the criteria set forth in article 17.032(c) of the Texas Code of Criminal Procedure are met, the magistrate must require the person, as a condition of release on personal bond, to submit to outpatient or inpatient mental health treatment or intellectual disability services as recommended by a qualified professional, as discussed in Intercept 2, Part II, section 2.1 of this Bench Book. Such a condition, however, is contingent on the magistrate's coordination with the LMHA or LIDDA that appropriate services are available.

#### **5.3.3. Exception: Criminal Court May Order Services After a Finding of Incompetency Under Chapter 46B if Charges Remain Pending**

In the event that:

- a person is found incompetent to stand trial under Chapter 46B;
- the person has either been opined and found not likely to be restored, or has been committed for a period of restoration and not restored;
- all charges pending against the person are not dismissed; and
- it appears to the court that the person may have MI or ID;

the court with jurisdiction over the criminal case must determine whether the person should be (1) court-ordered to mental health services under section 574 of the Texas Health and Safety Code or (2) committed to a residential care facility under section 593 of the Texas Health and Safety Code, as applicable. [Tex. Crim. Proc. Code arts. 46B.084\(e\), 46B.101, .102, .103.](#)

Note that this exception applies only if charges remain pending. If it appears to the court that the person has MI or ID but the charges have been dismissed, the court must enter an order transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. [Tex. Crim. Proc. Code art. 46B.151\(b\).](#)

### **Collaboration is Key**

Because, with limited exceptions, only a court with probate jurisdiction may hear proceedings for court-ordered mental health services, collaboration between those courts and courts with criminal-matter jurisdiction is critical to ensuring that civil commitment may effectively serve as a diversionary tool. It is also essential for the local courts to collaborate with the LMHA/LBHA and LIDDA to assure that services are available.

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# Tab 1

**Notification - Emergency Detention**

NO. \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

THE STATE OF TEXAS  
FOR THE BEST INTEREST AND PROTECTION OF:

\_\_\_\_\_

**NOTIFICATION OF EMERGENCY DETENTION**

Now comes \_\_\_\_\_, a peace officer with (name of agency) \_\_\_\_\_, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained) \_\_\_\_\_ evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the above reasons, I present this notification to seek temporary admission to the (name of facility) \_\_\_\_\_ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) \_\_\_\_\_ on an emergency basis.

6. Was the person restrained in any way? Yes  No

\_\_\_\_\_  
PEACE OFFICER'S SIGNATURE

\_\_\_\_\_  
BADGE NO.

Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF EMERGENCY MEDICAL SERVICES PERSONNEL (if applicable)

Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under section 573.001, Health and Safety Code, and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under section 573.005, Health and Safety Code.

## Tab 2

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

§  
§  
§  
§  
§

IN THE \_\_\_\_\_ COURT OF

VS.

\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

**GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION**

To: \_\_\_\_\_ [name of facility]:

I, \_\_\_\_\_ [undersigned guardian], have reason to believe and do believe that \_\_\_\_\_ [name of person] evidences mental illness and a substantial risk of serious harm to himself/herself and others. The harm is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I have reason to believe and do believe that the risk of harm is imminent unless the person is immediately restrained. My beliefs are derived from specific recent behavior, overt acts, attempts, or threats described as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Other relevant information: \_\_\_\_\_

\_\_\_\_\_.

Guardian information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Guardian signature: \_\_\_\_\_

Date: \_\_\_\_\_

cc: \_\_\_\_\_ [Court that granted the guardianship]

# Tab 3

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

§  
§  
§  
§  
§

IN THE \_\_\_\_\_ COURT OF

VS.

\_\_\_\_\_ COUNTY, TEXAS

\_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

**APPLICATION FOR EMERGENCY DETENTION**

I, \_\_\_\_\_ [undersigned applicant], have reason to believe and do believe that \_\_\_\_\_ [name of person] evidences mental illness and a substantial risk of serious harm to himself/herself and others. The harm is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I have reason to believe and do believe that the risk of harm is imminent unless the person is immediately restrained. My beliefs are derived from specific recent behavior, overt acts, attempts, or threats described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

My relationship with the person is as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

Other relevant information: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

I therefore request the magistrate to issue a warrant for emergency detention under Texas Health and Safety Code chapter 573.012 of the above-named person.

Applicant information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Applicant signature: \_\_\_\_\_

Date: \_\_\_\_\_

# Tab 4

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS  
FOR THE BEST INTEREST  
AND PROTECTION OF

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MAGISTRATE FOR  
\_\_\_\_\_  
COUNTY, TEXAS

**MAGISTRATE’S ORDER AND WARRANT FOR  
EMERGENCY APPREHENSION AND DETENTION**

On the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ [name of applicant] came to present an Application for Emergency Detention of the above referenced person.

After examining the Application and any accompanying relevant information, I find that there is reasonable cause to believe (1) that the person evidences mental illness; (2) that the person evidences substantial risk of serious harm to the person or others, such harm being demonstrated either by the person’s behavior or by evidence of severe emotional distress and deterioration in his/her mental condition to the extent that the person cannot remain at liberty; (3) that the risk of harm is imminent unless the person is immediately restrained; and (4) that necessary restraint cannot be accomplished without emergency detention. I further find that the person meets all four criteria for emergency detention in subsection (b) of section 573.012, Texas Health and Safety Code.

It is therefore, ORDERED that a Warrant shall issue for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility or, if none is available, to a facility deemed suitable by the mental health authority for this County, for the preliminary examination in accordance with the provisions of Texas Health and Safety Code section 573.021. It is further ORDERED that the Warrant shall serve as the application required in section 573.021(a), and that copies of the Application for Emergency Detention and the Warrant be immediately transmitted to such facility.

\_\_\_\_\_  
Magistrate

**WARRANT**

THE STATE OF TEXAS  
COUNTY OF \_\_\_\_\_  
THE STATE OF TEXAS

TO ANY PEACE OFFICER OF THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to immediately seize and apprehend \_\_\_\_\_ [patient name] and transport same to \_\_\_\_\_ [name of facility] in \_\_\_\_\_ [county], Texas for the purpose of a preliminary examination, as provided in Texas Health and Safety Code section 573.021.

HEREIN FAIL NOT, but of this writ make due return, showing how you have executed the same.

WITNESS my official signature, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, JUDGE  
\_\_\_\_\_, COURT  
\_\_\_\_\_, COUNTY, TEXAS

THE STATE OF TEXAS

TO: \_\_\_\_\_  
Name of person apprehended

You are being temporarily detained to determine if you are suffering from mental illness such that you need mental health services for the protection of yourself and others. The following is the name and number (called the "style") of your case.

NO. \_\_\_\_\_

THE STATE OF TEXAS  
FOR THE BEST INTEREST AND  
PROTECTION OF \_\_\_\_\_.

§  
§  
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MAGISTRATE FOR  
\_\_\_\_\_  
COUNTY, TEXAS

Among your rights, you have the right to know the following information.

- 1) You are being detained at \_\_\_\_\_ [name of facility].
  - (a) The reasons for your detention are  
\_\_\_\_\_  
\_\_\_\_\_.
  - (b) This temporary detention could result in a longer period of involuntary commitment to a mental health facility.
- 2) You have the right to contact an attorney of your own choosing, and the right to a reasonable opportunity to contact that attorney.
- 3) If you are not admitted for emergency detention, you have the right to be transported back to the location of your apprehension or to your place of residence in Texas or other suitable locations, unless you are arrested or object to the return.
- 4) You have the right to be released from detention if the administrator of this facility where you are being held determines that any one of the following four criteria for emergency detention no longer apply:
  - (a) That you are mentally ill; or
  - (b) That you show that a substantial risk of serious harm to yourself or others would result from your release, as determined either by your behavior or by evidence of severe emotional distress and deterioration in your mental condition to the extent that you cannot remain at liberty; or
  - (c) That the risk of harm to yourself or to others is imminent unless you are immediately restrained at this time; or
  - (d) That emergency detention is the least restrictive means by which necessary restraint may be accomplished.
- 5) If you talk with or communicate with a mental health professional, those communications may be used in proceedings for further detention.

The above-named person was advised within 24 hours of admission, orally, in simple, non-technical terms of the above listed types. In addition, the person was informed in writing of those same rights, in the person's primary language if possible. If said person was hearing and/or visually impaired, those rights were communicated through means reasonably calculated to communicate those right, in the following manner:

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Peace Officer or Facility Representative

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

COPY TO BE RETURNED TO COURT

# Tab 5

### Screening Form for Suicide and Medical/Mental/Developmental Impairments

County:	Date and Time:	Name of Screening Officer:	
Inmate's Name:	Gender:	DOB:	If female, pregnant? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/>
Serious injury/hospitalization in last 90 days? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Currently taking any prescription medications? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, what:			
Any disability/chronic illness (diabetes, hypertension, etc.) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Does inmate appear to be under the influence of alcohol or drugs? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
Do you have a history of drug/alcohol abuse? If yes, note substance and when last used			
*Do you think you will have withdrawal symptoms from stopping the use of medications or other substances (including alcohol or drugs) while you are in jail? If yes, describe			
*Have you ever had a traumatic brain injury, concussion, or loss of consciousness? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, describe:			
<b>*If yes, Notify Medical or Supervisor Immediately</b>			

***Place inmate on suicide watch if Yes to 1a-1d or at any time jailer/supervisor believe it is warranted***

	YES	NO	"Yes" Requires Comments
<b><i>IF YES TO 1a, 1b, 1c, or 1d BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</i></b>			
Is the inmate unable to answer questions? If yes, note why, notify supervisor and place on suicide watch until form completed.			
1a. Does the arresting/transporting officer believe or has the officer received information that inmate may be at risk of suicide?			
1b. Are you thinking of killing or injuring yourself today? If so, how?			
1c. Have you ever attempted suicide? If so, when and how?			
1d. Are you feeling hopeless or have nothing to look forward to?			

***IF YES TO 2-12 BELOW, NOTIFY SUPERVISOR AND MAGISTRATE. Notify Mental Health when warranted***

2. Do you hear any noises or voices other people don't seem to hear?			
3. Do you currently believe that someone can control your mind or that other people can know your thoughts or read your mind?			
4. Prior to arrest, did you feel down, depressed, or have little interest or pleasure in doing things?			
5. Do you have nightmares, flashbacks or repeated thoughts or feelings related to PTSD or something terrible from your past?			
6. Are you worried someone might hurt or kill you? If female, ask if they fear someone close to them.			
7. Are you extremely worried you will lose your job, position, spouse, significant other, custody of your children due to arrest?			
8. Have you ever received services for emotional or mental health problems?			
9. Have you been in a hospital for emotional/mental health in the last year?			
10. If yes to 8 or 9, do you know your diagnosis? If no, put "Does not know" in comments.			
11. In school, were you ever told by teachers that you had difficulty learning?			
12. Have you lost / gained a lot of weight in the last few weeks without trying (at least 5lbs.)?			

***IF YES TO 13-16 BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY***

13. Does inmate show signs of depression (sadness, irritability, emotional flatness)?			
14. Does inmate display any unusual behavior, or act or talk strange (cannot focus attention, hearing or seeing things that are not there)?			
15. Is the inmate incoherent, disoriented or showing signs of mental illness?			
16. Inmate has visible signs of recent self-harm (cuts or ligature marks)?			

Additional Comments (Note CCQ Match here):

Magistrate Notification Date and Time: Electronic or Written (Circle)	Mental Health Notification Date and Time:	Medical Notification Date and Time:
Supervisor Signature, Date and Time:		

# Tab 6

\_\_\_\_\_ County Jail

Inmate Mental Condition Report to Magistrate

NAME \_\_\_\_\_ OFFENSE \_\_\_\_\_

ARRESTING AGENCY: \_\_\_\_\_

BOOKING OFFICER \_\_\_\_\_ BOOKING TIME \_\_\_\_\_ DATE \_\_\_\_\_

The above inmates may have mental health issues based on:

- Observation of law enforcement officer at time of arrest
- CCQ return show possible match
- Self admission by inmate at booking
- Subject is violent and appears to be a danger to themselves or others
- Medical evaluation by Emergency Room or other Medical Professional
- Previous arrest/medical records of the jail
- Observation of Jail Staff
- No Indication/No Notification Made

Details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As required by law, this notification is made to the magistrate in reference to an observation or report of possible mental illness by the above listed means. It is required within 12 hours after receiving credible information of reasonable cause to believe that a defendant committed to the Sheriff's custody: 1) Has mental illness 2) Is a person with mental retardation or 3) the observations of the defendant's behavior immediately before, during and after the defendants arrest and the results of any previous assessment of the defendant for mental illness. (Art. 16.22 (a))

**MAGISTRATE SIGNATURE:** \_\_\_\_\_

**MAGISTRATE NOTIFIED AT** \_\_\_\_\_ **ON** \_\_\_\_\_ **BY** \_\_\_\_\_  
(Fax-Email-Direct)

**OFFICER SENDING NOTIFICATION:** \_\_\_\_\_

# Tab 7

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

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MAGISTRATE FOR

VS.

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**ORDER FOR TEXAS C.C.P. ARTICLE 16.22 ASSESSMENT**

To: \_\_\_\_\_ [LMHA, LIDDA, or other qualified mental illness or intellectual disability expert]

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the magistrate has determined that there is reasonable cause to believe that \_\_\_\_\_ [defendant], date of birth \_\_\_\_\_, has a mental illness or is a person with an intellectual disability.

The defendant is incarcerated at the \_\_\_\_\_ Jail, \_\_\_\_\_, Texas, and is charged with \_\_\_\_\_.

**IT IS THEREFORE ORDERED** that, pursuant to Texas Code of Criminal Procedure article 16.22(a)(1)(A), \_\_\_\_\_ [LMHA, LIDDA, or other qualified mental illness or intellectual disability expert] (1) collect information regarding whether the defendant has a mental illness as defined by Texas Health and Safety Code section 571.003 or is a person with an intellectual disability as defined by Texas Health and Safety Code section 591.003 and (2) provide the magistrate a written assessment of the information collected.

The written assessment must be completed on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Texas Health and Safety Code section 614.0032(b). It must include, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment.

**IT IS FURTHER ORDERED** that, unless good cause is shown, the assessment must be submitted to the magistrate:

\_\_\_\_\_ within 96 hours (initial if the defendant is in custody), or  
\_\_\_\_\_ within 30 days (initial if the defendant is not in custody).

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Magistrate

cc: Attorney for the State  
Attorney for Defendant  
Trial court (if case filed)

**CERTIFICATION OF COMPLIANCE TO MAGISTRATE**

I, \_\_\_\_\_ [LMHA, LIDDA, or other qualified mental illness or intellectual disability expert], certify that a written report as required by Texas Code of Criminal Procedure article 16.22(b) has been submitted to the Magistrate in compliance with the above stated Order for Assessment on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
LMHA, LIDDA, or other qualified mental illness or intellectual disability expert]

*[Provider: Append this certification to your written assessment]*

**CERTIFICATION OF DELIVERY BY MAGISTRATE TO COUNSEL AND TRIAL COURT**

I, Justice of the Peace, Precinct /Magistrate, certify that a copy of the assessment has been forwarded to the following individuals as required by Article 16.22(b), Code of Criminal Procedure, on the following date(s):

- ( ) County Attorney \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_
- ( ) District Attorney \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_
- ( ) Attorney for Defendant \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_
- ( ) Trial Court \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Magistrate

*[Magistrate: Append this certification to the written assessment.]*

# Tab 8

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

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MAGISTRATE FOR

VS.

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**ORDER REQUIRING DEFENDANT TO SUBMIT TO ARTICLE 16.22 ASSESSMENT**

The Court finds that, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court determined that there was reasonable cause to believe that \_\_\_\_\_ [defendant], date of birth \_\_\_\_\_, has a mental illness or is a person with an intellectual disability.

The Court ordered that \_\_\_\_\_ [LMHA, LIDDA, or other qualified mental illness or intellectual disability expert] (1) collect information regarding whether the defendant has a mental illness as defined by Texas Health and Safety Code section 571.003 or is a person with an intellectual disability as defined by Texas Health and Safety Code section 591.003 and (2) provide the magistrate a written assessment of the information collected.

The Court further finds that the defendant has refused to submit to the ordered assessment.

**IT IS THEREFORE ORDERED** that, pursuant to Texas Code of Criminal Procedure 16.22(a)(3), a warrant shall issue for the immediate apprehension, detention, and transportation of the defendant to (initial and complete one of the following):

\_\_\_\_\_ [jail]; or  
\_\_\_\_\_ [placed determined by LMHA or LIDDA].

The defendant may be detained for a reasonable period not to exceed 72 hours from the time of apprehension.

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Magistrate

City: \_\_\_\_\_

County: \_\_\_\_\_

CAUSE NO. \_\_\_\_\_

THE STATE OF TEXAS

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MAGISTRATE FOR

VS.

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

TO: ANY PEACE OFFICER OF THE STATE OF TEXAS

**GREETINGS:**

You are hereby commanded to apprehend \_\_\_\_\_ and transport same to \_\_\_\_\_ for the purpose of assessment under Texas Code of Criminal Procedure article 16.22.

Herein fail not, but of this writ make due return, showing how you executed same.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Magistrate

City: \_\_\_\_\_

County: \_\_\_\_\_

.....

**OFFICER'S RETURN**

Received the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and executed by apprehending the person, \_\_\_\_\_, and transporting the person to \_\_\_\_\_ for assessment under Texas Code of Criminal Procedure article 16.22.

Date Executed: \_\_\_\_\_ Time: \_\_\_\_\_

By: \_\_\_\_\_  
Peace Officer

# Tab 9

**COLLECTION OF INFORMATION FORM FOR  
MENTAL ILLNESS AND INTELLECTUAL DISABILITY**  
*AUTHORITY: Art. 16.22, Code of Criminal Procedure & Sec. 614.0032, Health & Safety Code*  
Approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI)

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**SECTION I: DEFENDANT INFORMATION**

Defendant Name (*Last, First*): \_\_\_\_\_ Offense: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ CARE Identification # (*If available*): \_\_\_\_\_ SID or CID # (*If available*): \_\_\_\_\_  
Last Four Digits of Social Security Number: \_\_\_\_\_  
Current County or Municipality of Incarceration: \_\_\_\_\_ Date of Magistrate Order: \_\_\_\_\_

---

**SECTION II: PREVIOUS HISTORY**

Has the defendant been determined to have a mental illness or to be a person with an intellectual disability within the last year?

*Yes*                                       *No*                                       *Unknown*

**Date of Previous Assessment (*if applicable*):** \_\_\_\_\_

**Previous Mental Health and/or Intellectual Disability Assessment Information (*if available*):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION III: CURRENT INFORMATION**

Most Recent Diagnosis(es) and Date(s) (*if available*):

\_\_\_\_\_

At time of the collection of information or as indicated on the jail screening form for suicide and medical/mental/developmental impairments, is the defendant acutely decompensated, suicidal, or homicidal according to self-report?

*Yes- Circle Above*                                       *No*                                       *Not Applicable- Reason* \_\_\_\_\_

Other relevant information pertaining to mental health and intellectual disability history and/or previous treatment recommendations:

\_\_\_\_\_  
\_\_\_\_\_

**Observations and Findings Based on Information Collected:**

- Defendant is a person who has a mental illness.
- Defendant is a person who has an intellectual disability.
- There is clinical evidence to support the belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B, Code of Criminal Procedure.
- Any appropriate or recommended treatment or service:

\_\_\_\_\_

None of the above.

**Procedures Used to Gather Information:**

\_\_\_\_\_

**SECTION IV: INFORMATION OF PROFESSIONAL SUBMITTING FORM**

Name and Credentials of Person Submitting Form: \_\_\_\_\_ Date of Submission: \_\_\_\_\_

**COLLECTION OF INFORMATION FORM FOR  
MENTAL ILLNESS AND INTELLECTUAL DISABILITY**  
*AUTHORITY: AUTHORITY: Art. 16.22, Code of Criminal Procedure & Sec. 614.0032, Health & Safety Code*  
Approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments  
(TCOOMMI)

## **INSTRUCTIONAL GUIDELINES**

This form is not to be confused or supplemented by the "Screening Form for Suicide and Medical/Mental/Developmental Impairments" as required by the Texas Commission on Jail Standards

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### **Section I: DEFENDANT INFORMATION**

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- **Defendant Name** should be filled out by last name followed by first name.
- **Offense** information should include arresting offense information.
- **Date of Birth** and **last four digits of social security number** are to be obtained to assist in validating identity.
- **CARE Identification #** – *If available*, this number should be complimentary to the CCQ match.
- **SID or CID Number** – *If available*, this number should include the State Identification Number (SID) or the County Identification (CID) Number.
- List the **Current County** or **Municipality** of the current incarceration.
- **Date of Magistrate Order** should be the date the magistrate signed the order which initiates the timeframes for completing the collection of information (not later than 96 hours for a defendant in custody; not later than 30 days for a defendant not in custody).

### **Section II: PREVIOUS HISTORY**

- **Has the defendant been determined to have a mental illness or to be a person with an intellectual disability within the last year?**
  - **If Yes** – The Magistrate *is not required* to order the collection of information if the defendant *in the year proceeding* 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 disability expert described.
  - **If No** – Further collection of information under this form will be necessary for applicable defendants.
  - **If Unknown** - Further collection of information under this form *may* be necessary for applicable defendants.
- **Previous Mental Health and/or Intellectual Disability Assessment Information and Date** - *If available*, collect information regarding whether the defendant has a mental illness as defined by section 571.003, Health and Safety Code, or is a person with an intellectual disability as defined by section 591.003, Health and Safety Code, including, if applicable, information obtained from any previous assessment of the defendant and information regarding any previously recommended treatment.  
Note: Include source of information. Examples are self-report, CARE or CCQ match, or clinical records available from local mental health authority of local intellectual developmental disability authority.

---

### **Section III: CURRENT INFORMATION**

- **Most Recent Diagnosis(es) and Date(s)** - *If available*, include information here.
- **Is the client acutely (at time of assessment or as indicated on the jail screening form for suicide and medical/mental/developmental impairments) decompensated, suicidal, or homicidal according to self-report?**
  - **If Yes** – select yes.
  - **If No** – select no
  - **If Not Applicable** – Indicate the reason why here.

**COLLECTION OF INFORMATION FORM FOR  
MENTAL ILLNESS AND INTELLECTUAL DISABILITY**

▪ **AUTHORITY:** *AUTHORITY: Art. 16.22, Code of Criminal Procedure & Sec. 614.0032, Health & Safety Code*  
Approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI)

Note: This information may be helpful to the magistrate or judge, as it will allow the magistrate or judge to know the severity of the defendant's mental health status for prioritization purposes.

➤ **Other relevant information pertaining to mental health history and/or previous treatment recommendations** – Note: Examples may include the following:

- Previous competency examination results or outcome of examination results;
- Parole, Probation or Pre-Trial Supervision status;
- Military history is applicable to treatment history;
- If this section is not applicable, indicate as such.

➤ **Observations and Findings Based on Information Collected** – Select option as appropriate.

Note: **Any appropriate or recommended treatment or service** – Include whether the defendant warrants a competency examination, outpatient services, etc. **Provide any recommendation for further assessment/evaluation by higher level clinical providers.**

➤ **Procedures Used to Gather Information** – Include informational sources used to collect information. Examples may include: Sources of information such as, self-report, CARE or CCQ match, previous psychological evaluations, assessments or clinical records available from local mental health authority of local intellectual developmental disability authority.

**Section IV: INFORMATION OF PROFESSIONAL SUBMITTING FORM**

- **Name and Credentials of Person Submitting Form** – Person completing the form along with his or her credentials, is to be listed here. Note: *This form is to be completed by the local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert.*
- **Date of Submission** – Include the date the form is submitted to Magistrate.

# Tab 10

## SB 1326 Reporting Guidance

**Q: What is a mental health/intellectual disability assessment?** A written assessment **ordered by the magistrate** and completed by the **local MH/IDD authority** or another qualified expert. It is NOT a notice sent to the magistrate by the jail or sheriff about a potential mental health issue.

The assessment must be documented on the [form](#) approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

**Q: What is a competency examination?** An examination **ordered by the court** to determine whether the defendant is incompetent to stand trial. It is NOT an emergency mental health commitment ordered by a magistrate.

**Q: Who is responsible for SB 1326 reporting?** The magistrate, the trial court, and the district clerk or county clerk.

Mental health/intellectual disability assessments:

- The **magistrate** is required to provide copies of the assessment to the defense counsel, the attorney representing the state, and the **trial court** (district or county court).
- The **magistrate** should send the assessment to the custodian of the district or county court records—**the district clerk or county clerk**—for inclusion in the defendant’s case file.
- The number of written assessments will be captured from district and county courts on Judicial Council Monthly District and County Court Activity Reports, submitted by **district clerks and county clerks**.

Role	Action Required to Report to OCA
Municipal or Justice Court Judges Serving as Magistrates, Justice or Municipal Court Clerks	Forward copy of MH/ID assessments to district clerk or county clerk (or both if necessary). If case is from another county, send to that county’s clerk.
All Other Magistrates	Forward copy of MH/ID assessments to district clerk or county clerk (or both if necessary). If case is from another county, send to that county’s clerk.
District and County Clerks	Report MH/ID assessments on the Judicial Council Monthly Court Activity Report

Competency examination reports:

- The **trial court** is required to report the number of competency examination reports received. The court should ensure that the **clerk** has the information necessary to report this information on the Judicial Council Monthly Court Activity Report.

Role	Action Required to Report to OCA
District and County Clerks	Report competency examinations on the Judicial Council Monthly Court Activity Report

**Q: When and where do I need to start reporting this information?** Beginning with the **September 2017 Judicial Council Monthly Court Activity Reports**, changes will be made to the **Criminal – Additional Court Activity** section for the district and county courts ONLY:

Reporting Requirement	Change
Mental health/intellectual disability assessment	New field added
Competency examination report	Replaces current <b>Competency Hearings</b> category

**Q: My office has never received a mental health assessment. Those are done by the magistrates. How are we supposed to report the assessments on the Judicial Council Monthly District and County Court Activity Reports?** The requirement for the magistrate to provide a copy of the assessment to the trial court is not new. SB 1326 only added a requirement that the assessment be on a specific form and that the number of assessments be reported to OCA. Given the now widespread awareness of the requirements, you should start receiving copies from the magistrates.

**Q: How are assessments to be reported when there has not been an indictment or filing of a complaint or information?** The assessment will not be reported until indictment or filing of a case. If there is no indictment or filing of a case, the assessment will not be reported.

**Q: What date should be used when reporting an assessment or competency examination?**

Document	Event	Date
Mental health/intellectual disability assessment	Assessment received from magistrate <b>prior</b> to indictment/filing of complaint or information	Indictment/case filing date
	Assessment received from magistrate <b>after</b> filing of case	Assessment date
Competency examination report	Report received from evaluator	Date report received

**Q: How many assessments/competency examination reports should be reported when a defendant has multiple cases?**

Count the assessment or competency examination report in **each** of the defendant's cases. For example, if an assessment is issued for a person named in five separate indictments, count this as five assessments.

