

# Texas County Mental Health Law Plan Class #2 Early Intervention

February 9, 2023

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Guest Speaker: Judge Roxanne Nelson



# Today's discussion

- Welcome
- Why Early Identification?
- Early Identification Process and Documents
  - 16.22 – Jail Early Identification
  - 17.032 – Mental Health Bonds
- Q&A



**1 in 5 U.S. adults** experience mental illness each year.



**3,347,000 adults** in Texas have a mental health condition.

That's more than **3X** the population of Austin.

It is more important than ever to build a stronger mental health system that provides the care, support and services needed to help people build better lives.



**More than half of Americans** report that **COVID-19** has had a **negative impact** on their mental health.

In February 2021, **43.4% of adults in Texas** reported symptoms of **anxiety or depression**.

**26.4% were unable to get needed counseling or therapy.**



**1 in 20 U.S. adults** experience serious mental illness each year.

In Texas, **796,000 adults** have a **serious mental illness**.



**1 in 6 U.S. youth** aged 6–17 experience a **mental health disorder** each year.

**314,000 Texans** age 12–17 have depression.

## Texans struggle to get the help they need.



**More than half of people** with a mental health condition in the U.S. **did not receive any treatment** in the last year.

Of the **839,000 adults in Texas who did not receive needed mental health care**, 45.3% did not because of cost.

**18.4% of people in the state are uninsured.**



**Texans** are over **5x more likely to be forced out-of-network** for mental health care than for primary health care — making it more difficult to find care and less affordable due to higher out-of-pocket costs.

**15,072,179 people** in Texas live in a community that **does not have enough mental health professionals**.

An inadequate mental health system affects individuals, families and communities.



High school students with depression are more than **2x more likely to drop out** than their peers.

**64.7% of Texans** age 12–17 who have depression **did not receive any care** in the last year.



27,229 people in Texas are homeless and **1 in 6 live with a serious mental illness.**



On average, 1 person in the U.S. **dies by suicide every 11 minutes.**

In Texas, **3,930 lives were lost to suicide** and 756,000 adults had thoughts of suicide in the last year.

**1 in 4 people with a serious mental illness has been arrested**

by the police at some point in their lifetime –



leading to over **2 million jail bookings** of people with serious mental illness each year.

About **2 in 5 adults** in jail or prison have a history of mental illness.



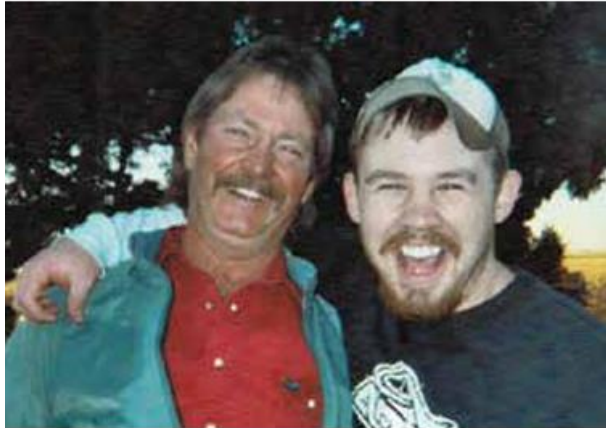
**7 in 10 youth** in the juvenile justice system have a mental health condition.



NAMI Texas is part of NAMI, National Alliance on Mental Illness, the nation’s largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness.

This fact sheet was compiled based on data available in February 2021. For full citations, visit: [nami.org/mhpolicystats](http://nami.org/mhpolicystats).

# Preventable Tragedies: How to Reduce Mental-Health Related Deaths in Texas Jails



**Terry Borum** was a 53-year-old grandfather who suffered from depression and alcoholism. He died from a head injury sustained during severe, untreated alcohol withdrawal in Swisher County Jail.

**Gregory Cheek** was a 29-year-old artist and surfer who had bipolar disorder and schizophrenia. He died from a bacterial infection in Nueces County Jail after the jail failed to transfer him to a state hospital or attend to his medical needs.



**Amy Lynn Cowling** was a 33-year-old mother of three who had bipolar disorder and was in treatment for opioid addiction. She died in Gregg County Jail after suffering severe withdrawal seizures resulting from abrupt withdrawal from prescribed medication.

**Lacy Dawn Cuccaro** was a 28-year-old mother of two who had bipolar disorder, depression, and anxiety. She committed suicide by hanging in Hansford County Jail after the jail failed to properly monitor her.



# Preventable Tragedies: How to Reduce Mental-Health Related Deaths in Texas Jails



**Victoria Gray** was an 18-year-old young woman who had bipolar disorder and schizophrenia. She committed suicide by hanging in Brazoria County Jail after jail staff failed to notify a magistrate about her.

**Jesse C. Jacobs** was a 32-year-old man who suffered from anxiety. He died in Galveston County Jail after several seizures caused by unsupported withdrawal from his prescription anti-anxiety medication, which the jail denied him.

**Robert Montano** was a 41-year-old father with a known history of psychiatric illness. He died in Orange County Jail after five days of isolation without any mental health assessment or treatment.

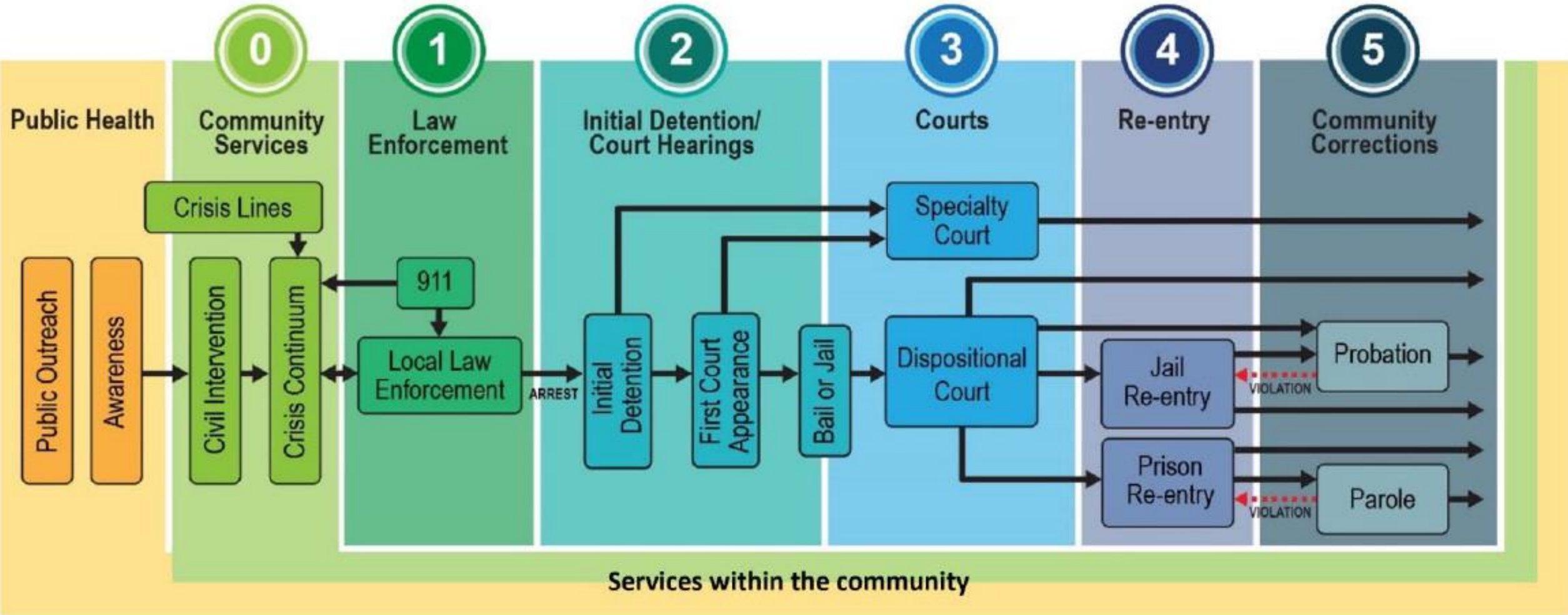
**Robert Rowan** was a 27-year-old man who died in an isolation cell in Smith County Jail from complications stemming from unsupported withdrawal from anti-anxiety medication after jail staff failed to properly monitor him.

**Carl Chadwick Snell** was a 39-year-old father who suffered from bipolar disorder. He committed suicide by hanging in Denton County Jail after the magistrate took no action following notification.

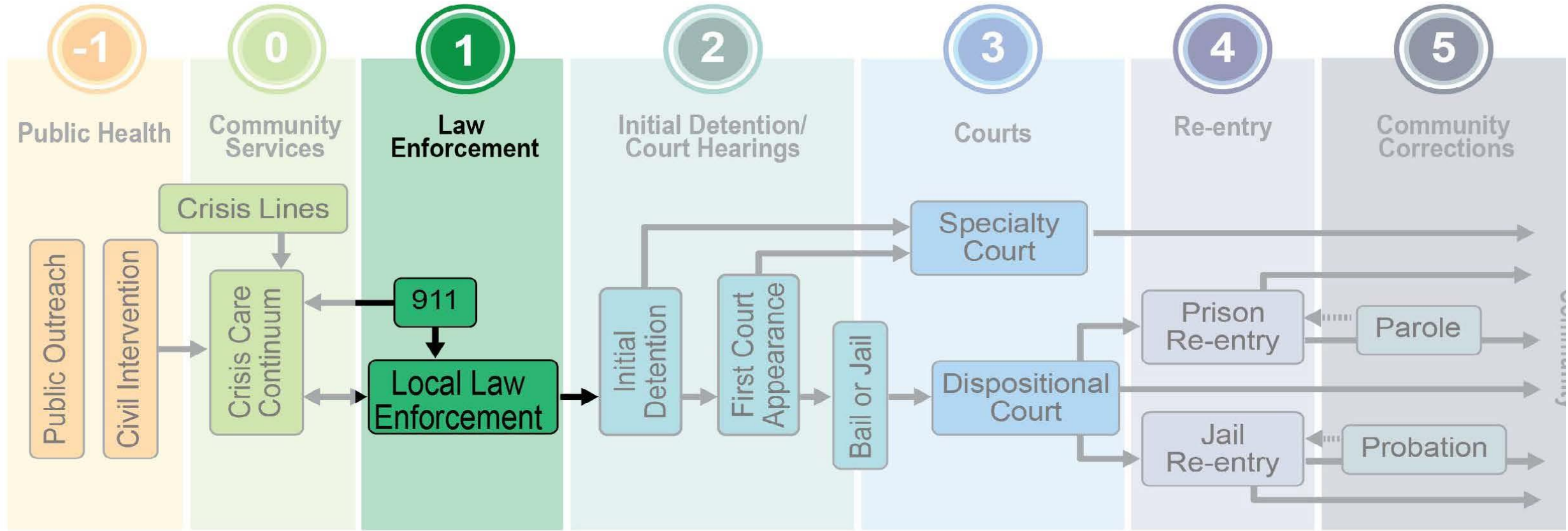


When have you seen a positive outcome when you or someone else has gone the extra mile for a person with mental illness?

# Sequential Intercept Model







# ① Intercept 1: Initial Contact with Law Enforcement

# Intercept 1: Initial Contact with Law Enforcement

- ▶ Law Enforcement MUST divert when appropriate

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:

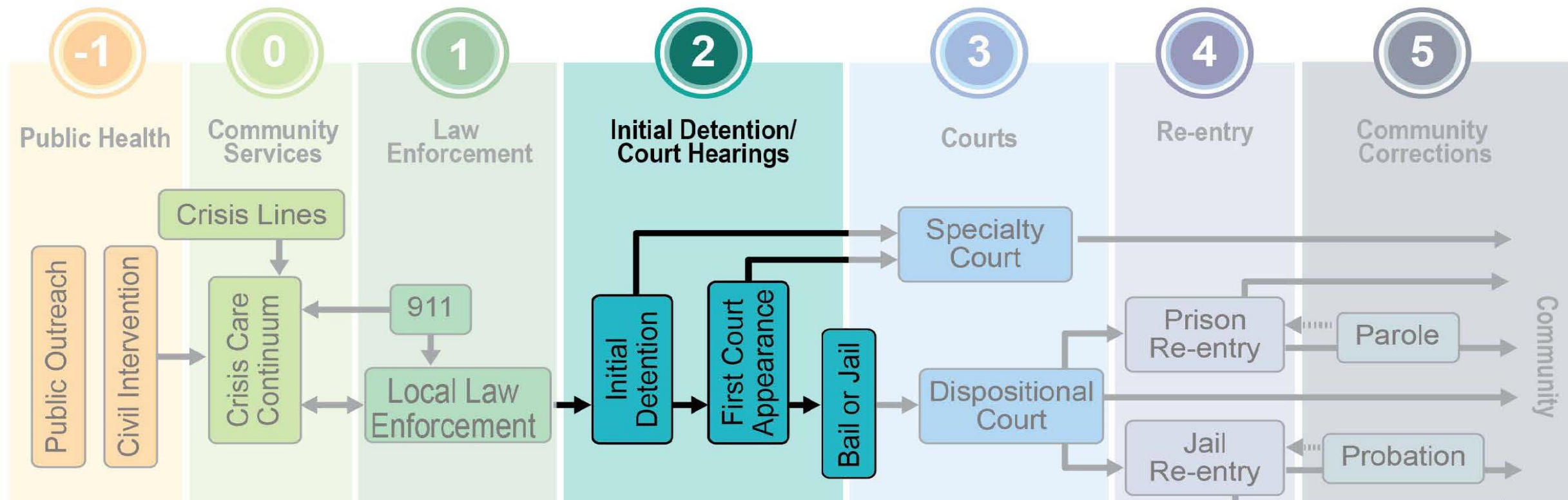
- a treatment center is available;
- diversion is reasonable;
- the offense is a non-violent misdemeanor; and
- the mental health or substance abuse issue is suspected to be the reason for the offense.

Tex. Code Crim. Proc. art. 16.23(a).

# Police Intervention, Detention, & Arrest



- ▶ Officers have considerable discretion in responding to a situation in the community involving a person with MI or IDD who may be engaging in criminal conduct, experiencing a mental health crisis, or both.
- ▶ 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.



## ② Intercept 2: Initial Detention and Court Hearings

# Sandra Bland

February 7, 1987 – July 13, 2015



A Texas Traffic Stop.

Led to an arrest.

She was Booked into Jail.

Bond set at \$5000.

Unable to get \$500.

Jailers put her in a cell alone.

Did not conduct the 15 min welfare checks.

Three days post-arrest, at 7:34am, Bland was checked on in her cell.

The next time she was checked on, at 9:07am, Sandra Bland was found unresponsive in her cell due to suicide.

"the kind of information disclosed on Bland's intake form should have prompted jail officials to place Bland on a suicide watch, meaning a face-to-face check on her welfare every 15 minutes instead of the hourly checks normally required."

Texas Senate Bill 1849, also known as the Sandra Bland Act, went into effect on **September 1, 2017**, and mandated change to corrections and police policy when dealing with those with substance abuse or mental health concerns.

S.B. 1849 "requires de-escalation training for police officers and mandates county jails divert people with mental health and substance abuse issues toward treatment, makes it easier for defendants to receive a personal bond if they have a mental illness or intellectual disability, and requires that independent law enforcement agencies investigate jail deaths.

# Texas Code of Criminal Procedure

## Art. 16.22

- ▶ Early Identification of Individuals with Mental Illness (MI) or Intellectual or Developmental Disabilities (IDD)
- ▶ Art. 16.22 details a procedure for identifying a person's possible Mental Illness or Intellectual Disability at the earliest stages of, and throughout, the criminal proceeding.



# When was a 16.22 early identification procedure added into Texas law?

- 73rd Legislature (1993)
- Effective Sept 1, 1994



What is it that we are trying to identify?

Why is *early* identification important?

# Intercept 2: Initial Detention and Court Hearings



## 16.22 Interview and Written Report

- LMHA/LBHAs must interview the defendant and otherwise collect information on whether the defendant has a MI or ID and provide to the magistrate a written report of the information collected under CCP art. 16.22.

## 17.032 Bond Recommendations

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

\*Note that jails are responsible for medical, mental, and dental health care. The owner/operator of each jail 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.*

# Intercept 2: Interview and Written Report



Under CCP Article 16.22, a full-blown examination of mental illness or IDD is not required before the defendant goes before a magistrate. All that is required is that the local mental health authority (LMHA), local intellectual and developmental disability authority (LIDDA), or another qualified mental health or intellectual and developmental disability (IDD) expert must simply **“interview” the defendant and collect related information.**

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

The qualified mental health expert must **prepare a written report.**

# 16.22 Guide



## **THE TEXAS CCP ART. 16.22 GUIDE:**

**for Successful Early Identification of  
Defendants Suspected of Having Mental  
Illness or Intellectual Disability**

Step-by-Step Instructions for:

- Judges
- Attorneys
- Clerks
- County Leaders

September 2023

# Step 1: Arrival at Jail

Law Enforcement: Drop off defendant; tell jailers anything that may be a sign or symptom of MI or IDD

Jailers: Tell the Judge within 12 hours of discovering credible information that this person may have MI or IDD.

*How do we know?*

- a. Initial Identification Information can come from ANY source of credible information.*
- b. What signs or symptoms are you looking for?*

# Step 1: Arrival at Jail

Defendant arrested on any offense.

# Step 2: Identification of Individual Suspected of Mental Illness



*Initial Identification Information can come from ANY source of credible information.*

## Observations of:

- ▶ Law Enforcement
- ▶ Jail Staff\*
- ▶ Magistrate Judge

## Other Sources:

- ▶ Texas Commission on Jail Standards (TCJS) Jail Screening Form –mandatory for all jail intake
- ▶ TLETS CCQ (Texas Law Enforcement Telecommunications System, Continuity of Care Query)
- ▶ Witnesses / Witness Statements / Probable Cause Affidavit
- ▶ Staff familiar with the individual from the Local Mental Health Authority (LMHA), Local Intellectual or Developmental Disability Authority (LIDDA), or other care providers
- ▶ Defendant's family members or friends
- ▶ Medication brought into the jail with or for the defendant

# TCJS Screening Form

Purpose?

Who gets it?

Where is it kept?

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>		
<b>Place inmate on suicide watch if Yes to 1a-1d or at any time jailer/supervisor believe it is warranted</b>		
	YES	NO "Yes" Requires Comments
<b>IF YES TO 1a, 1b, 1c, or 1d BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</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?		
<b>IF YES TO 2-12 BELOW, NOTIFY SUPERVISOR AND MAGISTRATE. Notify Mental Health when warranted</b>		
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.)?		
<b>IF YES TO 13-16 BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</b>		
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:		





# TCJS Screening Form



	YES	NO	REQUIRES COMMENTS
<b>IF YES TO 1a, 1b, 1c, or 1d BELOW, NOTIFY SUPERVISOR, MAGISTRATE, AND MENTAL HEALTH IMMEDIATELY</b>			
Is the inmate unable to answer questions? If yes, note why, notify supervisor and place on suicide watch until form completed.			
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<b>IF YES TO 2-12 BELOW, NOTIFY SUPERVISOR AND MAGISTRATE. Notify Mental Health when warranted</b>			
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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):			

# Notification to Magistrate

- ▶ No statutory form
- ▶ Suggested forms useful for jail records in proving jail compliance with 16.22.
- ▶ Doesn't need to go to clerk.

# Step 3: Magistrate must make a Reasonable Cause Determination

- A. Reviews notification(s) from Jailers
- B. Any documents attached to notifications
- C. Reviews charges/criminal history
- D. Meets with defendant
- E. Communicates with LMHA, LIDDA, MH Provider
- F. Magistrate decides whether there is reasonable cause to believe the defendant has mental illness or IDD?
  - NO, then no further action needed.
  - If YES, keep going...

## Step 4: If reasonable cause is found.

- ▶ Magistrate **SHALL** order a qualified mental health professional to interview the individual and complete a 16.22 report.

### *Except if...*

1. The defendant had a 16.22 report done within the last year
  2. The defendant is out of custody
  3. Its only a class C misdemeanor
- ▶ If any of these exceptions exist, **THEN** the Magistrate **MAY** order a qualified mental health professional to interview the individual and complete a 16.22 report. But it is no longer required by statute.

# Step 4b: Exceptions that may apply

1. Magistrate checks to see if a prior 16.22 report was completed in the last year that indicates MI or IDD.
  - If yes, magistrate is allowed to use that report
  - If no prior report, the Magistrate SHALL order the MH 16.22 interview.
  
2. Magistrate checks to make sure defendant is still in custody.
  - If not, then ordering 16.22 interview is discretionary
  - If still in custody, the Magistrate SHALL order 16.22 interview.
  
3. Magistrate checks charge.
  - If only arrested on Class C, then ordering 16.22 interview is discretionary.
  - Arrested on charge greater than Class C, Magistrate SHALL order 16.22 interview.

# Magistrate orders the LMHA to interview the Defendant and write report



[THE STATE OF TEXAS VS. \_\_\_\_\_]

Service / Offense Report No.	Offense	City Jail

**ORDER FOR THE COLLECTION OF INFORMATION REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY**

On this day, the Court having determined, pursuant to article 16.22 of the Texas Code of Criminal Procedure, that there is reasonable cause to believe the Defendant, \_\_\_\_\_, has a mental illness or is a person with an intellectual disability;

**IT IS HEREBY ORDERED** that (the local LMHA) interview the Defendant pursuant to article 16.22 (a-4) if the Defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the Defendant was arrested for the offense for which the Defendant is in custody and otherwise collect information regarding whether the Defendant has a mental illness as defined by Section 571.003, Health and Safety Code, or is a person with 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 or service; and

**IT IS FURTHER ORDERED** that a written report of the interview described by the foregoing paragraph and the other information collected regarding the Defendant shall be provided to the \_\_\_\_\_ County magistrate on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments under Section 614.0032(c), Health and Safety Code not later than 96 hours after the time an order was issued for a Defendant held in custody or not later than the 30th day after the date an order was issued for a Defendant released from custody. The written report must include a description of the procedures used in the interview and collection of other information and the applicable expert's observations and findings pertaining to:

- (1) whether the Defendant is a person who has a mental illness or is a person with an intellectual disability;
- (2) 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, of the Texas Code of Criminal Procedure; and
- (3) any appropriate or recommended treatment or service.

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Magistrate [type name]

16.22 Order for the Collection of Information  
REV 09/2021

Purpose?

Who gets it?

Where is it kept?

**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 Interview with Written Report on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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

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

**CERTIFICATION OF DELIVERY BY MAGISTRATE**

I, \_\_\_\_\_, Justice of the Peace, Precinct \_\_\_ / Magistrate, certify that a copy of the report has been forwarded to the following individuals as required by Article 16.22(b) and (b)(1), Code of Criminal Procedure, on the following date(s):

- ( ) County Attorney \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_
- ( ) District Attorney \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_
- ( ) Attorney for the Defendant \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_
- ( ) Trial Court \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_
- ( ) County Sheriff \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_
- ( ) Bond or Pre-Trial Supervision Office \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Justice of the Peace / Magistrate

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

16.22 Order for the Collection of Information  
REV 09/2021

# The Interview

# Interview of the Defendant

- ▶ What does that look like?
- ▶ An interview may be conducted in person **in the jail, by telephone, or through a telemedicine medical service or telehealth service.**



# LMHA Conducts Interview

TCOOMMI Statutory Form

OR...

**COLLECTION OF INFORMATION FORM FOR  
MENTAL ILLNESS AND INTELLECTUAL DISABILITY**  
AUTHORITY: Texas Code of Criminal Procedure art. 16.22; Texas Health and Safety Code § 614.0032  
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: \_\_\_\_\_

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**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 Written Report of Collected Information (if applicable): \_\_\_\_\_

Previous Mental Health and/or Intellectual Disability Information (if available):  
\_\_\_\_\_  
\_\_\_\_\_

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**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 or service recommendations:  
\_\_\_\_\_  
\_\_\_\_\_

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**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:**  
\_\_\_\_\_  
\_\_\_\_\_

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

Name, Credentials & Organization of Person Submitting Form: \_\_\_\_\_ Date of Submission: \_\_\_\_\_

This form and the contents herein may only be shared in accordance with Texas Health and Safety Code § 614.017 and Texas Code of Criminal Procedure article 16.22(f). This form and its contents are otherwise confidential and not subject to disclosure under Chapter 552 of the Government Code.

# LMHA Conducts Interview

Local form with all info required on statutory form



Client Name: Test, Test    DOB: 01/01/2001    ClientId: 4109940  
Document Name: Court Order Assessment    Effective Date: 02/05/2020

### Bluebonnet Trails Community Services Court Order Assessment

CARE ID:    SID or CID:    Current County:  
Municipality of Incarceration:  
Date of Magistrate Order:  
Sex:    SSN:  
Address:  
Parent/Guardian Name:    Telephone #:  
Referral Source:    Telephone #:  
Residence County:    Marital Status:  
Legal Status:    Ethnicity:  
Race:    Living Arrangement:  
Insurance Type:  
Military Service:  Yes  No    Branch:    VA Services:  Yes  No

### Risk Assessment

Current Suicidal Ideation:  Yes  No    Current Suicidal Plan:  Yes  No  
Current Suicidal Intent:  Yes  No    Means to carry out suicide attempt:  Yes  No  
Current Homicidal Ideation:  Yes  No    Current Homicidal Plan:  Yes  No  
Current Homicidal Intent:  Yes  No    Means to carry out attempt:  Yes  No  
If "Yes" to any of the above questions, Explain:

Refer to Psych:  Yes  No    Refer to Medical:  Yes  No  
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  
Date of Previous 16.22 Report (if applicable):

### Current Status

PRESENTING PROBLEM:  
Current Diagnosis from BBT or Community Provider:  
 Bipolar D/O     Schizophrenia     Major Depression     IDD or Related Condition     Substance Use Disorder  
 Unknown     Other:  
Symptoms:

### Prior Criminal Justice History and Involvement

Does client have any of the following criminal justice history or involvement?  
Police involvement/frequent police contact:  Yes  No  
Probation:  Yes  No  
Parole:  Yes  No  
Contact with mental health deputies:  Yes  No  
Contact with school-based police officers:  Yes  No  
Incarceration:  Yes  No  
Contact with court/county/state officials in a legal capacity:  Yes  No

### Prior Treatment History

Person in Treatment:  Yes  No    If yes, where:  
Actively Participating in Treatment:  Yes  No  
Probation/ Parole:  Yes  No    If Yes, Name of PO:  
Criminal Charges Pending:  Yes  No    Charges are:  
Prior Hospitalizations:  Yes  No  
Where:    When:    How many times last year?  
History of Substance Abuse:  
 Marijuana     Cocaine     Alcohol     Meth     Amphetamines     Pills  
 Crack     Inhalant     Heroin     Hallucinogens     PCP     Ecstasy  
 Other     N/A  
Last Use:    Last Use Amount:  
Assessment (consider all the data presented along with your interview conclusions):

Recommendation for Treatment or Crisis Intervention Plan (include Recommendations for Least Restrictive Treatment Setting):

DOES CLIENT MEET CRITERIA FOR DIVERSION:  Yes  No  
If No, Why Not?

### Observations and Findings Based on Information Collected:

- Defendant is a person who has a history of mental illness.
- Defendant is a person who has a history of 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.
- None of the above

### Methods Used to Gather Information:

- Interview
- Review of Psychiatric Records
- CARE Database

Collateral Contact:    (name, relationship)  
 Bluebonnet Trails Community Services recommends immediate admission and treatment at a State Psychiatric Facility. If court proceedings are required to administer psychiatric care, Bluebonnet Trails would support such efforts.  
Referred for State-Facility Hospitalization?     Yes     No    If yes, where?

Name, Credentials & Organization of Person Submitting Form:

Date of Submission:

This form and the contents herein may only be shared in accordance with Texas Health and Safety Code § 614.01 Code of Criminal Procedure article 16.22(f). This form and its contents are otherwise confidential and not subject to disclosure under Chapter 552 of the Government Code.

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

# The Report

# What does the LMHA do with the completed form –i.e., the 16.22 report?



- ▶ Send Report to Magistrate Judge

# Communication is Essential

- ▶ Communication between the Courts and LMHA about the defendant *for purposes of the continuity of care and services for the defendant.*



# Information Sharing

Tex. Health & Safety Code § 614.017

- ▶ State law requires that agencies share information for purposes of continuity of care and services for “special needs offenders”
- ▶ This includes individuals:
  - for whom criminal charges are pending or
  - who, after conviction or adjudication, is in custody or under any form of criminal justice supervision.
- ▶ 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.*

# Information Sharing

*Tex. Health & Safety Code § 614.017*



**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, 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.

# Information Sharing *Broadcast MSG 0795*



**Broadcast MSG0795**

April 24, 2018

To: Executive Directors, Local Mental Health Authorities  
Executive Directors, Local Behavioral Health Authorities

From: Courtney Harvey, Forensic Director  
Behavioral Health Services Section  
Medical and Social Services Division  
Jennifer D. Miller, Office of Contractor Services Director  
Behavioral Health Services Section  
Medical and Social Services Division

Subject: Exchanging Information on Special Needs Offenders

### Overview

The purpose of this letter is to require individuals and entities regulated by or under contract with the Health and Human Services Commission (HHSC) for the provision of mental health services to exchange information on special needs offenders in accordance with the provisions of Health & Safety Code (HSC) §614.017. Some providers of mental health services have been reticent to exchange information on special needs offenders as required by §614.017 due to misinterpretation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

To summarize, HHSC requires mental health providers regulated by or under contract with HHSC to exchange information in accordance with the provisions of HSC §614.017. Psychotherapy notes, however, cannot be exchanged without an individual's authorization. The exchange of information also cannot include information that would identify the individual as having received or applied for treatment for alcohol or substance use without the individual's consent.

### Discussion

HIPAA is a federal law which generally preempts state laws that allow disclosure of information that would identify the individual as having received or applied for treatment for alcohol or substance use without the individual's consent. However, HIPAA permits the disclosure of information that would identify the individual as having received or applied for treatment for alcohol or substance use without the individual's consent if the disclosure is required by law. HHSC's Office of General Counsel

P.O. Box 13247 • Austin, Texas 78711-3247 • 512-424-6500 • [hhs.texas.gov](http://hhs.texas.gov)

has confirmed that HIPAA permits the disclosure of protected health information related to mental health treatment in accordance with the provisions of HSC §614.017.

In addition to summarizing the HIPAA "required by law" exemption and how it relates to the required disclosures specified in HSC §614.017, this broadcast message will briefly review the more restrictive federal requirements in 42 Code of Federal Regulations (CFR) pt. 2 on the disclosure of information that would identify an individual as having received or applied for treatment for alcohol or substance use.

The federal HIPAA Security and Privacy Rules in the CFR at 45 CFR pt. 164. Sec. 164.512(a) permits a covered entity to "use or disclose protected health information to the extent that such use or disclosure is required by law and the use of such information to the extent that such use or disclosure is required by such law," which requires the disclosures to be necessary for the use or disclosure. "Uses and disclosures for which an authorization or disclosure is not required," clearly shows that a covered entity does not need to obtain an individual's authorization for a disclosure that is required by and in compliance with another law. Sec. 164.103 defines "required by another law" as a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Examples of protected health information that are enforceable in a court of law include, as an example, "statutes or regulations that require the disclosure of information."

§614.017 is a state law that requires disclosure of information that may be health information under HIPAA. HSC §614.017(c)(1) defines "agency" as "an entity and individuals included in that definition. Please note that an agency includes "a person with one or more" of them. HHSC encourages providers to review §614.017 so providers will be able to determine if they are required to disclose information. According to HSC §614.017, providers, for disclosure of information relating to a special needs offender, shall accept and disclose "information relating to a special needs offender, including information about the offender's identity, needs, criminal, and vocational history, supervision status and conditions of supervision, and medical and mental health history." In this law, the legislature clearly mandates and requires disclosure of this information. Thus, §164.512(a) of the HIPAA Privacy Rule permits covered entities to disclose protected health information in accordance with state law.

§614.017 requires providers to exchange information with other providers between the listed agencies under §614.017 must serve the best interests of the care and services of a special needs offender. HSC §614.017(c)(2) defines "continuity of care and services." Sec. 614.017(c)(2) defines "offender" as "an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision."

While there are generally no restrictions on the type of mental health information that can be exchanged under HSC §614.017, HIPAA specifically requires an individual's authorization before psychotherapy notes can be disclosed, even if another law requires disclosure. "Psychotherapy notes" is a defined term in the HIPAA rules in §164.501, and the restrictions on disclosure are in §164.508(a)(2). Sec. 164.508(b) has standards for disclosures that cover psychotherapy notes. HHSC encourages providers to become familiar with the HIPAA provisions related to the use and disclosure of psychotherapy notes.

Please also note that §§164.512(e), (f), and (k) of the HIPAA rules allow an individual's protected health information to be disclosed for judicial and administrative proceedings and certain law enforcement purposes. Disclosures in accordance with those regulations are allowed without the need for another statute which requires the disclosures. The Office for Civil Rights of the U.S. Department of Health & Human Services, the office that enforces and provides guidance on the HIPAA rules, has a series of Frequently Asked Questions (FAQs) available on its website, including one which summarizes disclosures related to law enforcement purposes. That FAQ can be accessed at the following website: <https://www.hhs.gov/hipaa/for-professionals/faq>.

Generally, the federal regulations in 42 CFR pt. 2 which apply to alcohol and substance treatment programs that receive "federal assistance," is a term explained in §12(b). These regulations place restrictions beyond those in HIPAA on the disclosure of information that would identify an individual as having received or applied for treatment for alcohol or substance use. These regulations do not have a road exemption found in HIPAA for disclosures required by other laws, so they do not permit the disclosures. Thus, these regulations prohibit the exchange of information under HSC §614.017 if that information would identify an individual as having received or applied for treatment for alcohol or substance use. The entities listed in HSC §614.017 as agencies, and their agents and representatives, should not accept or disclose such information without an individual's consent.

However, that Subparts D and E of the 42 CFR pt. 2 regulations cover specific protected information that is not required before disclosing an individual's consent is not required before disclosing an individual's consent in those specific situations related to alcohol or drug use treatment. These regulations are encouraged to review the scope of this broadcast message, without Patient Consent, permits disclosures without an individual's consent in medical emergencies, research activities, and audit and evaluation purposes. The disclosures are in accordance with the Subpart D and E of the regulations, titled "Court Orders Authorizing

and Use," covers other situations where a court is involved in the disclosure of information otherwise protected under the 42 CFR pt. 2 regulations. HHSC requires mental health providers regulated by or under contract with HHSC to exchange information in accordance with the provisions of HSC §614.017. Psychotherapy notes, however, cannot be exchanged without an individual's authorization. The exchange of information also cannot include information that would identify the individual as having received or applied for treatment for alcohol or substance use without the individual's consent. In ensuring that disclosures of information for the purposes of HSC §614.017 are made expeditiously and in accordance with applicable laws is appreciated. If providers have questions or need assistance with this broadcast message, please seek assistance from your

❖ <http://texasjcmh.gov/media/1563/exchanging-info-on-special-needs-offenders-hhs.pdf>



What does the Magistrate  
Judge do with the Report?

# Step 5: Review the Report

Magistrate Receives Report & must review the 16.22 report.

Is it timely?

For a newly ordered report, the interview and report must be completed and received by the Magistrate within 96 hours of the order (or 30 days of the order if the defendant is out of custody).

Does it contain everything?

1. A description of the procedures used in the interview and collection of information; and
2. Expert's observations pertaining to:
  - a. Whether the defendant has MI or IDD;
  - b. Whether the defendant may be incompetent; and
  - c. Any appropriate or recommended treatment or service.

# TCOOMMI 16.22 Report Form

Purpose?

Who gets it?

Where is it kept?

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

**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 Written Report of Collected Information (if applicable): \_\_\_\_\_

Previous Mental Health and/or Intellectual Disability 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 or service 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, Credentials & Organization of Person Submitting Form: \_\_\_\_\_ Date of Submission: \_\_\_\_\_

*This form and the contents herein may only be shared in accordance with Texas Health and Safety Code § 614.017 and Texas Code of Criminal Procedure article 16.22(f). This form and its contents are otherwise confidential and not subject to disclosure under Chapter 552 of the Government Code.*



# What to look for on a 16.22 Report

## 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:

\_\_\_\_\_

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### SECTION IV: INFORMATION OF PROFESSIONAL SUBMITTING FORM

Name, Credentials & Organization of Person Submitting Form: \_\_\_\_\_ Date of Submission: \_\_\_\_\_

*This form and the contents herein may only be shared in accordance with Texas Health and Safety Code § 614.017 and Texas Code of Criminal Procedure article 16.22(f). This form and its contents are otherwise confidential and not subject to disclosure under Chapter 552 of the Government Code.*

## Step 6: Magistrate sends the report to:

- ▶ Defense Counsel
- ▶ State's Attorney
- ▶ Trial Court
- ▶ Sheriff (or holder of medical records of Defendant)
- ▶ Personal Bond Office / Director of Pretrial Services

# Why do they need to know?



## Includes...

- ▶ **Defense Counsel** – *Diversion alternatives, treatment ideas, Trial Preparations, discovery requests, plea negotiations*
- ▶ **State's Attorney** – *bond or probation conditions, plea offers, mens rea, discovery*
- ▶ **Trial Court** – *diversion, bond or probation conditions, treatment alternatives, timeline of case*
- ▶ **Sheriff** (or holder of medical records of Defendant) – *medical attention in the jail or later in prison, competency, special holding units, diversion, medical issues*
- ▶ **Personal Bond Office / Director of Pretrial Services** – *personalized treatment, caseload, and conditions*

# Who else needs the report?

- ▶ County or District Clerk's Office
  - OCA Reporting
- ▶ Report to be included in TDCJ Pen Pack, if applicable.

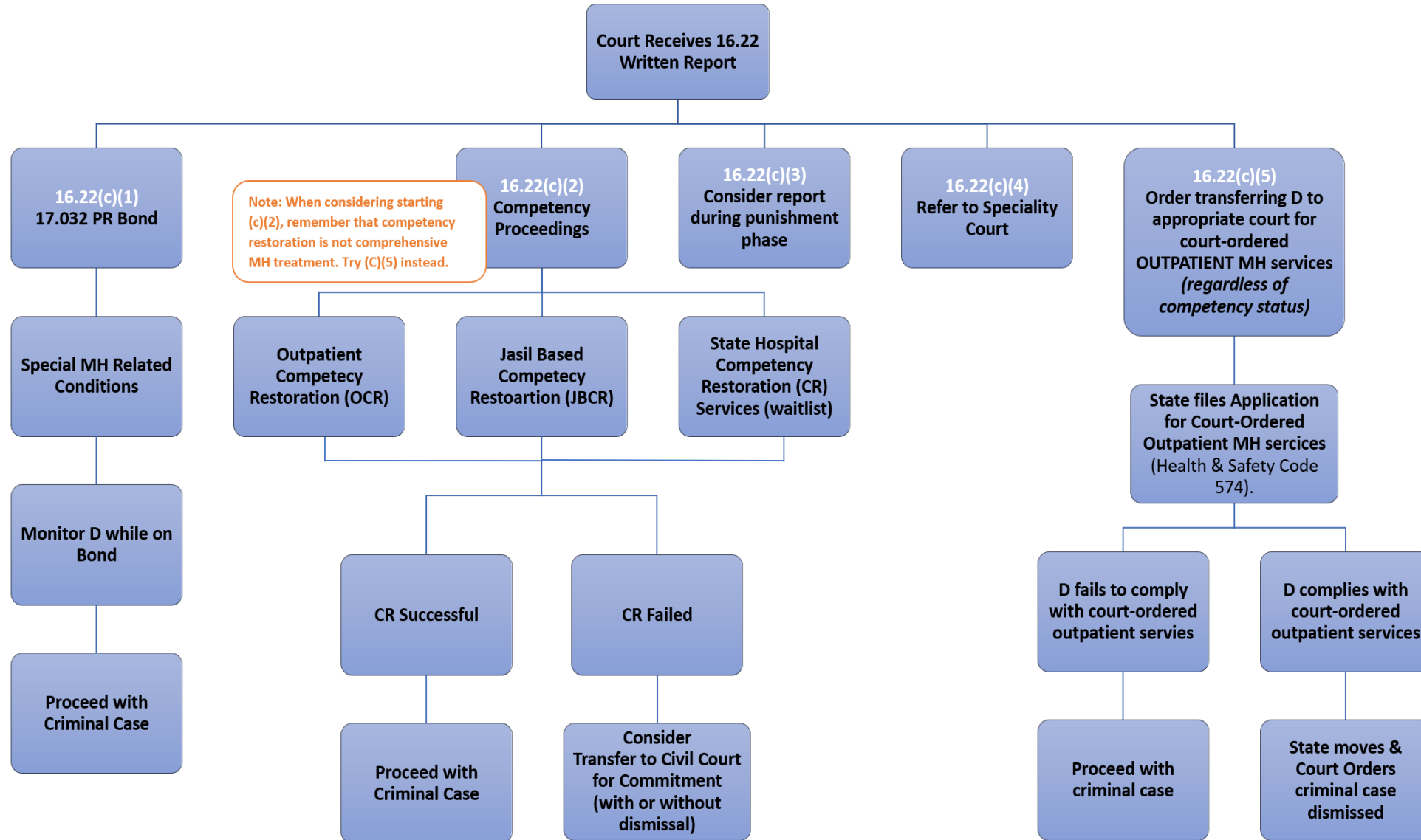
What does the Trial Court do  
with the report?



# Options for the Trial Court

- ▶ Continue Criminal Proceedings
- ▶ Competency Proceedings
- ▶ Specialty Courts
- ▶ Consider the report during punishment
- ▶ Dismiss and Transfer Procedure

# Dispositional Court: *after receiving the 16.22 report*



# Intercept 2: CCP 16.22 (c)(5) Sets Out a Roadmap for Diversion from Criminal Justice System to Court-Ordered Outpatient Treatment



This section contains a roadmap in the Code of Criminal Procedure for prosecutors and trial court judges, once an Article 16.22 report is received, **to release the defendant with MI or IDD on bail and transfer the defendant by court order to the appropriate court for court-ordered outpatient mental health services** under Chapter 574 of the Health & Safety Code.

The judge may only do this “if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person.” If the judge enters such an order, the attorney for the state will file an application for court-ordered outpatient services.

What does the Clerk's Office  
do with the Report?

# Why does the clerks' offices need the 16.22 order and report?

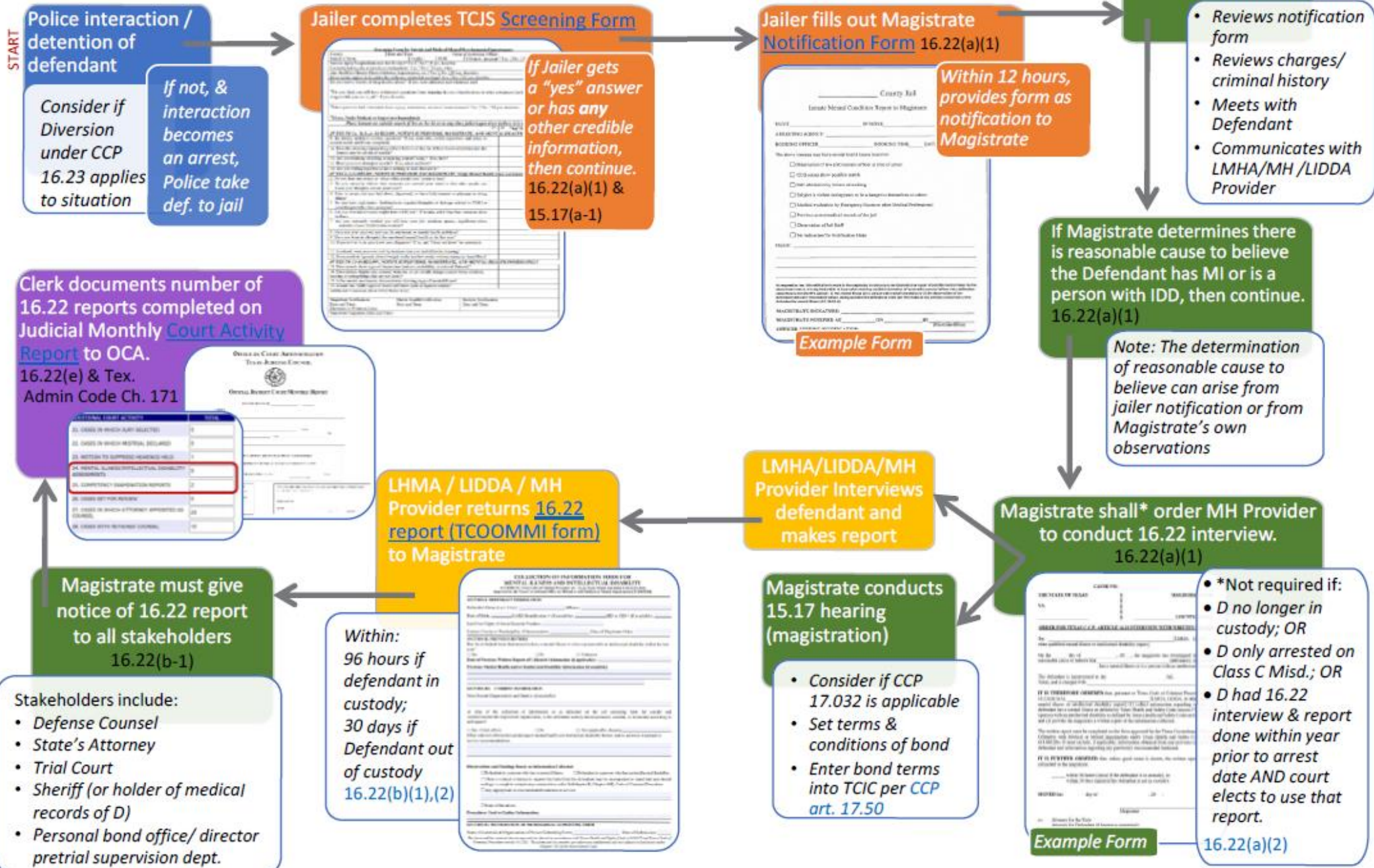


## ▶ County or District Clerk's Office

- The County or District Clerk for inclusion in the case file and recording; the clerk then uses the reports to report to the Office of Court Administration (OCA).
- *See 16.22 Guide pages 8 and 15-17 for more information on reporting to OCA.*

# Applicable Forms for Tex. CCP art. 16.22 Process

Police | Jail | Magistrate | LMHA | Clerk



# Mental Health Bonds

- ▶ What are they?
- ▶ How can they be used?
- ▶ When are they required?
- ▶ Why are they important?
- ▶ Who can start this process?

# Mental Health Bonds

- ▶ What are they?
  - CCP art. 17.032 - *Release on Personal Bond of Certain Defendants with Mental Illness or Intellectual Disability*

## What people think it is

*Chance*

GET OUT OF  
JAIL FREE




THIS CARD MAY BE KEPT UNTIL NEEDED OR SOLD

## What it really is

*Mental Health  
Personal  
Bond*

GET OUT OF  
JAIL FREE



WITH PERSONALIZED CONDITIONS THAT MANDATE TREATMENT FOR MENTAL ILLNESS OR SERVICES FOR IDD + OTHER CONDITIONS, AS DEEMED NECESSARY BY THE COURT, WHICH ENSURE YOUR RETURN TO COURT AND THE SAFETY OF THE COMMUNITY & VICTIM.



# Mental Health Bonds

- ▶ How can they be used?
  - Release directly into inpatient services from the jail
  - Release into the community to get services
  - Other circumstances as they arise

# Mental Health Bonds

- ▶ When is it required? [CCP 17.032\(b\)](#)
  1. A magistrate SHALL, **unless good cause shown**, release a defendant on a personal bond if...
    - D is not charged with, or previously convicted of, a violent offense;
    - D's 16.22 report:
      - shows that the D has a mental illness or is a person with IDD;
      - recommends MH treatment or IDD services; and
    - Those services are available
  - AND
  2. Magistrate finds that release on personal bond would reasonably assure appearance in court and safety of community and victim

# Mental Health Bonds

- ▶ Conditions of Release? [CCP 17.032\(c\)](#)
  - Magistrate MUST, **unless good cause shown**, require treatment or services as a condition of release if...
    - MI or IDD is chronic in nature, or
    - Ability to function independently will deteriorate without services.
  - Magistrate MAY also require reasonably necessary conditions to ensure appearance in court and safety of community and victim

# Mental Health Bonds

- ▶ Benefits of releasing on MH Bond vs. Jail Dockets?
  - Stop the revolving door and treat the cause instead of the symptoms of the arrest.
    - Prevent future arrests
    - Save county money
    - Provide treatment or services for a person
    - Community and victim safety – preventing the crime from repeating

# Mental Health Bonds

- ▶ Who can start the process?
  - Sua sponte by the judge
  - Defense Attorney
  - Prosecutor

# Q&A



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