

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 16. THE COMMITMENT OR DISCHARGE OF THE ACCUSED

Art. 16.01. EXAMINING TRIAL. When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if aailable case. If the accused has been transferred for criminal prosecution after a hearing under Section 54.02, Family Code, the accused may be granted an examining trial at the discretion of the court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 140, Sec. 4, eff. Sept. 1, 1987.

Art. 16.02. EXAMINATION POSTPONED. The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.03. WARNING TO ACCUSED. Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he cannot be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.04. VOLUNTARY STATEMENT. If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.06. COUNSEL MAY EXAMINE WITNESS. The counsel for the State, and the accused or his counsel may question the witnesses on direct or cross examination. If no counsel appears for the State the magistrate may examine the witnesses.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.07. SAME RULES OF EVIDENCE AS ON FINAL TRIAL. The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.08. PRESENCE OF THE ACCUSED. The examination of each witness shall be in the presence of the accused.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.09. TESTIMONY REDUCED TO WRITING. The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. In lieu of the above provision, a statement of facts authenticated by State and defense counsel and approved by the presiding magistrate may be used to preserve the testimony of witnesses.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.10. ATTACHMENT FOR WITNESS. The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpoena for that purpose.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.11. ATTACHMENT TO ANOTHER COUNTY. The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and if the facts set forth are not considered material by the magistrate, or if they be admitted to be true by the adverse party, the attachment shall not issue.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.12. WITNESS NEED NOT BE TENDERED HIS WITNESS FEES OR EXPENSES. A witness attached need not be tendered his witness fees or expenses.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.13. ATTACHMENT EXECUTED FORTHWITH. The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ.
Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.14. POSTPONING EXAMINATION. After examining the witness in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the

custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or if the same be admitted to be true by the adverse party, the postponement shall be refused.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.15. WHO MAY DISCHARGE CAPITAL OFFENSE. The examination of one accused of a capital offense shall be conducted by a justice of the peace, county judge, county court at law, or county criminal court. The judge may admit to bail, except in capital cases where the proof is evident.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.16. IF INSUFFICIENT BAIL HAS BEEN TAKEN. Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, a justice of a court of appeals, or to a judge of the district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1981, 67th Leg., p. 802, ch. 291, Sec. 104, eff. Sept. 1, 1981.

Art. 16.17. DECISION OF JUDGE. After the examining trial has been had, the judge shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause

and the accused shall be discharged.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.18. WHEN NO SAFE JAIL. If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit defendant to the nearest safe jail in any other county.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.19. WARRANT IN SUCH CASE. The commitment in the case mentioned in the preceding Article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.20. "COMMITMENT". A "commitment" is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas";
2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed;
3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant;
4. That it state to what court and at what time the defendant is to be held to answer;
5. When the prisoner is sent out of the county where the prosecution arose, the warrant of commitment shall state that there is no safe jail in the proper county; and
6. If bail has been granted, the amount of bail shall be stated in the warrant of commitment.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.21. DUTY OF SHERIFF AS TO PRISONERS. Every sheriff shall keep safely a person committed to his custody. He shall use

no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a)(1) Not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the magistrate, except as provided by Subdivision (2), shall order the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to:

(A) interview the defendant if the defendant has not previously been interviewed by a qualified mental health or intellectual and developmental disability expert on or after the date the defendant was arrested for the offense for which the defendant is in custody and otherwise collect 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 or service; and

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

(2) The magistrate is not required to order the interview and collection of other information under Subdivision (1) if the defendant is no longer in custody or if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and developmental disability services, the local mental health authority, the local intellectual and developmental disability authority, or another mental health or intellectual and developmental disability expert described by Subdivision (1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the interview and collection of other information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a jail, or in another place determined to be appropriate by the local mental health authority or local intellectual and developmental disability authority, for a reasonable period not to exceed 72 hours. If applicable, the county in which the committing court is located shall reimburse the local mental health authority or local intellectual and developmental disability authority for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with the state travel regulations in effect at the time.

(a-1) If a magistrate orders a local mental health authority, a local intellectual and developmental disability authority, or another qualified mental health or intellectual and developmental disability expert to conduct an interview or collect

information under Subsection (a)(1), the commissioners court for the county in which the magistrate is located shall reimburse the local mental health authority, local intellectual and developmental disability authority, or qualified mental health or intellectual and developmental disability expert for the cost of performing those duties in the amount provided by the fee schedule adopted under Subsection (a-2) or in the amount determined by the judge under Subsection (a-3), as applicable.

(a-2) The commissioners court for a county may adopt a fee schedule to pay for the costs to conduct an interview and collect information under Subsection (a)(1). In developing the fee schedule, the commissioners court shall consider the generally accepted reasonable cost in that county of performing the duties described by Subsection (a)(1). A fee schedule described by this subsection must be adopted in a public hearing and must be periodically reviewed by the commissioners court.

(a-3) If the cost of performing the duties described by Subsection (a)(1) exceeds the amount provided by the applicable fee schedule or if the commissioners court for the applicable county has not adopted a fee schedule, the authority or expert who performed the duties may request that the judge who has jurisdiction over the underlying offense determine the reasonable amount for which the authority or expert is entitled to be reimbursed under Subsection (a-1). The amount determined under this subsection may not be less than the amount provided by the fee schedule, if applicable. The judge shall determine the amount not later than the 45th day after the date the request is made. The judge is not required to hold a hearing before making a determination under this subsection.

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

(b) Except as otherwise permitted by the magistrate for good cause shown, a written report of an interview described by Subsection (a)(1)(A) and the other information collected under that paragraph shall be provided to the magistrate:

(1) for a defendant held in custody, not later than 96

hours after the time an order was issued under Subsection (a); or

(2) for a defendant released from custody, not later than the 30th day after the date an order was issued under Subsection (a).

(b-1) The magistrate shall provide copies of the written report to:

(1) the defense counsel;

(2) the attorney representing the state;

(3) the trial court;

(4) the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail; and

(5) as applicable:

(A) any personal bond office established under Article 17.42 for the county in which the defendant is being confined; or

(B) the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

(b-2) The written report must include a description of the procedures used in the interview and collection of other information under Subsection (a)(1)(A) 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; and

(3) any appropriate or recommended treatment or service.

(c) After the trial court receives the applicable expert's written report relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the

defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B;

(3) consider the written report during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision;

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; or

(5) if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574, Health and Safety Code.

(c-1) If an order is entered under Subsection (c)(5), an attorney representing the state shall file the application for court-ordered outpatient services under Chapter 574, Health and Safety Code.

(c-2) On the motion of an attorney representing the state, if the court determines the defendant has complied with appropriate court-ordered outpatient treatment, the court may dismiss the charges pending against the defendant and discharge the defendant.

(c-3) On the motion of an attorney representing the state, if the court determines the defendant has failed to comply with appropriate court-ordered outpatient treatment, the court shall proceed under this chapter or with the trial of the offense.

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

(1) releasing a defendant who has a mental illness or is a person with an intellectual disability from custody on

personal or surety bond, including imposing as a condition of release that the defendant submit to an examination or other assessment; or

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

(e) The Texas Judicial Council shall adopt rules to require the reporting of the number of written reports provided to a court under Subsection (a)(1)(B). The rules must require submission of the reports to the Office of Court Administration of the Texas Judicial System on a monthly basis.

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

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 3.05, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 828, Sec. 1, eff. Sept. 1, 2001; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 35, Sec. 2, eff. Jan. 1, 2004; Subsec. (c)(2) amended by Acts 2003, 78th Leg., ch. 35, Sec. 2, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1228 (S.B. 1557), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 2.01, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 4.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 4.003, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 936 (S.B. 49), Sec. 2, eff. September 1, 2021.

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 2.02, eff. September 1, 2017.