

THE 16.22 PROCESS STEP-BY-STEP

STEP 1: ARRIVAL AT JAIL

- The defendant is arrested for Class B misdemeanor or higher and is brought to jail.

STEP 2: IDENTIFICATION OF INDIVIDUAL SUSPECTED OF MENTAL ILLNESS

Initial identification can come from any source of credible information, which may include:

- Information from:
 - » 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
- Observations of:
 - » Law Enforcement
 - » Jail Staff*
 - » Magistrate Judge

**Magistrate Judge must be notified of any credible information within 12 hours of the discovery of that information by jail staff.*

STEP 3: MAGISTRATE MAKES REASONABLE CAUSE DETERMINATION

1. Magistrate should:
 - Review the notification of credible information and any supporting documents
 - Review the defendant's charges and criminal history
 - Meet with the defendant
 - Communicate with the LMHA/LIDDA/LBHA/Mental Health Service Provider
2. Magistrate then decides whether there is reasonable cause to believe the defendant has a mental illness or IDD.

STEP 4: IF REASONABLE CAUSE IS FOUND

- If reasonable cause is found that an individual has a mental illness or IDD, then the magistrate shall order a qualified mental health professional to interview the individual and complete a 16.22 report.

STEP 4B: EXCEPTIONS TO ORDERING THE INTERVIEW AND REPORT

- If the defendant had a 16.22 interview and report done within the year prior to the arrest date, then Magistrate may, but does not have to, elect to use the previous report instead of ordering a new one.
- If the defendant is no longer in custody, then Magistrate may choose whether to order a 16.22 Interview and Report.

STEP 5: MAGISTRATE REVIEWS THE 16.22 REPORT

- Magistrate Receives Report: 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).
- The Magistrate must review the 16.22 report.
 - » The Report must contain:
 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.

STEP 6: DISTRIBUTION OF THE 16.22 REPORT

Whether the Magistrate elects to use a previous report or a new report,

- The Magistrate must send a copy of the 16.22 report to the following stakeholders:
 - » Trial Court
 - » Prosecutor's Office (County or District Attorney's Offices, or both)
 - » Defense Counsel
 - » Sheriff (or other person that is responsible for the defendant's medical records while they are in custody)
 - » Personal Bond Office/ Director of Pretrial Supervision Office.
- The Magistrate should send a copy of the report to:
 - » 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).

STEP 7: TRIAL COURT USES & CONSIDERATIONS OF 16.22 REPORT

The Court can use the results of the 16.22 report for a variety of purposes, including:

- Considering a mental health personal bond pursuant to CCP art. 17.032. CCP art. 16.22(c)(1).
 - » *Note that MH personal bond is required in certain circumstances under CCP art. 17.032(b) unless good cause shown otherwise.*
- Resuming or initiating competency proceedings under CCP art. 46B. CCP art. 16.22(c)(2).
- Consideration of 16.22 report during penalty phase as a part of the pre-sentence investigation report, or in imposition of conditions of a community supervision program. CCP art. 16.22(c)(3).
- Referring the defendant to a specialty court or docket. CCP 16.22(c)(4).
- Release on bail and transfer of individual to a civil court for court-ordered outpatient mental health services (regardless of competency status) CCP art. 16.22(c)(5).
- Appointment of defense counsel. CCP art. 26.04.
- Specifically tailored bond conditions. CCP art. 17.032.

Post-adjudication: If an individual is remanded to the custody of TDCJ then the 16.22 report must be included in the individual's pen packet. Any other mental health records, screening reports, or similar information must also be included.