

Texas Mental Health Law: What You Need to Know

Judicial Summit on Mental Health
November 10, 2020
Judge Ryan Kellus Turner
Executive Director
Texas Municipal Courts Education Center

Your Local Article 16.22 Process: Compliance with Article 16.22 of the Code of Criminal Procedure is the responsibility of all stakeholders. How compliance is achieved will vary throughout Texas. (There is no singular correct way.) There are, however, several specific shared challenges.

First, Article 16.22 is not a simple statute and its contents have not remained static. When Article 16.22 was passed into law in 1993, it consisted of approximately 521 words. Seventeen years (and six legislative sessions) later, it consists of more than 1,700 words. In the last two legislative sessions there have been major amendments. Even among stakeholders it is probably a mistake to presuppose a general understanding of Article 16.22. Do stakeholders in your locality share a general understanding of what is now required by Article 16.22?

Second, while Article 16.22 prescribes what is required by law, how its provisions are implemented is not specified. Texas is a big state (268,597 square miles). The City of Austin is different than Austin County. What works in Hansford County may not work in Harris County. The urban-rural divide is real, however, so are the opportunities for shared solutions. Metropolitan areas of Texas and rural Texas each face unique challenges. However, each also has different attributes which are potential assets.

Four Cs, One Wheel (and One Question): Regardless of locale, rural or urban, the key components of managing Article 16.22 implementation challenges are cooperation, coordination, communication, and collaboration (the “four Cs”). After identifying stakeholders (i.e., “the wheel”), localities are better able to identify both challenges and assets.

The question then becomes “who is the hub of the stakeholder wheel?” A lack of consensus suggests a lack of collaboration. It is important to identify challenges, but such challenges should not be used to justify not collaborating. “Taking inventory” of stakeholders is opportunity for introspection and analysis. It is not just a matter of logistics (who is responsible for what?); it is an opportunity to figure out if all pertinent parties are “at the table.” It is an opportunity to gauge the level of silo mentality in the locality. [In government, silo mentality promotes insular thinking while collaboration bridges silos and improves communication.](#)

The “four Cs” are also the crux of effectively managing Article 16.22 issues associated with “Initial Detention and Court Hearings” (Sequential Intercept 2) (e.g., requisite collection of information, conducting interviews and written reports, providing magistrates information pertinent to personal bonds, LMHA/LBHA crisis screening and response, reimbursement, confidentiality, etc.).

The Three Ds: Data, Diversion, and Dismissal

The absence of meaningful data has been described [as the core of a national crisis in criminal justice](#). However, collecting meaningful data is only part of what is necessary for true success at Sequential Intercept 2. The focus of Article 16.22 and Article 16.23 is early identification of individuals with mental illness or intellectual disability and individuals suffering from a mental health crisis or the effects of substance abuse who are accused of non-violent misdemeanors. A problem addressed by the Sandra Bland Act in 2017, but subsequently repealed in 2019, pertains to Article 16.22 and individuals suspected of having mental illness or intellectual disability who are arrested for Class C misdemeanors. [A comprehensive diversion strategy for misdemeanors addresses all misdemeanors both at the jail and in the courtroom.](#) Under current law, courts that adjudicate Class C misdemeanors (e.g., disorderly conduct, public intoxication, and other “nuisance” offenses) have no statutory procedural safeguards for pro se defendants or judicial procedures to help ensure that constitutional requirements applicable in all criminal cases also apply in criminal cases involving fines. [The Texas Judicial Council recommends the Legislature address these issues in 2021. According to SAMHSA, courts that hear these criminal cases can be effective tools for diverting people with mental and substance disorders.](#)