Flow Chart Describing Article 16.22 Requirements

Arrest

Sheriff's Office receives credible evidence that a person in custody may have mental illness or is a person with mental retardation.

(TCJS admin rule - 37 TAC § 273.5 - requires that jails check each inmate upon intake against the DSHS CARE or CCQ system to determine if the inmate has previously received state mental healthcare)

*Within 72 Hours

Sheriff notifies magistrate of the possible MHMR issue.

Magistrate determines reasonable cause to believe that the person has a mental illness or is a person with mental retardation? (Reasonable cause can come from outside Sheriff's Office)

NO

No further action needed

YES

In the past year, has arrestee had a qualifying MHMR assessment per the definitions of HSC § 571.003 or HSC § 591.003?

NO

YES

Magistrate orders local MHMR authority or other qualified MHMR expert to:

(1) Collect information showing whether arrestee has mental illness as defined by HSC § 571.003 or has mental retardation as defined by HSC § 591.003; and

(2) Provide the magistrate with a written assessment.

If arrestee refuses to submit to collection of information, magistrate may order defendant to submit to examination in MH facility not to exceed 21 days.

Within 30 days for felony offenses and 10 days for misdemeanor offenses

Written assessment provided to magistrate. Findings pertain to:

(1) Whether arrestee is person with mental illness or mental retardation;

(2) Whether there is clinical evidence to support belief arrestee may be incompetent to stand trial; and

(3) Recommended treatment.

Magistrate provides copies of assessment to defense counsel, prosecuting attorney, and trial court.

Trial court may:

(1) Resume criminal proceedings including a release on PR bond under Article 17.032;

(2) Resume or initiate competency proceedings; or

(3) Consider the written assessment during punishment phase after conviction for the offense.

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Flow Chart Describing Article 17.032 Requirements

Magistrate receives MHMR assessment required by Article 16.22

Is arrestee charged with or been convicted of a violent crime?

NO

Does MHMR expert conclude:

(1) arrestee has a mental illness or is a person with mental retardation and is competent to stand trial; and

(2) Recommends MH treatment for the defendant?

YES

Does magistrate in consultation with MHMR authority conclude that appropriate community based MHMR services are available?

YES

Magistrate retains discretion to release on PR bond

NO

Magistrate retains discretion to release on PR bond

NO

Magistrate retains discretion to release on PR bond

YES

Magistrate shall release arrestee on PR bond unless good cause is shown

Unless good cause is shown, outpatient treatment is to be condition of PR bond if the defendant's illness creates either of the following two conditions:

(1) The mental illness or mental retardation is chronic in nature; or

(2) The ability to function independently will continue to deteriorate if the defendant is not treated.

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