

## **BILL ANALYSIS**

Senate Research Center  
81R11010 KEL-D

S.B. 1557  
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Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Recently, the legislature has made a commitment to ensure that arrested individuals are appropriately screened and identified for mental illness or mental retardation at the jails. While this information is being collected at the jails for screening, often, the information does not make it to the appropriate magistrate for consideration during the individual's legal proceedings.

As proposed, S.B. 1557 requires the sheriff, within a certain time frame after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, to provide written or electronic notice of the information to the magistrate. The bill requires the magistrate to then order the local mental health or mental retardation authority or another qualified mental health or mental retardation expert to fulfill certain requirements and authorizes the trial court, after it receives the applicable expert's written assessment to consider the assessment during the punishment phase after the conviction of the offense for which the defendant was arrested.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 16.22, Code of Criminal Procedure, as follows:

Art. 16.22. New heading: EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR MENTAL RETARDATION.  
(a)(1) Requires the sheriff, not later than 72 hours after receiving credible information, rather than evidence or a statement, that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with mental retardation, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, to provide written or electronic notice of the information to the magistrate, rather than notify a magistrate of that fact. Requires the magistrate, except as provided by Subdivision (2), on a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with mental retardation to order the local mental health or mental retardation authority or another qualified mental health or mental retardation expert, rather than order an examination of the defendant, to fulfill certain requirements. Deletes existing text requiring a defendant's behavior or the result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment to be considered in determining whether reasonable cause exists to believe the defendant has a mental illness or is a person with mental retardation.

(2) Provides that the magistrate is not required to order the collection of information under Subdivision (1), rather than an examination described by Subdivision (1), if the defendant in the year preceding the defendant's applicable date of arrest has been determined, rather than evaluated and determined, to have a mental illness or to be a person with mental retardation by the local mental health or mental retardation authority or

another mental health or mental retardation expert described by Subdivision (1). Authorizes a court that elects to use the results of that previous determination, rather than evaluation, to proceed under Subsection (c).

(3) Authorizes the magistrate, if the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), rather than an examination required under Subdivision (1), to order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or mental retardation authority for a reasonable period not to exceed 21 days.

(b) Requires that a written assessment of the information collected under Subsection (a)(1)(A) (relating to collecting information as to whether the defendant has a mental illness or mental retardation) be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and requires the magistrate to provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. Requires the written assessment to include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to certain information regarding the defendant. Deletes existing text requiring that a written report of the examination be submitted to the magistrate not later than the 30th day after the date of any order of examination issued in a felony case and not later than the 10th day after the date of any order of examination issued in a misdemeanor case, and requiring the magistrate to provide copies of the report to the defense counsel and the prosecuting attorney. Deletes existing text requiring the report to include a description of the procedures used in the examination and the examiner's observations and findings pertaining to certain information regarding the defendant.

(c) Authorizes the trial court, after the trial court receives the applicable, rather than examining, expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), to, as applicable, consider the written assessment 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. Makes conforming changes.

(d) Provides that this article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article, releasing a mentally ill or mentally retarded defendant from custody on personal or surety bond, or ordering an examination regarding the defendant's competency to stand trial. Deletes existing text providing that nothing in this article prevents the court from, pending an evaluation of the defendant as described by this article, performing certain duties.

SECTION 2. Amends Article 17.032(b), Code of Criminal Procedure, to make conforming changes.

SECTION 3. Amends Section 11(d), Article 42.12, Code of Criminal Procedure, to make a conforming change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2009.