

# TJCTC Webinar: MENTAL HEALTH orders

September 27, 2018

## resources

- TJCTC Mental Health Webpage: <http://www.tjctc.org/Mental-Health.html>
- OCA's Mental Health Training page: <http://www.txcourts.gov/publications-training/training-materials/mental-health/>
- Handouts to this presentation

## What we will cover

- Ordering Mental Health Assessments at Magistration (Art. 16.22)
- Release of a Defendant with Mental Illness on a Personal Bond (Art. 17.032)
- Building Coalitions in Your County

## Ordering mental health assessments at magistration

## WHAT IS A MENTAL ASSESSMENT?

- Sometimes a person who has been arrested shows signs of mental illness or an intellectual disability.
- Because that person might need treatment, the legislature requires certain procedures to be followed when the person appears before a magistrate.

## What is a Mental Illness?

- A mental illness is a condition that:
  - Impairs a person's perception of reality, emotional process or judgment; or
  - Grossly impairs their behavior.
- It does not include epilepsy, dementia, or substance abuse.
- For example, someone is hearing voices or thinks an ordinary chair is electrified and therefore they can't sit down.

-- Health and Safety Code § 571.003(14)

## What is an intellectual disability?

- An intellectual disability means significantly subaverage intellectual functioning.
- For example, Forrest Gump.

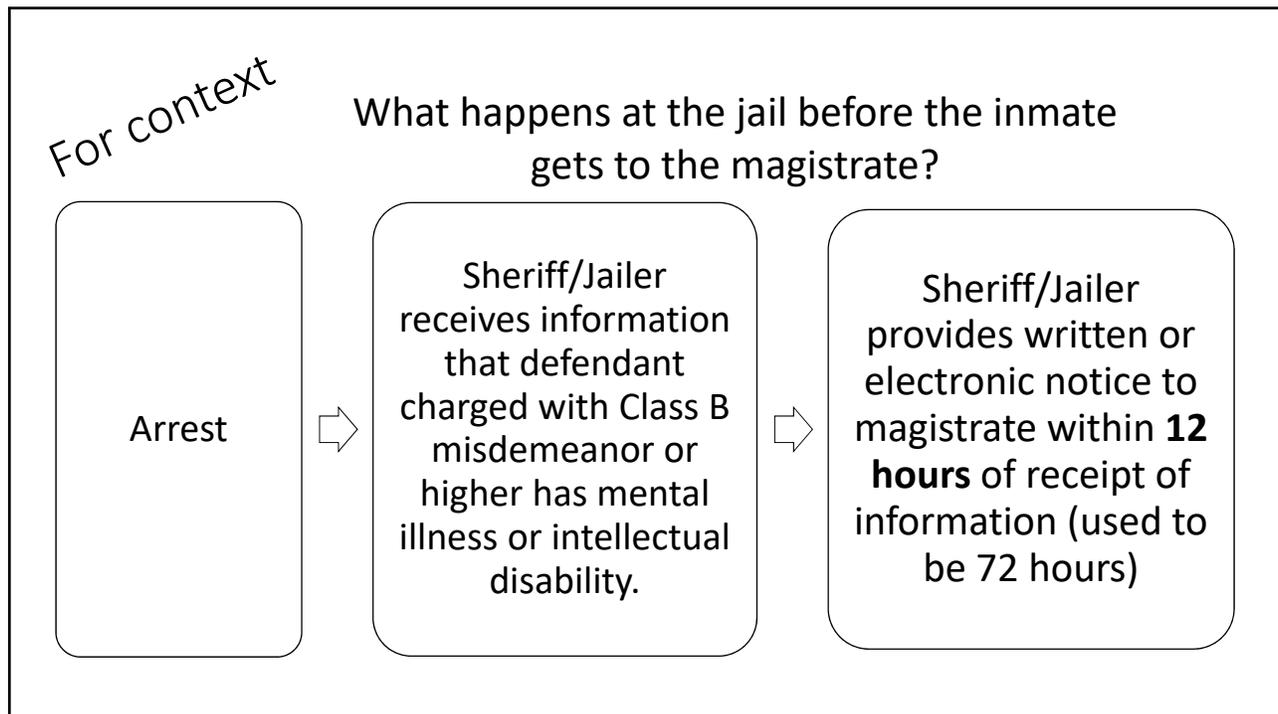
-- Health & Safety Code § 591.003(7-a) and (20)

### THE SANDRA BLAND ACT: S.B. 1849

- Enacted after 2015 incident where Sandra Bland was found dead in the Waller County jail after being arrested during a routine traffic stop.
- Shortens the time periods for notice by the jail and for completing the mental assessment.
- Makes it easier for a defendant with a mental illness or intellectual disability to be released on a personal bond.

## The Sandra Bland Act: S.B. 1849

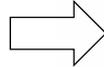
- Requires law enforcement to divert the defendant for treatment if they are suffering a mental health crisis or from the effects of substance abuse.
- Requires independent law enforcement agencies to investigate jail deaths.



## CCQ: Continuity of Care Query

A computer search to determine if an inmate has ever received any treatment from any Texas mental health service.

*Handout A in your  
packet.*



\_\_\_\_\_ County Jail  
Inmate Mental Condition Report to Magistrate

NAME \_\_\_\_\_ OFFENSE \_\_\_\_\_

ARRESTING AGENCY: \_\_\_\_\_

BOOKING OFFICER \_\_\_\_\_ BOOKING TIME \_\_\_\_\_ DATE \_\_\_\_\_

The above inmates may have mental health issues based on:

Observation of law enforcement officer at time of arrest

CCQ return show possible match

Self admission by inmate at booking

Subject is violent and appears to be a danger to themselves or others

Medical evaluation by Emergency Room or other Medical Professional

Previous arrest/medical records of the jail

Observation of Jail Staff

No Indication/No Notification Made

Details: \_\_\_\_\_

\_\_\_\_\_

## For context

- Handouts A, B, C are used by the jailer when an inmate is processed.

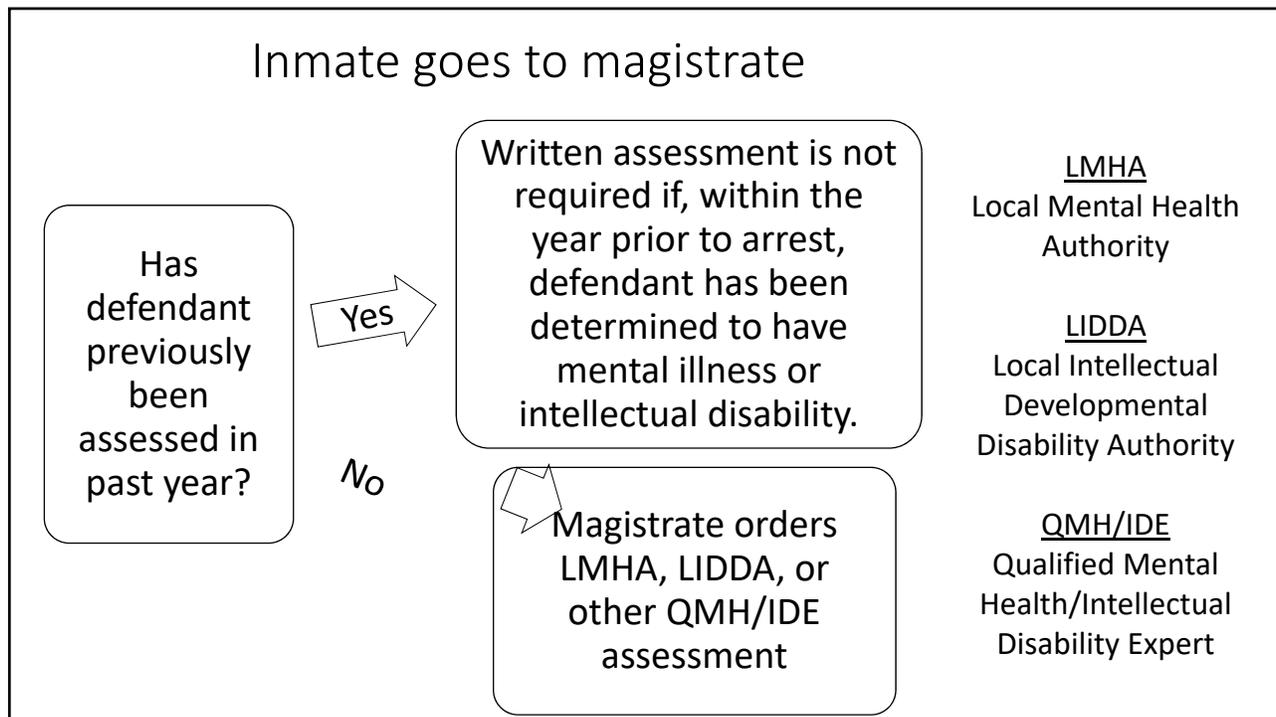
NEXT STEP

Does the magistrate find reasonable cause to believe defendant has a mental illness or is intellectually disabled?

How do  
magistrates  
find  
reasonable  
cause?

## Reasonable cause in practice

- What if the only “indication” of mental illness is that the defendant says he’s depressed?
- What if the defendant is no longer mentally ill and is not suicidal?
- What if the sheriff or jail does **NOT** send a report but the magistrate believes the defendant **IS** mentally ill?



## Order the assessment

- Let's look at the form:

Order for Mental Health or Intellectual Disability Assessment  
Article 16.22

*Handout D in your packet*

STATE OF TEXAS  
vs.  
\_\_\_\_\_

**ORDER FOR MENTAL HEALTH OR INTELLECTUAL DISABILITY ASSESSMENT**  
ARTICLE 16.22, TEXAS C.C.P.

To: \_\_\_\_\_ (LMHA or LIDDA)

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Magistrate has determined that there is reasonable cause to believe that \_\_\_\_\_ (Defendant), date of birth \_\_\_\_\_, has a mental illness or is a person with an intellectual disability.

The Defendant is incarcerated at the \_\_\_\_\_ County Jail, \_\_\_\_\_, Texas and is charged with:  
\_\_\_\_\_  
\_\_\_\_\_

**IT IS THEREFORE ORDERED** that \_\_\_\_\_ (Local Mental Health Authority or Local Intellectual and Developmental Disability Authority), or another qualified mental health or intellectual disability expert, perform an evaluation pursuant to Article 16.22, Code of Criminal Procedure to determine 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.

**IT IS FURTHER ORDERED** that a written assessment of the Defendant be submitted to the Magistrate pursuant to Art. 16.22, Code of Criminal Procedure.

SIGNED THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Justice of the Peace, Precinct \_\_\_\_\_  
County \_\_\_\_\_

cc: ( ) Trial Court  
( ) Prosecutor  
( ) Defense Attorney

Magistrate fills out this form and sends it to the local mental health authority (LMHA).

**ORDER FOR MENTAL HEALTH OR INTELLECTUAL DISABILITY ASSESSMENT**  
PAGE TWO

**CERTIFICATION OF COMPLIANCE TO MAGISTRATE**

I, \_\_\_\_\_, certify that a written report as required by Article 16.22(b), Texas C.C.P., has been submitted to the Magistrate in compliance with the above stated Order for Examination on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Person performing examination

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**CERTIFICATE OF DELIVERY BY MAGISTRATE TO COUNSEL**

I, Roxanne Nelson, Justice of the Peace, Precinct 11/Magistrate, certify that a copy of the report has been forwarded to the following individuals as required by Article 16.22(b), Texas C.C.P., on the following date(s):

( ) Trial Court \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
( ) Prosecutor \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
( ) Defense Attorney \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

SIGNED THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Justice of the Peace, Precinct \_\_\_\_\_  
County \_\_\_\_\_

← The local mental health authority (LMHA) fills out this form and sends it back to magistrate

← Magistrate fills out this form and sends it to the trial court, prosecutor and defense counsel.

The Local Mental Health Authority’s job is to:

- Collect information
- Provide written assessment on form approved by Texas Correction Office on Offenders with Medical or Mental Impairments.
- Send the assessment back to the magistrate.

Post-assessment form filled out by the local mental health authority (LMHA). This goes back to the magistrate.

*Handout E in your packet.*

**MENTAL ILLNESS ASSESSMENT  
MAGISTRATE WRITTEN NOTIFICATION FORM**

AUTHORITY: 85<sup>TH</sup> LEGISLATIVE SESSION, SENATE BILL 1326

Client Name:	
SID Number:	
Care Identification #:	
DOB:	
Last Four Digits of SSN:	
Previous Assessment (ANSA) or (CANS): LIDDA assessment: *To include but not limited to crisis assessment:	
Previously recommended treatment:	
Most recent diagnosis(es):	(Date)
Is the client acutely (at time of assessment) decompensated, suicidal, or homicidal according to self-report?	Yes / No If yes, explain:
Other relevant information pertaining to Mental Health History:	
Current County or Municipality of Incarceration:	
Name of Person Submitting Form:	
Date of Submission:	

MAGISTRATE IS NOT REQUIRED TO ORDER THE COLLECTION OF INFORMATION IF THE DEFENDANT IN THE YEAR PRECEDING THE DATE OF APPLICABLE ARREST HAS BEEN DETERMINED TO HAVE A MENTAL ILLNESS OR INTELLECTUAL DISABILITY BY THE LOCAL MENTAL HEALTH AUTHORITY, LOCAL INTELLECTUAL DEVELOPMENTAL DISABILITY AUTHORITY, OR ANOTHER MENTAL HEALTH OR INTELLECTUAL DISABILITY EXPERT.

Updated 9/1/17

Upon completion of this form, its contents remain confidential as applicable to Health and Safety Code Chapter 614.017

What if defendant refuses assessment?

- If defendant refuses to submit to information collection, then the magistrate can order them to submit to an examination “in a jail or in another place determined to be appropriate” by the local authority “for a period not to exceed 72 hours” – instead of 21 days.

-- Art. 16.22(a)(3)

WARRANT FOR MENTAL HEALTH/MENTAL RETARDATION EXAM – PERSON FAILING TO SUBMIT VOLUNTARILY (Art. 16.22, C.C.P.)

NO: \_\_\_\_\_

STATE OF TEXAS	§	MAGISTRATE FOR
VS.	§	_____
_____	§	COUNTY, TEXAS
Respondent		

**TO ANY HEALTH OR PEACE OFFICER OF THE STATE OF TEXAS - GREETINGS:**

You are hereby commanded to apprehend the person \_\_\_\_\_ and transport same to \_\_\_\_\_, Texas for the purpose of:

an examination to determine if the person has a mental illness as defined by Section 571.003, Health and Safety Code.

an examination to determine if the person is a person with mental retardation as defined by Section 591.003, Health and Safety Code.

It is further Ordered, pursuant to Article 16.22(a), Code of Criminal Procedure, that the person be held in custody no more than \_\_\_\_\_ days (21 days maximum) for the purpose of said examination.

Herein fail not, but of this writ make due return, showing how you executed same.

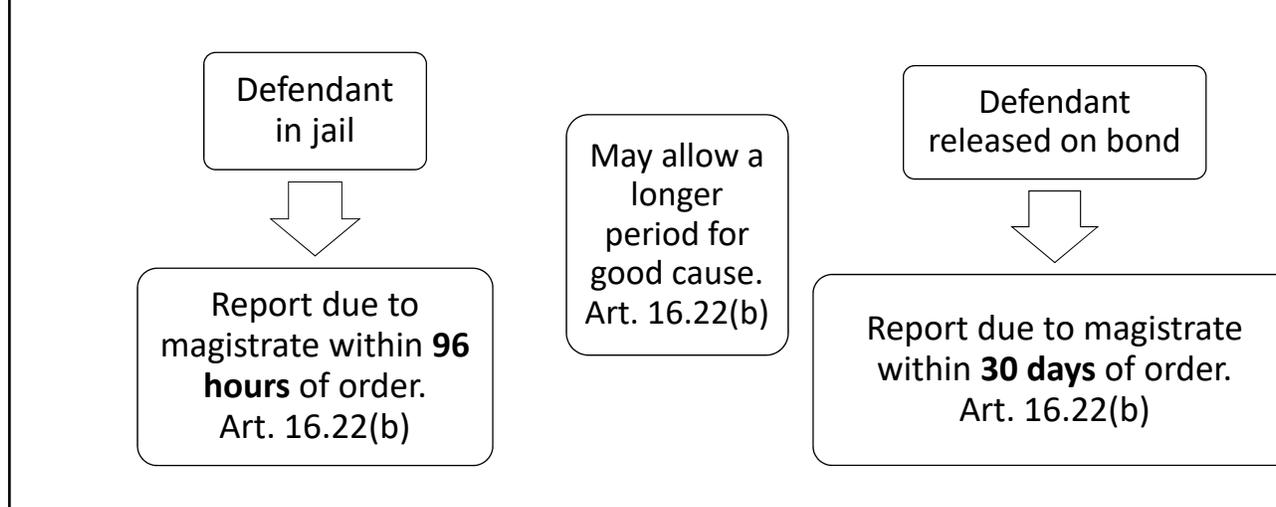
Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Magistrate  
City of \_\_\_\_\_  
\_\_\_\_\_  
County, Texas

Example of form if person refuses to submit to examination

*Handout F in your packet.*

When does the magistrate receive the assessment?



What does the assessment do?

- The assessment includes the expert's observations and findings:
  - Does the defendant have a mental illness or intellectual disability?
  - Is there clinical evidence to support a finding that the defendant may be incompetent to stand trial?
  - Any appropriate or recommended treatment or service.
    - Art. 16.22(b-1)

What does the magistrate do with the assessment?

- The magistrate must provide copies of the assessment to:
  - Defense counsel.
  - The Prosecutor.
  - The trial court.
    - Art. 16.22(b-1)

For context: What happens with the assessment information?

Upon receipt of assessment, **the trial court** can:

Resume criminal proceedings and address release on personal bond if defendant is being held in custody.

Resume or initiate competency proceedings under Article 46B.

Use assessment in connection with punishment or to set conditions for community supervision.

Refer defendant to appropriate specialty court.

## Magistrate reporting requirements

- The statute says the magistrate must submit the number of written assessments monthly to OCA. However, OCA has said you do **NOT** have to do this!
- You **do not have to report** these directly.
- Instead, OCA will tally the number of assessments each month from the reports submitted to them by the district and county clerks.

Release of a defendant  
with a mental illness  
on a personal bond

What is a personal bond?

- A **personal bond** is a commitment by the defendant to appear for any hearings and for trial **and** if he fails to appear then he agrees to pay the bail amount set by the magistrate.
- For example, if bail is set at \$5,000 and he is released on a personal bond and fails to appear for trial, he is liable for \$5,000 in a bail forfeiture proceeding.

What is a bail bond?

- By contrast, a **bail bond** is where a “surety,” such as a bail bondsman, guarantees payment of the bail amount if the defendant fails to appear.
  - In the example on the previous slide, if the defendant fails to appear for trial, both he and the bail bondsman are liable for the \$5,000 bail amount.
- To get a bail bond the defendant usually has to pay 10% of the bail amount as a fee to the surety.

## Release on personal bond of defendant with mental illness

Unless good cause is shown for not doing so, a magistrate must release a defendant with a mental illness on a **personal bond** if certain conditions are met (explained on the next slides).

-- Art. 17.032(b), Code of Criminal Procedure

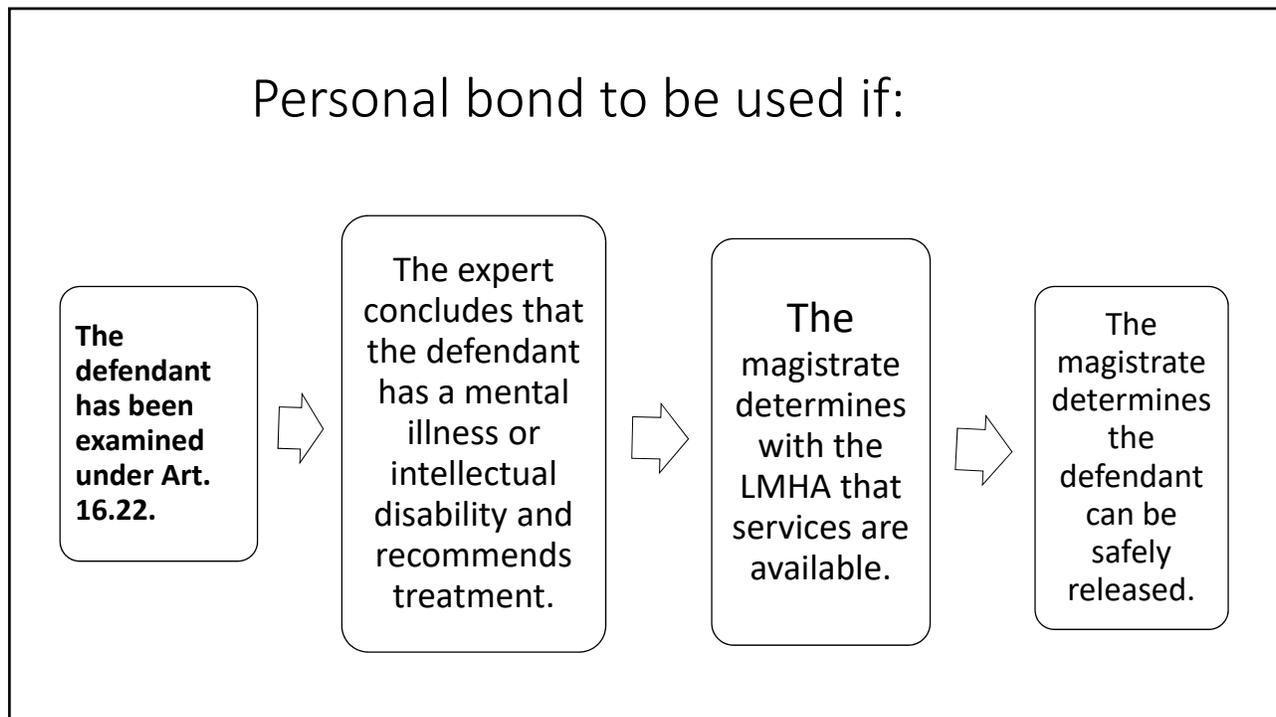
Art. 17.032: Personal bond to be used if:

The defendant is **not** charged with and has **not** been previously convicted of a violent offense;

### What's a violent offense?

- Murder
- Kidnapping
- Indecency with a child
- Assault, if the offense involves family violence
- Sexual assault
- Injury to a child, elderly, or disabled individual
- Aggravated robbery
- Continuous sexual abuse of young child
- Continuous trafficking of persons

## Personal bond to be used if:



## Personal Bond conditions: Requiring treatment

- Unless good cause is shown for not requiring treatment, the magistrate must require as a condition of release on a personal bond that the defendant submit to treatment if:
    - The defendant's mental illness or intellectual disability is chronic in nature; or
    - The defendant's ability to function independently will continue to deteriorate if the defendant is not treated.
- Art. 17.032(c)

Personal Bond Conditions: Reasonable conditions

- In addition, the magistrate may require compliance with other conditions reasonably necessary to ensure the defendant's appearance in court and the safety of the community/victim.
  - For example: counseling, report to adult probation department frequently by telephone or in person, curfew, GPS monitoring device.

Art. 16.22 Flowchart

## Building Coalitions with your county stakeholders

### Lessons from Mental Health Symposium

- Texas Counties and the Mentally Ill – Bridging the Gap – Georgetown, July 19 – 20, 2018:
  - The key to addressing mental health issues is to work together as a team with all the stakeholders in your county.
  - This means getting to know your LMHA.

## Lessons from Mental Health Symposium

- Schedule regular meetings (quarterly or monthly) with all the stakeholders (LMHA, sheriff's office, magistrates, prosecutors) to go over what is working smoothly and what is not working and needs to be addressed.
- Grants may be available through the LMHA for telepsych or mental health deputies.

## Lessons from Mental Health Symposium

- Smaller counties may wish to band together and have an interlocal agreement. Bastrop, Lee and Fayette Counties have done this and have two mental health deputies for Bastrop County and one each for Lee and Fayette Counties.
- Some counties have worked out good procedures for getting assessments and treatment for the mentally ill but only after working for months or even years with all interested parties in the county.
- It is all about good communication within your county.

**Texas Local Mental Health  
Authority Center Service  
Areas**