

# TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR  
Brandon S. Wood



P.O. Box 12985  
Austin, Texas 78711  
Voice: (512) 463-5505  
Fax: (512) 463-3185  
<http://www.tcjs.state.tx.us>  
[info@tcjs.state.tx.us](mailto:info@tcjs.state.tx.us)

## TECHNICAL ASSISTANCE MEMORANDUM

**TO:** All Sheriffs and Jail Administrators  
**FROM:** Brandon Wood, Executive Director  
**REGARDING:** Mental Health Referrals for Class B Misdemeanants  
**DATE:** January 23, 2018

SB 1326 and SB 1849 enacted recently by the 85th Legislature both amended Code of Criminal Procedure §16.22. This memo clarifies one part of these laws.

SB 1849 and SB 1326 in general agree in requiring that the sheriff or jailer notify the magistrate within 12 hours of receiving credible information that establishes reasonable cause to believe the defendant has a mental illness or is a person with an intellectual disability. However, SB 1326 requires this notification only when the defendant is alleged to have committed a Class B misdemeanor or higher. On the other hand, SB 1849 does not specify a misdemeanor class, which leaves jail staff uncertain which law prevails.

The Texas Commission on Jail Standards has concluded that jail staff is no longer required to notify magistrates of such individuals arrested for Class C misdemeanor offenses, and the Commission will not find a jail in non-compliance for failing to refer Class C misdemeanants.

However, after consulting with the Office of Court Administration (OCA), they share our opinion that the best practice is to refer all such individuals regardless of the level of crime alleged. Doing so will simplify the booking process and reduce the likelihood of failing to make an appropriate referral. Jailers will not have to remember whether the misdemeanor class referral threshold is A, B, or C. Also, if an inmate is first arrested for a Class C, but later a higher Class offense is added, the jailers will not have to remember whether they made a magistrate referral already or not. If the jail refers all arrestees suspected of mental illness or intellectual disability, then it is less likely that such an arrestee will slip through the cracks.

This memo is not intended to be a comprehensive treatment of these laws. There are other aspects of these laws not described in this memo. We, therefore, urge you to read and understand SB 1326 and SB 1849.

Judge Bill Stoudt, Longview, Chair  
Jerry W. Lowry, New Caney, Vice Chair  
Larry S. May, Sweetwater

Sheriff Dennis D. Wilson, Groesbeck  
Sheriff Kelly Rowe, Lubbock  
Dr. Esmail Porsa, M.D., Parker

Commissioner Ben Perry, Waco  
Duane Lock, Southlake  
Melinda E. Taylor, Austin

"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview".

*To empower local government to provide safe, secure and suitable local jail facilities through proper rules and procedures while promoting innovative programs and ideas*