

## FAQs

### **1. What if the person in custody is no longer mentally ill or not experiencing an impaired perception of reality, emotional process, or judgment or currently suicidal what actions need to be taken by the magistrate? Does CCP Art. 16.22 apply?**

A. The question is whether “there is reasonable cause to believe the defendant has a mental illness or is a person with an intellectual disability” where the determination was not made within the year preceding the defendant’s arrest. If there is no reasonable cause to believe a defendant has a mental illness or an intellectual disability, then the magistrate is not required to order an assessment. We realize the legislature has put the magistrate, who is not a psychiatrist, in the position of making a determination of whether there is reasonable cause to believe a defendant does or does not have a mental illness or intellectual disability. But this determination is to be based on “credible information” including observation of the defendant’s behavior immediately before, during and after the defendant’s arrest and any previous assessments of the defendant. The purpose of the statute is to provide the court and the attorneys with information concerning defendants who are suspected of having mental illness or retardation so that their status may be determined at an early stage of the case and an expert report may be prepared to assist the court with resumption of criminal charges, incompetency hearings or the punishment phase.

### **2. What happens if a JP does not respond to these notifications from the sheriff or jailer? It seems every morning more and more of these requests are presented at magistration, most have no supporting argument for the request other than the inmate answering yes to being depressed.**

A. The determination by the sheriff or jail is to be based on “credible information” including observation of the defendant’s behavior immediately before, during and after the defendant’s arrest and any previous assessments of the defendant. The magistrate must evaluate the determination and information related to the determination and order an assessment only if there is reasonable cause to believe the defendant has a mental illness or is a person with an intellectual disability.” That means you do not have to order an assessment if all that is presented to you is an affirmative answer to the question, "Do you feel sad?" Most defendants who have been arrested and are in custody “feel sad” but that does not mean there is reasonable cause to believe they are suffering from a mental illness or have an intellectual disability.

### **3. I had magistration duty this morning and as I was reading the statutory warnings to the defendant, I clearly noticed his body language as not being "right." After clarifying that he understood what was said, I asked the jail staff if there was a mental health report on him and the staff replied that if I didn't receive one, then there wasn't one. Based on his conduct before me, I started asking him questions about his mental health. Turns out he was hospitalized three years ago for bi polar, depression, hearing voices and he had been on meds**

**but stopped taking them because they weren't helping. Am I allowed to order a mental assessment in this situation?**

A. Yes. Although the process for ordering a mental assessment under Art. 16.22 normally begins with the sheriff or jail staff giving the magistrate notice, the statute does not make such a notice a prerequisite for ordering an assessment. It states that if the magistrate determines there is reasonable cause to believe that the defendant has a mental illness or intellectual disability, then the magistrate must order the local mental health authority to collect information and provide an assessment. We believe that if, based on the magistrate's own observation of the defendant during the magistration process, there is reasonable cause to believe the defendant has a mental illness or intellectual disability, then you may order an assessment without a notice from the jail.

**4. Beginning September 1, are we required to report the number of written mental assessments to OCA and to our District and County Court? Also, I was called to do an Emergency Detention order on someone not in jail, do we report that? In regards to the new Mental Illness Assessment Magistrate Written Notification Form, the authorized person making the mental illness assessment fills out the form, not the magistrate?**

A. (1) Magistrates are not required to submit a report to OCA concerning the number of mental assessments ordered even for persons they magistrate. This is because OCA has taken the position that magistrates do not have to submit these reports to OCA no matter how many assessments are ordered in a month by the magistrate. OCA states that the magistrate should send the assessment to the custodian of the district or county court records—the district clerk or county clerk—for inclusion in the defendant's case file. OCA will tally the number of assessments each month from the reports submitted to them by the district and county clerks.

(2) There is nothing that would require a report to be submitted to OCA for someone who is not magistrated.

(3) Yes, that form (prepared by OCA) is for the mental health authority to fill out after the magistrate requests an assessment under Art. 16.22.

**5. The County Jail has begun a new process of demanding that JPs sign off on a TCIC printout for each individual that is to be magistrated. They quote "new Jail Standards requirement". Jail staff are not able to explain why the signature is needed or what purpose it serves. Should there be any reason for concern and should we "sign off" on those printouts?**

A. It appears the jail has initiated this process as part of its compliance with Art. 16.22. Signing off on a TCIC form is not part of the magistration process under Art. 15.17 or Art. 16.22. As we understand it the TCIC form is used in data collection and to create a data base for law enforcement and is not a magistration function. Therefore, if you have any concerns about signing it we suggest you refrain from doing so.