

Emergency Mental Health Warrants/Emergency Detention Orders

WEBINAR

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Texas Justice Court Training Center

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Resources

Health and Safety Code (HSC) Chapter 462, 573

Health and Safety Code §773.003

Code of Criminal Procedure §2.12, 59.01

TJCTC Magistration Deskbook - <https://www.tjctc.org/tjctc-resources/Deskbooks.html>

Texas Judicial Commission on Mental Health – <http://texasicmh.gov/>

Bench Book: <http://texasicmh.gov/publications/bench-book-and-cards/>

Texas Association of Counties Bench Book on Mental Health and Mental Retardation –

http://www.easylawlookup.com/downloads/benchbook/pdf/d_mhmr.pdf

Office of Court Administration (OCA) Mental Health Training Materials –

<https://www.txcourts.gov/publications-training/training-materials/mental-health/>

Texas DSHS Mental Health and Substance Abuse Division - <https://www.dshs.state.tx.us/mental-health/>

Mental Help Net - www.mentalhelp.net

National Alliance on Mental Illness - www.nami.org

National Institute of Mental Health - www.nimh.nih.gov

National Council for Behavioral Health - <https://www.thenationalcouncil.org/>

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What is a Local Mental Health Authority (LMHA)?

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Local Mental Health Authorities (LMHAs)

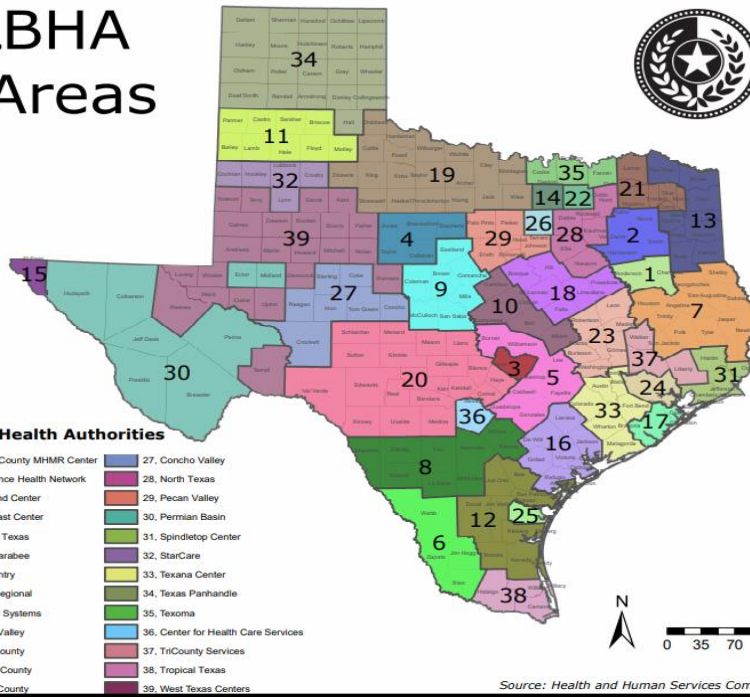
- Required to:
 - Plan,
 - Develop policy,
 - Coordinate,
 - Allocate, and
 - Develop resources
- for mental health services in the local service area.

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LMHA/LBHA Service Areas



TEXAS Health and Human Services



Source: Health and Human Services Commission, Behavioral Health Services

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Local Mental Health Authorities (LMHAs)

List of local mental health authorities:

<https://dshs.texas.gov/mhsa/lmha-list>



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Best Practices to Work with LMHAs

- Get to know them!
- Try to understand what they do.
- Listen to their concerns.
- Attend trainings if they apply to your Court if you can.

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General Overview of Emergency Mental Health Procedures

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Law Enforcement – no warrant



Guardian – no warrant, but must notify court



Any Adult → Apply to Court*



Facility → Apply to Court*

EMERGENCY DETENTION UNDER HEALTH AND SAFETY CODE CHAPTER 573

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The Role of the Justice of the Peace

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A Justice of the Peace, sitting as a magistrate, may issue warrants for the emergency apprehension and detention of mentally ill persons and chemically-dependent persons.



Purpose:

Keep a person from doing harm to themselves or others.

Get a person immediately to a facility that can provide needed treatment.

Role of the Justice of the Peace

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Role of the Justice of the Peace

May be necessary and appropriate when a person in mental health crisis will not submit to voluntary services.

The person **MUST** be placed in the **least restrictive**, most appropriate setting, while safeguarding their legal due process rights.

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Application

HSC § 573.011

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Application

An adult may file an application for the emergency detention of another person.

HSC § 573.011(a)

The application can be accompanied by any relevant information.

HSC § 573.011(c)

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Application

Required contents of the application:

The applicant has reason to believe and does believe:

- That person evidences mental illness;
- That person evidences a substantial risk of serious harm to himself or others;
- The risk of harm is imminent unless the person is immediately restrained;
- The applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

HSC § 573.011(b)

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Application

Required contents of the application: *continued...*

- A specific description of:
 - The risk of harm;
 - The specific behavior, acts, attempts, or threats; and
 - The applicant's relationship to the person whose detention is sought.

HSC § 573.011(b)

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CAUSE NO. _____

THE STATE OF TEXAS § IN THE _____ COURT OF
 § _____ COUNTY, TEXAS
 VS. § _____ JUDICIAL DISTRICT
 § _____

APPLICATION FOR EMERGENCY DETENTION

I, _____ [undersigned applicant], have reason to believe and do believe that _____ [name of person] evidences mental illness and a substantial risk of serious harm to himself/herself and others. The harm is as follows:

 _____.

I have reason to believe and do believe that the risk of harm is imminent unless the person is immediately restrained. My beliefs are derived from specific recent behavior, overt acts, attempts, or threats described as follows:

 _____.

My relationship with the person is as follows: _____
 _____.

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Other relevant information: _____
 _____.

I therefore request the magistrate to issue a warrant for emergency detention under Texas Health and Safety Code chapter 573.012 of the above-named person.

Applicant information:
 Name: _____
 Address: _____
 Phone: _____

Applicant signature: _____
 Date: _____

[Find form here.](#)

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Issuing The Warrant

- ▶ The application must be presented personally to the judge or magistrate.
 - ▶ If the applicant is a physician, then the magistrate can allow the electronic presentation of the application following [HSC § 573.012\(h\)](#).
- ▶ The judge or magistrate shall examine the application.
- ▶ The judge or magistrate may also interview the applicant.

[HSC § 573.012\(a\)](#)

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Issuing The Warrant

- ▶ The judge of a court with probate jurisdiction by administrative order may provide that the application must be retained by court staff and presented to another judge or magistrate as soon as practicable if the judge of the court is not available at the time the application is originally presented.

[HSC § 573.012\(a\)](#)

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Issuing The Warrant

▶ The magistrate shall deny the application unless they find that there is reasonable cause to believe that:

- ▶ The person evidences mental illness;
- ▶ The person evidences a substantial risk of serious harm to himself or others;
- ▶ The risk of harm is imminent unless the person is immediately restrained; and
- ▶ The necessary restraint cannot be accomplished without emergency detention

HSC § 573.012(b)

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What is a
substantial
risk of serious
harm??

- Unfortunately, there is no case law that tells us. However, there are cases discussing a similar standard for civil commitment under HSC 574.034.
- Signs and Symptoms can include:
 - Malnutrition
 - Poor hygiene arising to a level of dangerousness
 - Inability to administer necessary medications
 - Failure to provide for adequate shelter
 - Failure to maintain their own safety
 - Disorientation
 - Delusional thinking
 - Responding to visual and auditory hallucinations
 - Responding to an officer's questions with grunting noises
 - Soiling one's self regularly

*See, In re A.T.; State for Best Interest and Prot. Of H.S.; In re M.R.***

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Issuing The Warrant

▶ A substantial risk of serious harm to the person or others may be demonstrated by:

- ▶ The person's behavior; or
- ▶ Evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty

HSC § 573.012(c)

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Issuing The Warrant

▶ The magistrate shall issue to an on-duty peace officer warrant for the person's immediate apprehension if the criterion are satisfied

HSC § 573.012(d)

▶ This can be to any peace officer, including municipal, listed in article 2.12 of the CCP.

Tex. Att'y Gen Op. KP-0206, at *1(May 16, 2018).

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CAUSE NO. _____

THE STATE OF TEXAS §
 FOR THE BEST INTEREST §
 AND PROTECTION OF §
 _____ COUNTY, TEXAS

MAGISTRATE FOR

**MAGISTRATE'S ORDER AND WARRANT FOR
 EMERGENCY APPREHENSION AND DETENTION**

On the ____ day of _____, 20____, _____ [name of applicant] came to present an Application for Emergency Detention of the above referenced person.

After examining the Application and any accompanying relevant information, I find that there is reasonable cause to believe (1) that the person evidences mental illness; (2) that the person evidences substantial risk of serious harm to the person or others, such harm being demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in his/her mental condition to the extent that the person cannot remain at liberty; (3) that the risk of harm is imminent unless the person is immediately restrained; and (4) that necessary restraint cannot be accomplished without emergency detention. I further find that the person meets all four criteria for emergency detention in Subsection (b) of Section 573.012, Texas Health and Safety Code.

It is therefore, ORDERED that a Warrant shall issue for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility or, if none is available, to a facility deemed suitable by the mental health authority for this County, for the preliminary examination in accordance with the provisions of Texas Health and Safety Code section 573.021. It is further ORDERED that the Warrant shall serve as the application required in section 573.021(a), and that copies of the Application for Emergency Detention and the Warrant be immediately transmitted to such facility.

Magistrate

WARRANT

THE STATE OF TEXAS
 COUNTY OF _____
 THE STATE OF TEXAS
 TO ANY PEACE OFFICER OF THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to immediately seize and apprehend _____ [patient name] and transport same to _____ [name of facility] in _____ [county], Texas for the purpose of a preliminary examination, as provided in Texas Health and Safety Code section 573.021. HEREIN FAIL NOT, but of this writ make due return, showing how you have executed the same. WITNESS my official signature, this ____ day of _____, 20____.

 _____ JUDGE
 _____ COURT
 _____ COUNTY, TEXAS

[Find form here.](#)

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THE STATE OF TEXAS

TO: _____
 Name of person apprehended

You are being temporarily detained to determine if you are suffering from mental illness such that you need mental health services for the protection of yourself and others. The following is the name and number (called the "style") of your case.

NO _____

THE STATE OF TEXAS §
 FOR THE BEST INTEREST AND §
 PROTECTION OF §
 _____ COUNTY, TEXAS

MAGISTRATE FOR

Among your rights, you have the right to know the following information:

- 1) You are being detained at _____ [name of facility].
 (a) The reasons for your detention are _____
- (b) This temporary detention could result in a longer period of involuntary commitment to a mental health facility.
- 2) You have the right to contact an attorney of your own choosing, and the right to a reasonable opportunity to contact that attorney.
- 3) If you are not admitted for emergency detention, you have the right to be transported back to the location of your apprehension or to your place of residence in Texas or other suitable locations, unless you are arrested or object to the return.
- 4) You have the right to be released from detention if the administrator of this facility where you are being held determines that any one of the following four criteria for emergency detention no longer apply:
 - (a) That you are mentally ill; or
 - (b) That you show that a substantial risk of serious harm to yourself or others would result from your release, as determined either by your behavior or by evidence of severe emotional distress and deterioration in your mental condition to the extent that you cannot remain at liberty; or
 - (c) That the risk of harm to yourself or to others is imminent unless you are immediately restrained at this time; or
 - (d) That emergency detention is the least restrictive means by which necessary restraint may be accomplished.
- 5) If you talk with or communicate with a mental health professional, those communications may be used in proceedings for further detention.

The above-named person was advised within 24 hours of admission, orally, in simple, non-technical terms of the above listed types. In addition, the person was informed in writing of those same rights, in the person's primary language if possible. If said person was hearing and/or visually impaired, those rights were communicated through means reasonably calculated to communicate those right, in the following manner:

 Witness Peace Officer or Facility Representative

 Witness Title

COPY TO BE RETURNED TO COURT

[Find form here.](#)

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What happens next?!

- ▶ Officer transports person to:
 - ▶ The nearest appropriate inpatient mental health facility; or
 - ▶ A mental health facility deemed suitable by the local mental health authority (only if inpatient mental health facility not available)
- ▶ Preliminary examination in accordance with HSC § 573.021.
- ▶ The warrant serves as an application for detention in the facility & the warrant and a copy of the application shall be immediately transmitted to the facility.

HSC § 573.012(e) & (f)

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What happens at the preliminary examination?

- Within 12 hours of apprehension, whether a person was transported to a facility with or without a warrant, at least one physician must evaluate the person.

HSC § 573.021(c)

- A Physician need not be a psychiatrist, but must be:
 - A person licensed to practice medicine in this state;
 - A person employed by a federal agency who has a license to practice medicine in any state; or
 - A person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program

HSC § 571.003(18)

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What Happens if Person Does not meet criteria for detention?

The person must be released.

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How is a person being released transported?

The person must be returned to the location of apprehension, residence in TX, or another suitable location. If the person was apprehended by a peace officer, immediate transport is required; otherwise it must be reasonably prompt.

HSC § 573.024

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- ▶ Physician must issue a **written statement** that:
 - ▶ Is acceptable to the facility;
 - ▶ States that it is the physician's opinion that:
 - ▶ The person has a mental illness;
 - ▶ The person evidences a substantial risk of serious harm to self or others;
 - ▶ The risk of harm is imminent unless the person is immediately restrained; and
 - ▶ Emergency detention is the least restrictive means of necessary restraint.
 - ▶ Statement must also include:
 - ▶ A description of the nature of the person's mental illness;
 - ▶ A specific description of the risk of harm
 - ▶ The specific detailed information that was the basis of the physician's opinion.

HSC § 573.022

When can a person be admitted after a preliminary exam?

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- ▶ The **written statement** required under HSC 573.022 is **NOT** the same thing as a **certificate of medical examination for mental illness** under HSC 574.011.

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What happens AFTER the preliminary examination (if the person is admitted)?

- The facility cannot keep the person for a period of longer than 48 hours unless a written order for protective custody is obtained.
 - This includes the time the person spends waiting in the facility for medical care before the person receives the preliminary examination.
 - If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 pm, on the first succeeding business day, the person may be detained until 4 pm on the first succeeding business day.
 - If the 48-hour period ends at a different time, the person may only be detained until 4 pm on the day the 48-hour period ends.

HSC § 573.021

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What if the person is still in crisis but no Order of Protective Custody (OPC) has issued?

Can multiple emergency detentions issue until the order of protective custody (OPC) is issued?

NO, unless the patient makes some new claim that they intend to harm self or others.

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- ▶ The only option is to release the person and ask the LMHA to make a community safety plan and to follow up with the patient while waiting on the OPC.
- ▶ Need more legislation to help with this problem.



What are the options if the OPC hasn't issued within the 48-hours and the substantial risk of serious harm still exists?

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What are Causes of Delay that you see in your county?



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Causes of Delay

1. “bed letter” required before courts will accept an application for OPC
2. Local rules that require filings to happen before a time in the early afternoon (2 or 3 pm)
3. LEOs are hesitant to execute EDOs on juveniles (because no involuntary commitment)
4. MH facilities ask LEO to execute EDOs after voluntary admittance, but LEO are reluctant
5. Counties use different processes and forms for EDOs – can cause confusion
6. Patients under EDO transferred, new hospital wants EDO with the name of second hospital
7. Lack of inpatient psychiatric beds
8. Facilities are hesitant to do EDOs, because they don’t want to tie up their doctors in the courtroom (even though there is special procedure for them)
9. Hospitals don’t want contracts for state beds, because don’t pay well
10. OPC application might not be completed if there is no available bed
11. Hospitals afraid of getting in trouble for keeping patients too long
12. Facilities sometimes misunderstand when juveniles can provide own consent for psychoactive meds.

From JCMH Round Table

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Orders of Protective Custody (OPC)

- A motion for OPC must be filed only in the court in which an application for court-ordered mental health services is pending.
- HSC § 574.008(a)
- An application for court-ordered mental health services must be filed in a statutory or constitutional county court that has jurisdiction of a probate court in mental illness matters.
- HSC § 574.021(a)
- **This is NOT Justice Court!**

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Questions?

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Do Mental Health Warrants Expire?

- The statute does not provide an 'expiration date' and there are no cases or AG opinions that provide an expiration date for emergency mental health detention warrants. This seems to imply that they are treated like arrest warrants, which do not expire unless they are recalled by the issuing magistrate or judge.
- The court should use discretion and common sense in determining when to recall an unexecuted emergency mental health detention warrant.
- Note: This is talking about the Mental Health Warrant/EDO prior to it being executed (officer is looking for the person).

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Can a JP release mental health warrant records?

- Mental Health Warrant records are part of a mental health case and mental health records are **confidential** unless:
 - A county or district judge makes a written order granting access;
 - The requestor is the attorney for the patient; or
 - Law enforcement needs information in the record for execution of a writ or warrant.
- So unless one of the above three exceptions apply, the records should **not** be released.

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What happens if the person requesting the Mental Health Warrant lied?

- The person who was detained under the mental health warrant may have a claim against the applicant or the applicant may be subject to prosecution for the filing of a false statement.
- If you have reason to believe that the person is lying when they make the application, then you might end up denying the application, because you can't find reasonable cause to believe that the requirements for the warrant are met.

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What if JP does not want to issue Mental Health Warrants at all?

- TJCTC would not advise such a policy.
- Remember that the JP's bond is conditioned that the justice will "faithfully and impartially discharge the duties required by law."
- Canon 3(A) of the Code of Judicial Conduct, states: "The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law."
- Canon 3(B)(1) states: "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate."
- Canon 3(B)(9) states: "A judge should dispose of all judicial matters promptly, efficiently and fairly."
- Issuance of a mental detention warrant under Health & Safety Code § 573.012 is a magistrate function to which these provisions of the Code of Judicial Conduct would arguably apply.

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What if the peace officer thinks the Mental Health Facility is too far away?

- It is the magistrate's duty to determine the nearest appropriate inpatient mental facility or a MH facility deemed suitable by the LMHA if an appropriate MH facility is not available, NOT the officer's duty.
- The officer does not have discretion to refuse to execute the warrant, because they think the facility is too far away.
- They could be giving the magistrate info that the facility is "not available" – in this case the magistrate could choose another facility, but it is not the officer's choice.

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Our County Court-at-Law Judge said that he needs at 2 certified medical examinations (cme) prior to issuing an OPC. He says that means we need and Emergency Detention before an OPC can be issued. (You may have covered this) Is the CCL Judge correct?

- A motion for a Protective Order (issued by court with probate jurisdiction, not JP) must be accompanied by a certificate of medical examination (CME) for mental illness prepared by a physician who has examined the proposed patient. The physician must have prepared the CME not earlier than the 3rd day before the motion is filed. HSC § 574.011, 574.021(d).
- This is different than the written statement under HSC § 573.022
- It is likely that the judge is actually discussing the requirement of a medical examination under HSC § 574.009(d) for an Application for Court-Ordered Mental Health Services, which is different from the Protective Order but must be filed in the same court for the court to issue the Protective Order.

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It is my understanding that a local hospital ER is not mental health facility, as defined by the health and safety code. If the local hospital ER is the place deemed suitable by the local mental health authority, is that the responsibility of the local health authority to answer if it is brought up or can the Magistrate that signs the warrant get in trouble for sending the person under apprehension to the ER, even though it's under declaration by the local mental health authority? Our local ER doesn't have an identifiable part of the hospital that treats, diagnosis, and cares for persons with mental illnesses. Per the definition in the Health and Safety Code 571.

It is the duty of the LMHA, not the magistrate to designate the alternate Mental Health Facility. Therefore, we believe there wouldn't not be an issue for the Magistrate unless there was an inpatient facility available or the Magistrate chose to send the detained person to some other facility not covered in HSC § 573.012(e).

(answer continued on the following slide)

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(answer continued from previous slide)

HSC § 571.002 (12) defines a "Mental health facility" as:

- (A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;
- (B) a community center or a facility operated by a community center;
- (C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or
- (D) with respect to a reciprocal agreement entered into under Section [571.0081](#), any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

The situation described in the question would presumably fall under section (D) above. While the ER is not ideal, it might be the only option for the LMHA in your area. We encourage you to discuss this with the LMHA and potentially the other stakeholders involved the mental health commitment processes in your county.

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Case Citations

In re A.T., No. 02-18-00197-CV, 2018 WL 3385701 (Tex. App. –Fort Worth July 12, 2018, no pet.)

State for Best Interest & Prot. Of H.S., 484 S.W.3d 546, 551 (Tex. App.—Texarkana 2016, no pet.)

In re M.R., No. 02-15-00221-CV, 2015 WL 6759249 (Tex. App.—Fort Worth Nov. 3, 2015, no pet.)

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