

Emergency Apprehension & Detention

Kristi Taylor, J.D., Executive Director

Kama Harris, J.D., Staff Attorney

Texas Judicial Commission on Mental Health



1

Trigger Warning



- ▶ The contents of this session involves discussion of mental health, suicide, lived experience, and other subjects that can be difficult or triggering for some individuals.
- ▶ This is especially true for those with previous trauma exposure, a mental health condition, or lived experience.
- ▶ Please take care of your mental health when listening to our presentation.

2

2

Quiz #1



- ▶ In the United States ____ % of Adults will experience mental illness each year.
- ▶ In 2015, what percentage of people in Texas Jails had at least one Serious Mental Illness?
- ▶ July 2022, this mental health hotline went live nationally. To reach this hotline, dial what number?
- ▶ On average in the United States, one person does by suicide every ____ minutes.

3

3

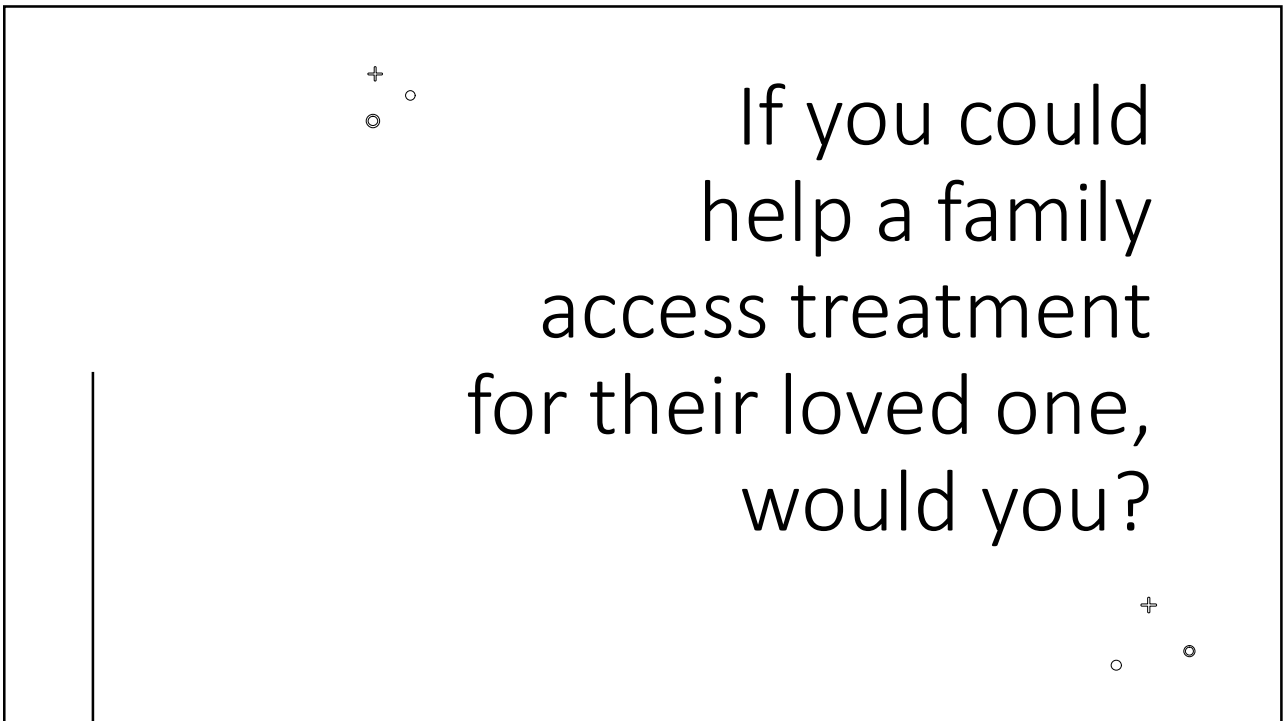
Access to Justice?

4

4



5



6

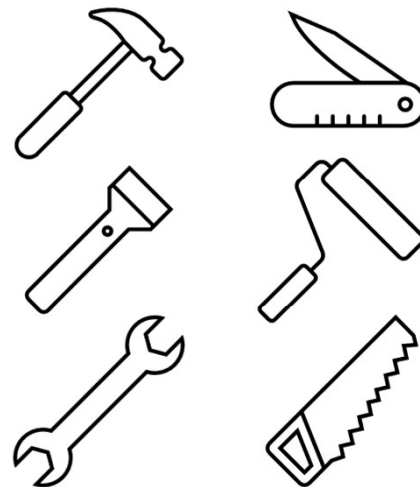
What stops most of us?

1. I don't know where to start.
2. I'm not sure what I can do.

7

7

One tool in your toolbox...



8

8

How familiar are you with Emergency Detentions?

- I have personally issued an Emergency Detention
- I have seen it done before / know the basics
- I am familiar with the concept
- I am completely new

11/8/2023

9

9

Objective 1

Who can issue an emergency Detention?



10

10

Objective 2

11

11

Objective 3



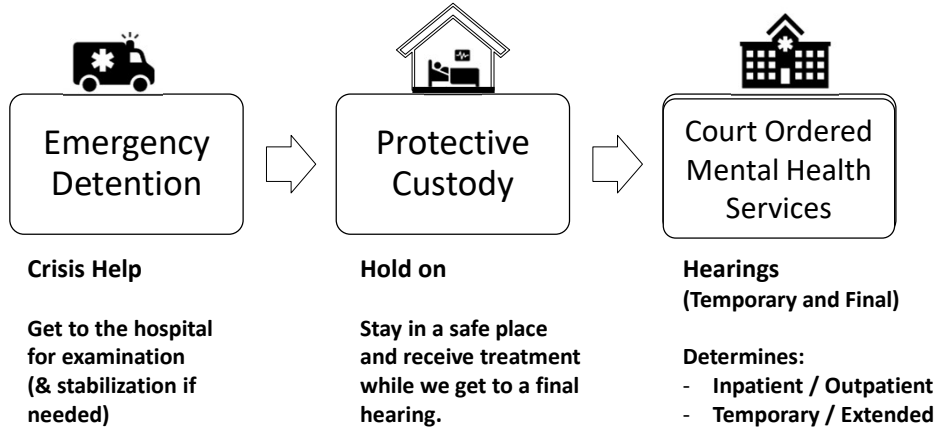
12

12

Big Picture



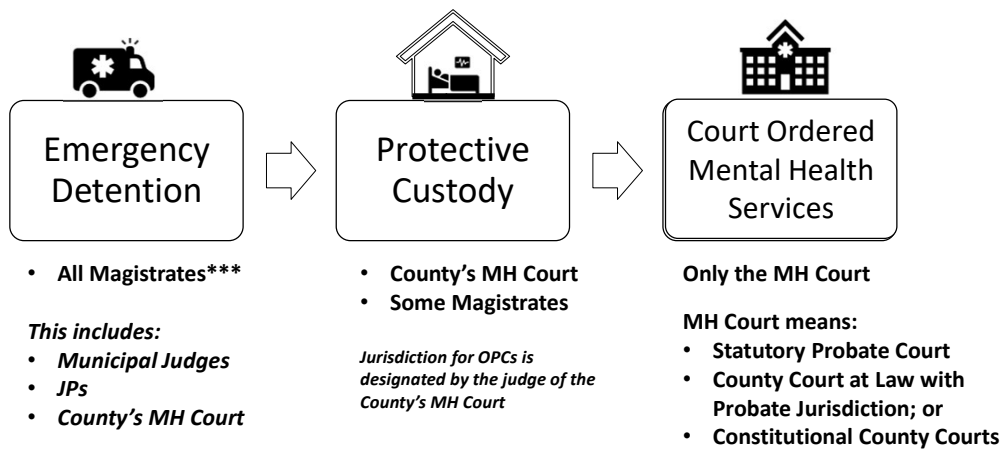
3 Steps of Involuntary Commitment



Big Picture



Who has Jurisdiction to Order Each?



Magistrate Jurisdiction May Be Limited



Emergency Detention

- All Magistrates***

This includes:

- Municipal Judges
- JPs
- County's MH Court

*****All Magistrates*****

HOWEVER – May be limited by your Probate Judge. Look for an Administrative Order.

With 2 or more courts with probate Jurisdiction the order must be signed by all Probate Judges.

Health and Safety Code § 573.012(g)

15

15

What is Emergency Detention?

What → Legal procedure to detain

Who → a person experiencing a severe mental health crisis

Why → for a preliminary examination and crisis stabilization

16



Purpose of an Emergency Detention?

- Keep a person from harming themselves or others.
- Get someone to a facility for any necessary treatment.
- Place the person in the least restrictive, most appropriate setting while safeguarding their legal due process rights.

17

Types of Emergency Detention



1. With a Warrant
 - Doctor or Licensed Mental Health Professional employed by LMHA
 - Any other adult
2. Without a Warrant - Peace Officer
3. Without a Warrant - Guardian  

- Very Rare
 - Notice to Court that ordered the guardianship

18

18

Starting the Process of Getting a Warrant



- ▶ Patient goes to ER (voluntarily)
 - ▶ Patient wants to leave
 - ▶ Doctor files an Application for Emergency Detention Warrant
- OR**
- ▶ Family files an Application for Emergency Detention Warrant
 - ▶ Warrant gets issued
 - ▶ Patient brought to hospital with a warrant

Application for Emergency Detention

The Application Must State:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
+ description of risk of harm
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) This is based on specific recent behavior, overt acts, attempts, or threats.
+description of those behaviors
- 5) Applicant’s relationship to person.

§ 573.011

CAUSE NO. _____

IN THE INTEREST OF AND FOR THE PROTECTION OF _____ IN THE _____ COURT _____ COUNTY, TEXAS

**APPLICATION FOR EMERGENCY DETENTION
(Sec. 573.011, Texas Health and Safety Code)**

BEFORE ME, the undersigned Magistrate of _____ County, Texas, appeared _____ (hereinafter "Applicant"), an adult person who being duly sworn made written application for the emergency detention of another, namely _____, (hereinafter "the Proposed Patient") as follows:

I am _____, Applicant, an adult person.
My address is _____ and my telephone number is _____.

I have reason to believe and do believe that _____, the Proposed Patient, evidences mental illness.

I have reason to believe and do believe that the Proposed Patient evidences a substantial risk of serious harm to himself/herself, or to others, with the risk of harm being specifically described as follows:

I have reason to believe and do believe that the risk of harm from the Proposed Patient is imminent unless the Proposed Patient is immediately restrained.

My beliefs are based on specific recent behavior, overt acts, attempts, or threats by the Proposed Patient, which behavior, acts, attempts or threats are described in specific detail as follows:

The relationship, if any, between me and the Proposed Patient is: _____
If Guardian, which Court granted the guardianship: _____

I have attached any other relevant information to this application.

SUBSCRIBED AND SWORN TO ON THIS THE _____ DAY OF _____, 20____.

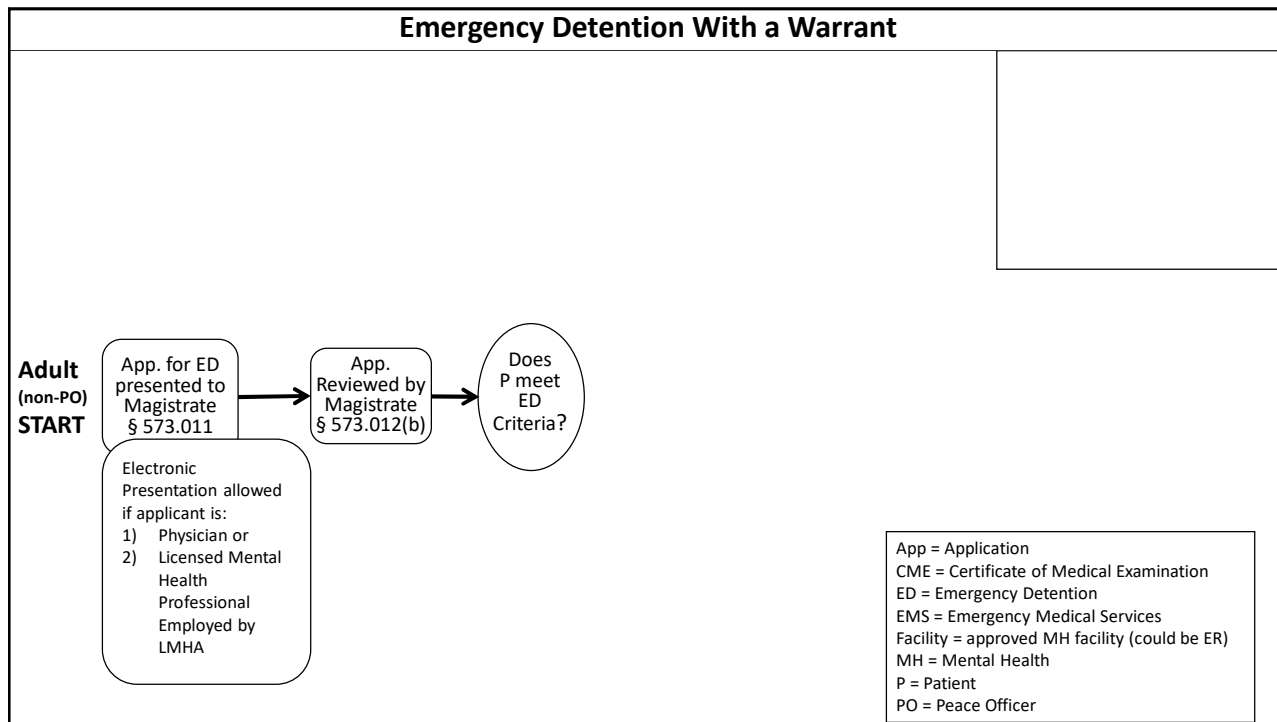
APPLICANT

SWORN TO BEFORE ME ON THIS THE _____ DAY OF _____, 20____.

JUSTICE OF THE PEACE, PCT. _____ MAGISTRATE
COUNTY, TEXAS


PATIENT DATA

Date of Birth _____ Social Security # _____ Driver's License # _____
Address _____ City _____ State _____ Zip Code _____



21

Emergency Detention with a Warrant Criteria



To Issue a Warrant, Magistrate Must Find Reasonable Cause to Believe:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) Necessary restraint cannot be accomplished without ED

22

22

Application versus Warrant



The Application Must State:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
+ description of risk of harm
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) This is based on specific recent behavior, overt acts, attempts, or threats.
+description of those behaviors
- 5) Applicant's relationship to person.

§ 573.011

To Issue a Warrant, Magistrate Must Find Reasonable Cause to Believe:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) Necessary restraint cannot be accomplished without ED.

§ 573.012

23

23

Order & Warrant for Emergency Detention

To Issue a Warrant, Magistrate Must Find Reasonable Cause to Believe:

1. The person evidences MI;
2. There is a substantial risk of serious harm to self or others;
3. The risk of harm is imminent unless person is immediately restrained;
4. Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
5. Necessary restraint cannot be accomplished without ED

§ 573.011

CAUSE NO. _____
IN THE INTEREST OF AND FOR THE PROTECTION OF _____ IN THE _____ COUNTY, TEXAS COURT

MAGISTRATE'S ORDER AND WARRANT FOR EMERGENCY DETENTION (Sec. 573.012, Texas Health and Safety Code)

BEFORE ME, the undersigned Magistrate of _____ County, Texas, appeared _____ (hereinafter "Applicant"), an adult person who being duly sworn made written application for the emergency detention of another, namely _____ (hereinafter "the Proposed Patient"). Based upon such application, upon the testimony of the Applicant, and upon other credible evidence presented to this Magistrate, I hereby make the following findings of fact:

1. There is reasonable cause to believe and I find that the Proposed Patient evidences mental illness.
2. There is reasonable cause to believe and I find that the Proposed Patient evidences a substantial risk of serious harm to himself/herself or to others.
3. There is reasonable cause to believe and I find that the risk of harm from the Proposed Patient is imminent unless the Proposed Patient is immediately restrained.
4. There is reasonable cause to believe and I find that emergency detention is the least restrictive means by which the necessary restraint may be effected, and the necessary restraint cannot be accomplished without emergency detention.

Based upon said findings, it is accordingly ORDERED that the following warrant shall be issued:

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS, GREETINGS:

YOU ARE HEREBY DIRECTED to immediately apprehend _____, wherever he/she may be found, and transport him/her to _____ or to the nearest appropriate inpatient mental health facility, for a preliminary examination in accordance with the provisions of Section 573.021 of the Texas Health and Safety Code. A copy of the application for emergency detention and the warrant itself are to be immediately transmitted to the facility and delivered with the person.

SIGNED ON THIS THE _____ DAY OF _____, 20____.

JUSTICE OF THE PEACE, PCT. _____ MAGISTRATE
COUNTY, TEXAS

OFFICER'S RETURN OF WARRANT

The above warrant came to hand at _____ a.m./p.m. on _____, 20____, and was executed by apprehending the said _____ at _____ a.m./p.m. on _____, 20____, and delivering him/her to the _____ (attach a copy of the application for emergency detention and the warrant itself)

SIGNED _____ AGENCY _____

24

24

Substantial Risk of Serious Harm

Texas Health and Safety Code 573.012(c)



(c) A substantial risk of serious harm to the person or others under Subsection (b) (2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

25

25

There is a substantial risk of serious harm to self or others;



Signs and Symptoms might include:

▪ Suicidal

- manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to him/herself

▪ Judgment is too impaired for him/her to understand the need for their care and treatment;

- Disorientation
- Delusional thinking
- Responding to visual and auditory hallucinations
- Non-verbal responses to questions

▪ Homicidal

- a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm

▪ The person's refusal or inability to meet his or her essential needs such as food, shelter, clothing, or health care

- 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
- Soiling self regularly

26

26

Situational Discussions

27

Situation 1

Ms. A reports feeling low for 3 months. She has a past diagnosis of depression; appears disheveled; doesn't want treatment; states she wants to die. Was admitted following drug overdose & needs treatment in a hospital setting for the effects of overdose.

- A. I would grant the application for emergency detention
- B. I would deny the application for emergency detention
- C. I would need more information before deciding.

28

28

Situation 2

Mr. D has significant cognitive impairment & history of SMI. Family reports he was doing well, but recently got kicked out of his group home & has started to deteriorate. Mr. D is annoyed & says he takes his meds, family says he hasn't refilled Rx in months.

- A. I would grant the application for emergency detention
- B. I would deny the application for emergency detention
- C. I would need more information before deciding.

29

29

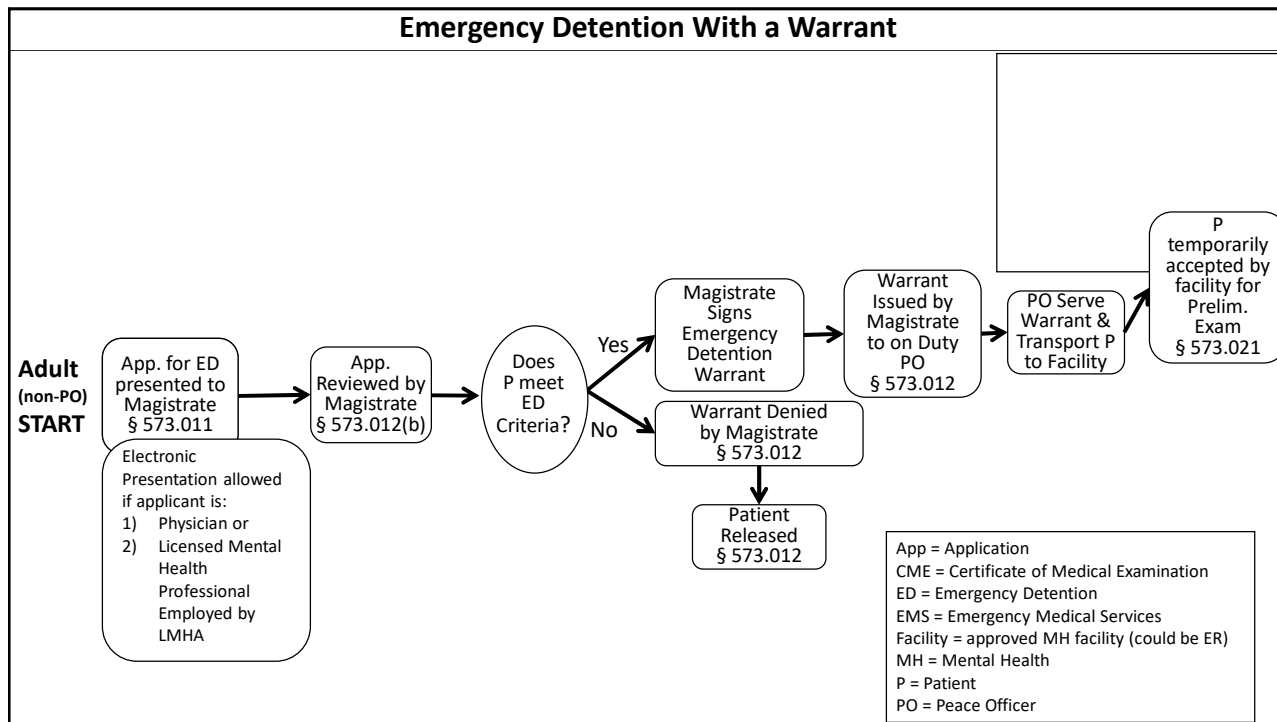
Situation 3

Mr. C is agitated, doesn't understand his condition, & believes the nurses are part of a conspiracy to harm him. He cannot believe treatment info & wants to leave. He has been verbally & physically aggressive toward staff due to confusion.

- A. I would grant the application for emergency detention
- B. I would deny the application for emergency detention
- C. I would need more information before deciding.

30

30



31

Apprehension by Police Officer Without Warrant

- ▶ Call 911
- ▶ Police Officer comes out
- ▶ If officer believes the criteria is met, then the officer may:
 - Take the person into custody
 - Transport to the nearest inpatient MH facility (NOT JAIL)
 - File the application with the facility for the Emergency Detention

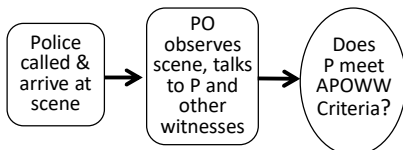
32

32

Emergency Detention Without a Warrant (APOWW)



Peace
Officer
START



App = Application
CME = Certificate of Medical Examination
ED = Emergency Detention
EMS = Emergency Medical Services
Facility = approved MH facility (could be ER)
MH = Mental Health
P = Patient
PO = Peace Officer

33

Apprehension by Police Officer Without Warrant (APOWW) Criteria



The Officer has reason to believe:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) There is not sufficient time to get a warrant

34

34

APOWW versus Warrant



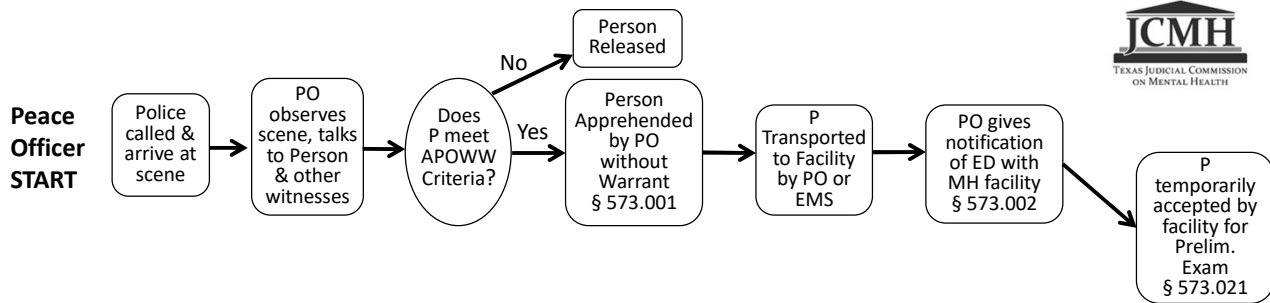
The Officer has reason to believe:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) There is not sufficient time to get a warrant

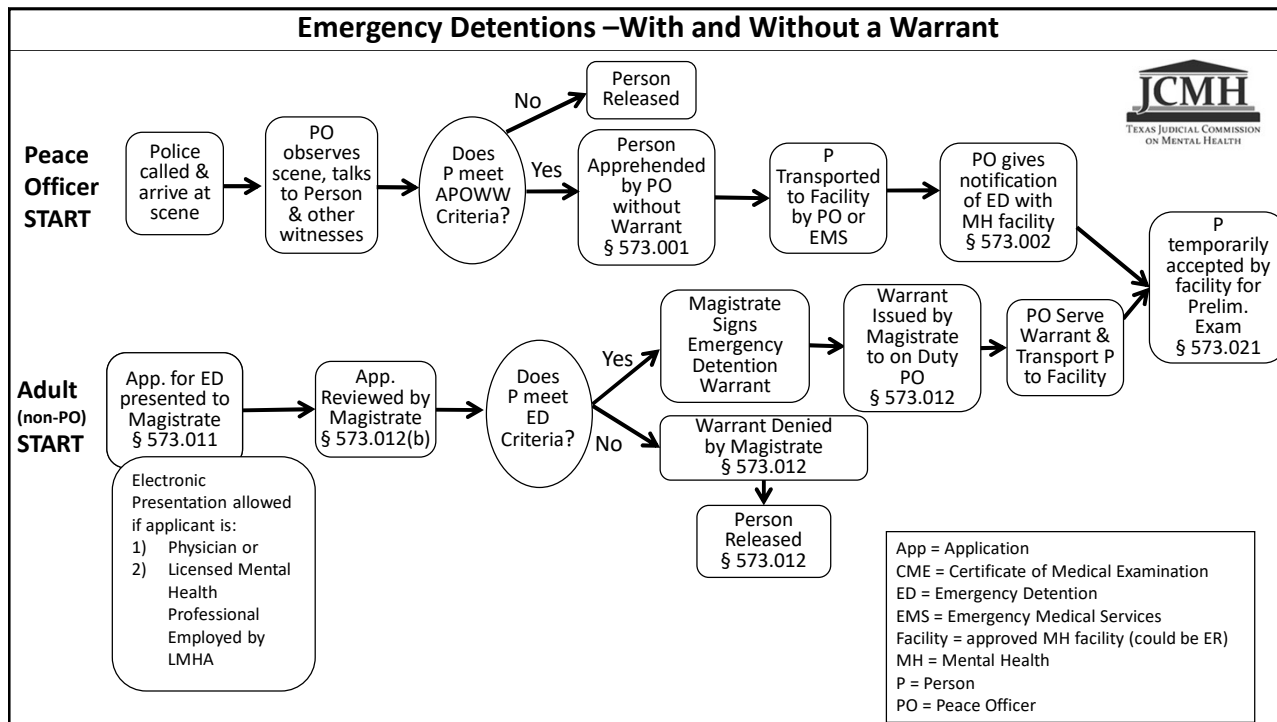
To Issue a Warrant, Magistrate Must Find Reasonable Cause to Believe:

- 1) The person evidences MI;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) Necessary restraint cannot be accomplished without ED

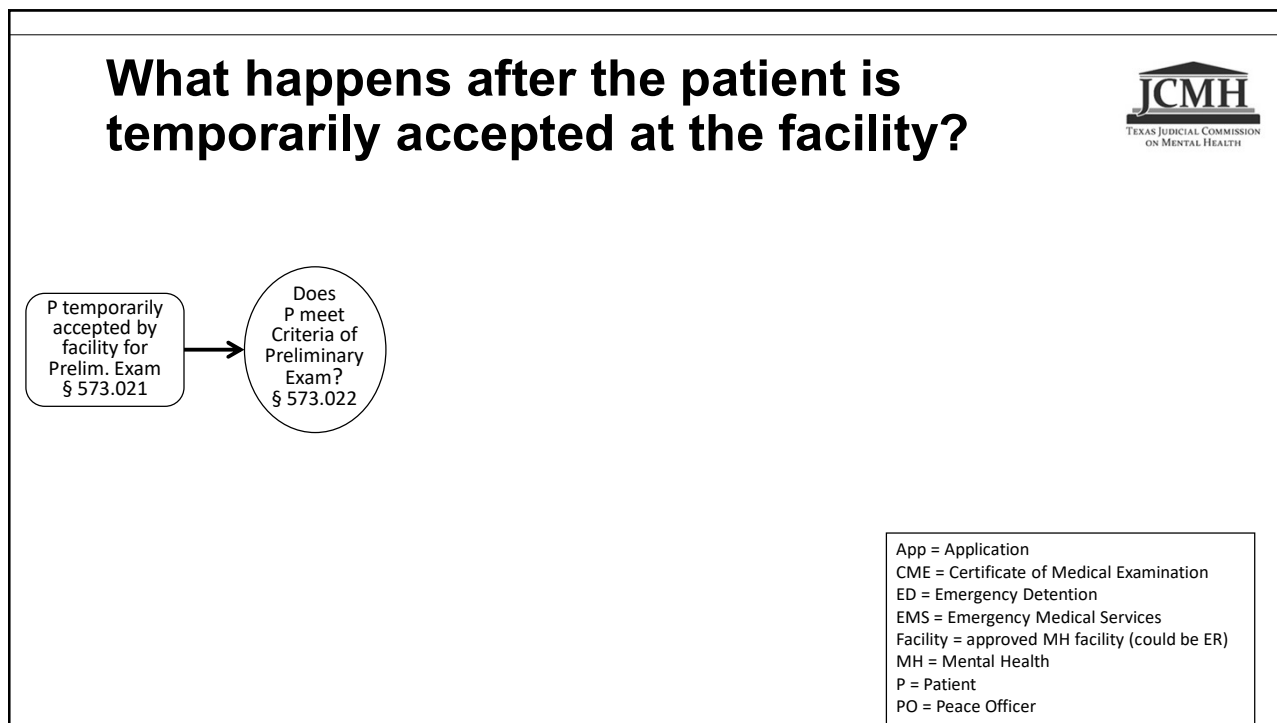
Emergency Detention Without a Warrant (APOWW)



App = Application
 CME = Certificate of Medical Examination
 ED = Emergency Detention
 EMS = Emergency Medical Services
 Facility = approved MH facility (could be ER)
 MH = Mental Health
 P = Person
 PO = Peace Officer



37



38

Preliminary Examination by a Physician



The Physician's issues a written statement that is acceptable to the facility, that in the doctor's opinion:

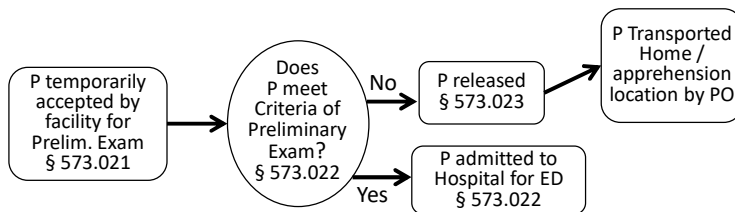
- 1) The person *is a person with MI*;
- 2) There is a substantial risk of serious harm to self or others;
- 3) The risk of harm is imminent unless person is immediately restrained;
- 4) Risk of Harm Demonstrated by:
 - Person's Behavior
 - Evidence of severe emotional distress and deterioration in the person's mental condition to the extent the person cannot remain at liberty
- 5) Emergency Detention is the least restrictive means by which the necessary restraint may be accomplished

PLUS:

- Description of the nature of the person's Mental Illness
- Other "specific detailed" information from which the physician formed the opinion

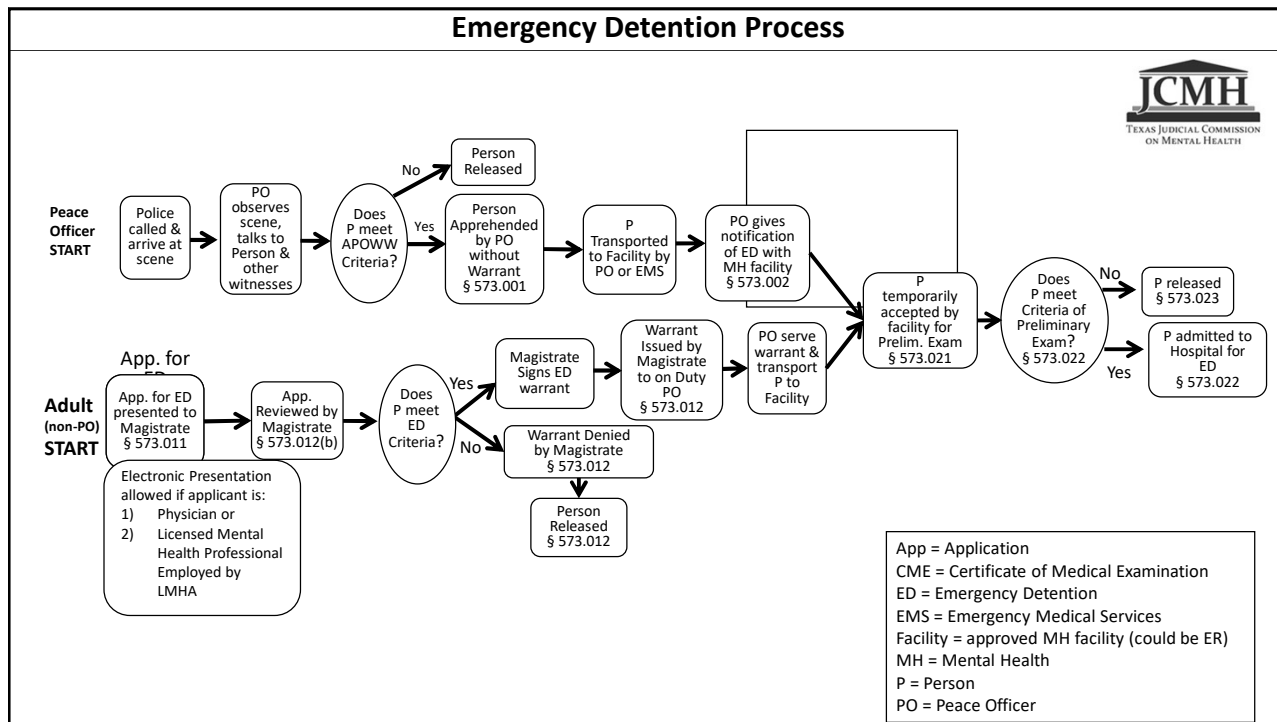
§ 573.022

39

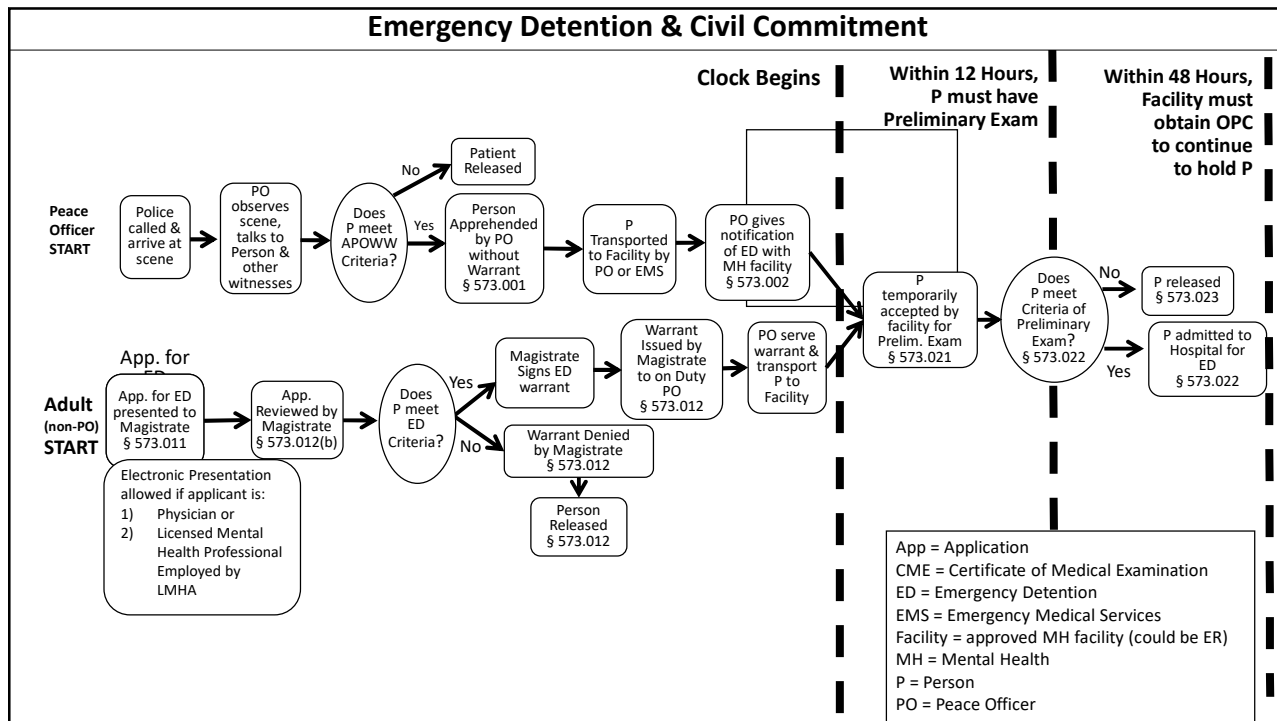


App = Application
 CME = Certificate of Medical Examination
 ED = Emergency Detention
 EMS = Emergency Medical Services
 Facility = approved MH facility (could be ER)
 MH = Mental Health
 P = Person
 PO = Peace Officer

40



41



42

Person Admitted to the Hospital

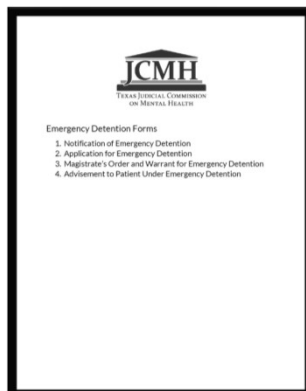
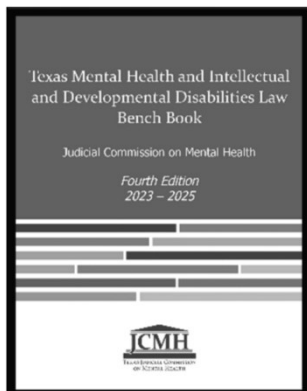
- Hospital Administers Treatment
- They have 48 hours.
- If they need to continue to hold the patient, an OPC is needed.

What if they don't get an OPC?

- Patient is released
 - Facility can ask the LMHA for a community safety plan
- Another Emergency Detention may not issue unless there are new facts!

43

Future Reference



44

44

JCMH Forms Bank



JCMH About Events Publications Technical Assistance Grants News Contact

Forms Bank

Technical Assistance

- Expert Consultation
- Mapping Workshop
- Mental Health Courts
- Peer Networking
- Resources
- External Resources
- COVID-19 Resources
- Forms Bank
- Training & Education
- Video Library



Forms Disclaimers

These forms are provided as examples to assist the bench and bar. The JCMH does not render legal or other professional advice. These forms do not constitute legal advice and should not be used as a substitute for the statutes, rules, and case law pertinent to any specific legal proceeding. All users are responsible for their own legal research and writing.

These forms are not approved or endorsed by the JCMH, the Supreme Court of Texas or the Texas Court of Criminal Appeals.

Forms Source Information

Throughout 2020 and 2021, the JCMH Forms Committee met to review and compile a collection of mental health forms that judges and attorneys can use to streamline and promote efficiency in court processes.

- 1) Emergency Detention
 - 1. Notification of Emergency Detention
 - 2. Advice to Patient Under Emergency Detention (Peace Officer)
 - 3. Application for Emergency Detention
 - 4. Magistrate Order & Warrant for Emergency Detention
 - 5. Advice to Patient Under Emergency Detention (Magistrate)
 - 2) Order for Protective Custody
 - 1. Duties of Attorney
 - 2. Motion for Protective Custody
 - 3. Order for Protective Custody
 - 4. Notification of Probable Cause Hearing - Model 1
 - 5. Notification of Probable Cause Hearing - Model 2
- A. Inland Filings must Attach Affidavits for Breachable Fire Hazard*

JCMH Technical Assistance



Bench Books

MH Law
Training & TA

MH Court
Support

Peer
Networking

Legislative
Initiatives

Video Library

Thank You!

Kristi.Taylor@txcourts.gov

Kama.Harris@txcourts.gov

JCMH@txcourts.gov

