

# Rural Magistration & EDO Issues

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Hockley County Precinct 5

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## Resources

- Texas Justice Court Training Center: <https://www.tjctc.org/>
- Office of Court Administration: <https://www.txcourts.gov/oca>
- Judicial Commission on Mental Health: <https://www.texasicmh.gov/>
- LMHA Map and Info: <https://www.hhs.texas.gov/services/mental-health-substance-use/mental-health-substance-use-resources/find-your-local-mental-health-or-behavioral-health-authority>
- Texas Law Help: <https://texaslawhelp.org/>
- Texas Constitution and Statutes: <https://statutes.capitol.texas.gov/>

**What other resources do YOU use?**

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## Agenda

### Scenarios and Discussion:

- What is Your Involvement in Your County?
- Magistrating at the Jail
- EDOs

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## What is Your Involvement in Your County?

- How are your relationships with law enforcement and mental health providers in your county?
- Are you on your county's LMHA board?
- Does your county have any relevant task forces?
- Any other ways you are involved?

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## Magistrating at the Jail

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## Questions About the PSRS?

- See TJCTC's SB 6 (Damon Allen Act) and Setting Bail webpage for information and links to other resources.
- <https://www.tjctc.org/bail.html>

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## 2023 Legislative Update Reminder – Magistrating at the Jail (1 of 3)

- HB 1712 / CCP Art. 2.101
  - All orders signed by a magistrate must include legible name of magistrate along with signature (*applies to a signed order issued on/after 9/1/23*).
- HB 1163 / Penal Code § 49.061
  - Boating While Intoxicated w/ Child Passenger offense added – IID is required bond condition.
- SB 1004 / Penal Code § 38.112
  - New state jail felony offense added if a person removes/tampers with an electronic monitoring device that they are ordered to have (which could be ordered as a bond condition).

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## 2023 Legislative Update Reminder – Magistrating at the Jail (2 of 3)

- HB 2715 / CCP Art. 17.49(b), 17.292(c)
  - Adds option for bond conditions and EPOs to prohibit tracking/monitoring of victim (*applies only to a defendant released on bond in connection with an offense committed on/after 9/1/23 or to an EPO entered on/after 9/1/23*).
- SB 48 / CCP Art. 17.292(d-1),(d-2), Government Code § 72.039
  - Magistrate shall use standardized EPO form created by OCA (*applies to EPOs issued on or after 6/1/24*).
- HB 767 / CCP 17.50
  - Stalking added to offenses for which bond condition info must be reported/entered into TCIC (*applies only to a condition of bond imposed on/after 9/1/23*).

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## 2023 Legislative Update Reminder – Magistrating at the Jail (3 of 3)

- SB 2479 / CCP Art. 16.22(a),(b-2), 17.03(b-2)
  - Notice from sheriff of mental illness/intellectual disability is now required for all offenses, not just Class B offenses or higher. The magistrate may, but is not required to order the interview/collection of information if the defendant was only arrested or charged with a Class C.
  - “except as provided by Art. 17.032” language added.
    - If charged with a violent offense listed under 17.03 that is not listed in 17.032, now eligible for release under 17.032 (if all other requirements met), when would have been prohibited before.
    - If Art. 17.03(b-2)(2) applies, now eligible for release under 17.032 (if all other requirements met), when would have been prohibited before.
      - 17.032(b-2)(2)= while released on bail or community supervision for an offense involving violence, defendant is charged with a felony, assault bodily injury, deadly conduct, terroristic threat, or disorderly conduct involving firearm.

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## Discussion: Magistration Logistics

- Access to internet/legal resources when at the jail? How do you handle this if not?
- What do you do when you need an interpreter for a less common language?
- How do you handle it when there are limited resources for conducting mental health interviews?
- No jail in your county or the only county in the area with a jail?
  - What issues arise?
  - How do you handle these?

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## Discussion: Virtual Magistration

- Do you do virtual magistration?
  - Technology issues?
  - Pros? Cons?
  - Creative solutions you've discovered?

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## Discussion: Pre-Trial Services

- Do you have pre-trial services in your county?
- How do you monitor bond conditions?
- Do the available resources in your county impact which bond conditions you order?

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EDOs

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## 2023 Legislative Update Reminder - EDOs

*SB 2479 – HSC § 573.012(d-1),(h)*

- A peace officer doing the transport:
  - is not required to remain at the facility while the person is screened/treated/having insurance verified; and
  - may leave immediately after the person is taken into custody by the facility staff and the peace officer has provided the required documentation.
- Adds "or a licensed mental health professional employed by a local mental health authority" to who can submit an EDO app electronically (along with "physician").

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## 2023 Legislative Update Reminder – EDOs (Continued)

*SB 1624 – HSC § 573.012(e),(h),(h-2),(h-3); Applies to an EDO that begins on/after 9/1/23.*

- Shall (instead of may) allow electronic applications.
- A facility may detain a person who is physically located in the facility to perform a preliminary examination under HSC § 573.021 if:
  - The magistrate transmits an EDO to the facility under § 573.012(h-1) for the detention of the person; and
  - The person is not already under an order under Chapter 573 or 574.
- OCA shall (as soon as practicable) develop and implement a process for an applicant to electronically present the application under § 573.012(h) and for a judge or magistrate to electronically transmit a warrant under § 573.012(h-1).

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## Discussion: Establishing County-Wide Policies and Best Practices

- Are you having discussions/are you on the same page with all the relevant players in your county?
- Which law enforcement do you send EDOs to? Can you spread it around?
- Do you have a hospital in your county? Does it have mental health services? Limited space?
- How do you handle limited resources? Partnerships with surrounding areas?
- What is your approach when dealing with confused or frustrated applicants? How can you manage expectations?

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## EDO Board Question #1

What resource does a JP have if an emergency detention order has been issued and sent to the local police department, twice, and they make very little attempt to detain the person and take them to the nearest mental health facility? I have had to issue two warrants in the last 10 days for the same person. The PD is driving by but not actually making an attempt to serve the warrant.

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## Discussion: Does an EDO Expire?

- There is no specific time limit or expiration.
- However, since these are issued in exigent circumstances, they need to be executed immediately.
  - The standard is “imminent” danger – that may not still be met if it has been too long. (And should be recalled if not yet executed and there is no longer an imminent danger).
  - The person could hurt themselves or someone else during the delay.
  - Some facilities are refusing to accept people if it has been more than a few days. While there is no authority for this, it may be tricky to get the facility to change their practice and there is a possibility that there is not actually still an imminent danger.
- **What are some strategies for addressing the issues of EDOs not being executed immediately and facilities not accepting people?**

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## EDO Board Question #2

In reference to emergency detention orders. I had a situation where an officer made a warrantless arrest for an emergency detention order. The subject was evaluated by MHMR and accepted by them. They called me wanting to send the patient, out of the county, to the state hospital. They advised that they needed a judge's order for the state hospital to accept the patient.

Doesn't the officer's emergency detention order suffice, when the patient has been accepted by MHMR?

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## EDO Board Question #3

I understand that we can't sign an emergency detention order on a person that has been diagnosed with dementia but what if they are a harm to themselves and others? Like if they become physical with a family member, what can and is there something we can do?

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## EDO Scenario #1

Adult male, late 30's, single, living with parents, calls 911 for suicidal thoughts. The patient explained that he was hearing voices that he no longer wanted to listen to. He explained that he knew the voices were in his head and telling him to do things he shouldn't do but he didn't know how to continue to deny them. He explains to the EMS responders that he needs transportation to a nearby hospital for psychiatric treatment. Approximately 20 miles from the closest hospital, where psychiatric treatment can be received, the patient revoked consent and began to physically refuse to continue the transport to the hospital. The patient also began speaking in an unknown/unfamiliar language advising that he spoke only French. EMS stopped on the side of the highway and requested assistance.

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## EDO Scenario #1 (Continued)

- What now?
- Is there reasonable cause for an Emergency Detention?
- Would a JP be required? If so, why? If not, why?
- Who continues the transportation at this point? LE? EMS?

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## EDO Scenario #2

29-year-old female who presented with symptoms of depression. She stated that she had daily crying spells, felt sad "all the time", had trouble sleeping at night, and was over-eating. She reported that her sleeping was disturbed and that it frequently took her several hours to fall asleep, that some nights she could not fall asleep at all, and if she did, she slept for only a few hours. She stated that she spent the time awake "thinking" and "worrying". She acknowledged that some of her worries included thoughts that she was not a good mom, and she felt that she was a problem to her husband. She reported that she thought about her family of origin and her unsatisfactory relationship with her mother. She stated that she thought her depression had worsened after the birth of her third child 10 months ago. During the initial interview, she noted that she felt "all right, always down". The "all right" response came out immediately, almost automatically. After a pause, she added, "always down". She revealed that she was constantly thinking and worrying and that she felt "like everyone is looking at me". She denied suicidal behavior and ideations. She said it would be nice to run away from her problems.

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## EDO Scenario #2 (Continued)

- What now?
- Is there enough reasonable cause for an emergency detention? If so, why? And, if not, why not?
- What would your response be in this situation?

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## EDO Scenario #3

An adult male complained of hearing voices for the past 10 months and loss of appetite. He also complained that he roamed around town. He exhibited apprehensive behavior, fatuous laughter, and hesitancy. He paced to and from one spot to the other while walking. His mood was depressed and his affect constricted. He experienced auditory hallucinations. He complained of hearing voices and engaged in third-person conversations involving both a man and a woman. He also complained that he heard people talking about him and insulting him, some of whom he knew. He was suspicious and felt uneasy with others. He believed that he had been targeted. His thought content revealed paranoid delusions and delusions of reference.

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## EDO Scenario #3 (Continued)

- Emergency Detention?
- Why or Why Not?

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## EDO Scenario #4

Adult male, mid 60's, divorced, living alone, admitted to the hospital in a near comatose condition due to an overdose of medications and alcohol intoxication.

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## EDO Scenario #4 (Continued)

- Would the hospital request a mental health warrant?
- Is a warrant necessary or could a LE EDO be sufficient?
- Is there reasonable cause for emergency detention?
- Do you need more information?

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## EDO Scenario #4 – Additional Information

He is a heavy drinker and has been unemployed for the past three months because of his drinking. He explained he's been feeling increasingly depressed since losing his job. He explains that for the past two weeks, he has suffered from insomnia, anorexia, and a ten-pound weight loss. He explains that he wants to die and that he has been contemplating suicide for at least a week and planned the overdose. He explained that he needed to "get drunk" before taking the pills because "I didn't have the guts" to kill himself. He is frustrated and unhappy that the suicide attempt failed. He states that "nobody can help me" and he sees no way to help himself. He denies having any close relationships and doesn't care what others might think or feel if he committed suicide. He views death as a relief.

► **What now?**

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