

Mental Health Detention

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Travis County Probate Court No. 2

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Resources

- TJCTC Website
 - www.tjctc.org
 - Magstration Deskbook Ch. 3, Section C; forms; self-paced modules; recordings for credit
- Judicial Commission on Mental Health
 - <https://www.texasjcmh.gov/>
- Health and Human Services LMHA and BHA Information
 - <https://www.hhs.texas.gov/providers/behavioral-health-services-providers/local-mental-behavioral-health-authorities>
- Texas Constitution and Statutes
 - <https://statutes.capitol.texas.gov/>

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Agenda

- Key Definitions
- Overview of Process
 - For specific Emergency Detention Warrant procedures, see TJCTC Magstration Deskbook Ch. 3, Section C
- Scenarios
- Roundtable Discussion

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Key Definitions

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Local Mental Health Authority (LMHA)

- An entity to which the executive commissioner of the HHS Commission delegates the executive commissioner's authority within a specified region for supervising and ensuring mental health service.
- LMHA and LBHA map (texas.gov)
 - <https://www.hhs.texas.gov/sites/default/files/documents/services/mental-health-substance-use/local-mental-health-authority-service-areas.pdf>

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Mental Health Facility

- An inpatient or outpatient mental health facility operated by DSHS, a federal agency, political subdivision, or any person;
- A community mental health and mental retardation center or a facility operated by a community center (language used in the statute); or
- Identifiable part of a general hospital that provides diagnosis, treatment, and care for persons who are mentally ill.

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Mental Illness

- For purposes of an emergency mental health warrant, a mental illness is “an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that... substantially impairs a person’s thought, perception of reality, emotional process, or judgment; or...grossly impairs behavior as shown by recent disturbed behavior.”

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Overview of Process

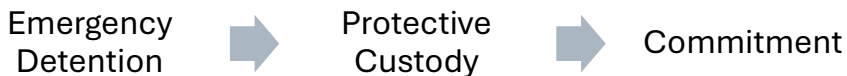
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Criminal vs. Civil Detention

- **Criminal:** Someone is arrested and accused of a crime. Mental health treatment is ordered by a magistrate/judge so that the defendant can be in a better place to follow bond conditions, be restored to competency to stand trial, and/or come out of a mental health crisis so as to not recidivate.
- **Civil:** A court orders someone to be held against their will for mental health evaluation or treatment because they present a danger to themselves or others.
 - A court process is involved instead of a purely medical process because patients have the right to due process before being involuntarily committed for mental health treatment.
 - ***This is the focus of this class.***

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Civil Commitment Big Picture



Crisis Help

Get to the hospital for examination (& stabilization if needed)

Hold on

Stay in a safe place and receive treatment while we get to a final hearing.

Hearings (Temporary and Final)

Determines:

- Inpatient / Outpatient
- Temporary / Extended

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Civil Commitment Process

Emergency detention w/o warrant by peace officer or **emergency detention warrant issued by magistrate** (only part of process that generally involves JP)



Patient transported by law enforcement to facility for preliminary exam.



If criteria met, Order of Protective Custody (OPC) is requested.



If judge enters OPC, Probable Cause (PC) hearing held.



If judge finds PC, commitment hearing set.



At commitment hearing, judge determines nature/length of commitment.

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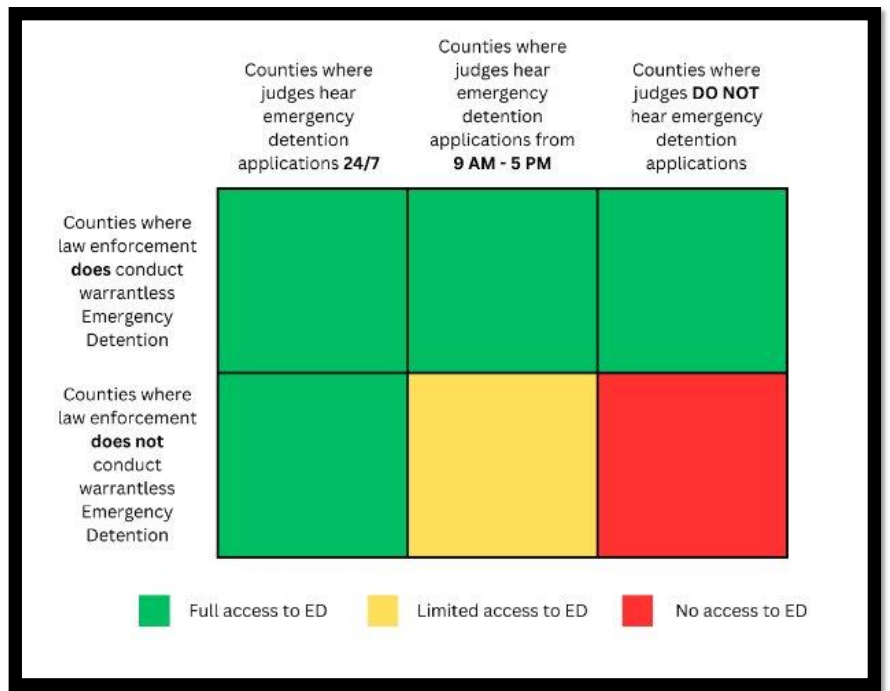
Which Courts Do What?

- Varies by county.
- Generally, any magistrate can handle Emergency Detention Warrants (including JPs).
 - A Court with Probate Jurisdiction can issue an administrative order designating which courts in the county will handle Emergency Detention Warrants. (*HSC Sec. 573.012(a)*)
 - Even if you can do them now, that could change. Make sure you know if your county has an administrative order about this.
- The rest of the process is generally handled by Statutory Probate Court, County Court at Law, or Constitutional County Court.

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Emergency Detention w/o a Warrant

- Peace officer can do emergency detention without a warrant if criteria are met:
 - Mental illness;
 - Substantial risk of serious harm;
 - Insufficient time for warrant.
- HSC Sec. 573.001



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Emergency Detention With a Warrant

The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe based on the application 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.

Reminder: for additional details regarding all of the procedures for request/issuance of the warrant, see TJCTC Magistration Deskbook Ch. 3, Section C.

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Scenarios

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Scenario #1

A doctor submits an electronic application for an emergency detention warrant, but the magistrate prefers for all applications to be presented in person.

- Can the magistrate refuse to accept the electronic application?

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Scenario #2

A patient was brought to a hospital due to a mental health crisis, but now they do not want to stay at the hospital. The hospital has requested an EDW to keep them there for a preliminary exam. A fellow JP tells you that there's nothing you can do, because the EDW just orders law enforcement to transport a person to a facility, not keep them at one.

- Is this accurate?

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Scenario #3

You receive an application from a nursing home for an EDW on one of the patients there.

- Can a nursing home request an EDW?
- What is important to pay attention to regarding whether the patient “evidences mental illness?”

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Scenario #4

You receive an application for an EDW stating that the person has depression and threatened to kill themselves tomorrow.

- Should it be granted?
- What if the application says that they threatened to do it one week ago?

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Scenario #5

A JP is having trouble getting EDWs executed in their county. Local law enforcement is stretched thin and is having a hard time executing the warrants due to the amount of time the officer has to spend at the hospital while the person is screened.

- Can law enforcement refuse to execute an EDW?
- What change from the 2023 legislative session might help with this problem?

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Scenario #6

Your court receives a record request for the records related to an EDW that you issued.

- Can this record be released?

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Roundtable Discussion

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What Are You Seeing in Your Counties?



Issues / challenges?



Solutions / best practices?

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