
Responding to the Mentally Ill: A Guide for Texas Peace Officers

Houston Police Department

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Houston Police Department

"Honor, Integrity, Respect"

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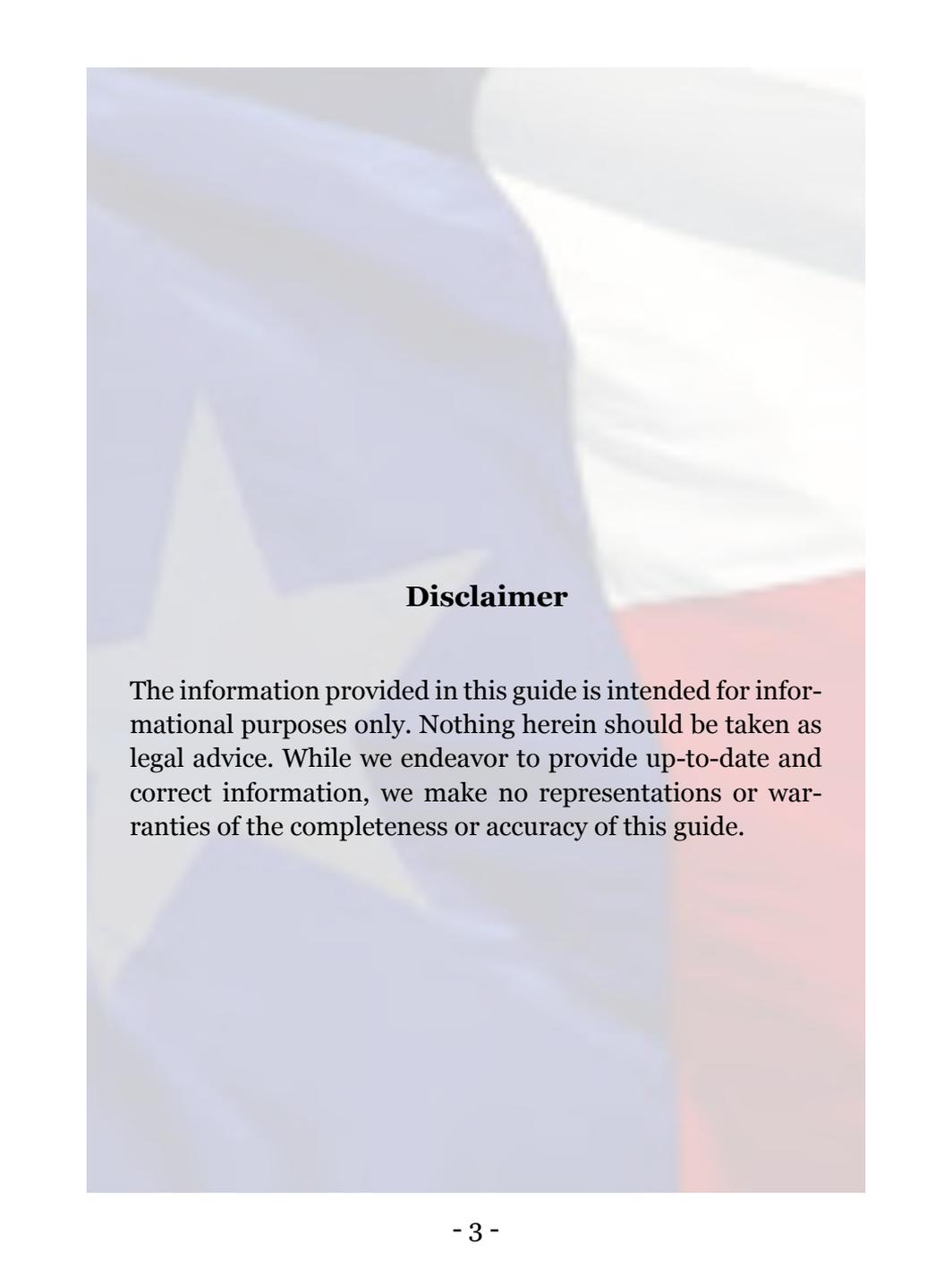
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Disclaimer

The information provided in this guide is intended for informational purposes only. Nothing herein should be taken as legal advice. While we endeavor to provide up-to-date and correct information, we make no representations or warranties of the completeness or accuracy of this guide.

Foreword

Law enforcement personnel across the state have increasingly become the first responders to individuals in serious mental health crises. Because of this, the Texas Legislature has granted peace officers unique authority and responsibility under the Texas Health and Safety Code, Subtitle C, the Mental Health Code. This includes:



- The authority to apprehend and transport an individual for an involuntary examination when that individual meets certain criteria and the person is unable or unwilling to consent to the examination.
- The authority to use reasonable force to make the apprehension and to transport.

Although responding to the mentally ill is a significant part of policing today, it is a relatively new role that is both complex and challenging. Some of these complexities and challenges include a non-traditional law enforcement approach and mindset; a Mental Health Code that has not been revised since 1985, before this became a law enforcement issue; and a lack of mental health resources.

This document is provided to help guide Texas peace officers in responding to individuals in serious mental health crises, to help officers understand and navigate the Texas Health and Safety Code, and to provide information and discussion on some of the most problematic issues experienced by officers across the state.

Periodic reference is made to the Florida Baker Act, which is comparable to Texas' Health and Safety Code. Reference is made to the Baker Act because it addresses many of the problems/issues facing Texas peace officers that the Texas Health and Safety Code does not address. We believe the Florida Baker Act is informative in these areas.

The Houston Police Department is pleased to provide this resource to you. I hope you find it helpful in responding to individuals in serious mental health crises safely, professionally, and humanely.

Art Acevedo

Art Acevedo
Chief of Police
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The Golden Rule

Treat the mental health consumers you respond to as you would like your loved ones treated.

Emergency Detention

Q. What are the criteria for initiating an emergency detention under the Health and Safety Code?

A peace officer, without a warrant, may take a person into custody if the officer believes that the person is mentally ill and because of that mental illness there is a substantial risk of serious harm to the person or to others, unless the person is immediately restrained, and the officer believes there is not sufficient time to obtain a warrant before taking the person into custody. Danger to self or others may be determined based on the person's behavior or severe emotional distress and deterioration in the person's mental condition to the point they cannot be left on their own. Since the mentally ill person has been found by the peace officer to be in need of immediate restraint due to the substantial risk of harm to self or others, it is evident that under emergency circumstances there is seldom, if ever, sufficient time to get a warrant. After taking the person into custody, the officer shall immediately transport the person to the nearest appropriate inpatient mental health facility or a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

Section 573.001 Health and Safety Code

Q. What warrant is the Code referring to?

A Judge's or Magistrate's Order for Emergency Apprehension and Detention. An adult may file a written application for the emergency detention of another person.

Section 573.011 Health and Safety Code

Q. Can the risk of harm to self be due to self-neglect?

Yes. If a person is not caring for himself and his health is deteriorating to the point there is a substantial risk of serious harm to himself, he meets the criteria for an emergency detention. Examples include: not eating, not drinking fluids, medical issues that are not being addressed, etc.

Q. What if I take a person into custody and it is later determined his behavior is the result of substance abuse or a medical problem and not mental illness? Am I liable in any way?

Peace officers are not trained to or expected to diagnose mental illness. According to Dr. Daryl K. Knox, MD, Chief Medical Officer of The Harris Center for Mental Health and IDD, people may appear mentally ill due to drugs, medical problems, brain in-

juries, etc. Doctors oftentimes are not able to determine the cause of the behavior without blood tests to determine if there are drugs in the person's system, infection, brain injury, etc.

The Health and Safety Code states: "A person who participates in the examination, certification, *apprehension, custody, transportation, detention*, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action."

Section 571.019 (a) Health and Safety Code

Q. What are some behaviors/conduct to look for when trying to determine if the person meets the criteria for an emergency detention under the Health and Safety Code?

Behaviors: rapid speech, flight of thought, no eye contact, quick movements, disconnected speech patterns, constant movement, difficulty concentrating, swift and frequent mood changes, disorganized thoughts, disoriented to time and place, acts of violence, cutting self, combative/aggressive behavior, inappropriate dress, nudity.

Hallucinations: sees people who are not there, hears voices telling them to hurt themselves or others, reports that the televi-

sion is suggesting harm to others, turning the head as if listening to an unseen person.

Self-Care Issues: insomnia or excessive sleep, has not eaten for days, not taking prescribed medications, home is in disarray, neglects household, neglects personal hygiene to the point of putting self/others at risk.

Feelings: low self-esteem with feelings of hopelessness or helplessness, flat affect (not reacting with much feeling or interest), extreme, excessive and unwarranted guilt/shame.

Suicidal Risks: has weapons or access to weapons, speaks about previous attempts, makes direct comments about dying or hurting self, evidence of previous attempts such as scars on the wrists.

Elderly Issues: wandering at night, leaving things on stove unattended, not eating or sleeping or caring for personal needs, unrealistic fears, uncontrollable anxiety, confusion, quantity and age of unused foods in the home.

Substance Abuse: abuse of prescribed medications, use of alcohol or illegal substances, especially if while taking medications.

Q. Does a peace officer have to personally see the behavior of the person to justify taking him/her into custody for an emergency detention under the Health and Safety Code?

No. The Code states "The peace officer may form [his/her] belief that the person meets the criteria for apprehension from a representation of a credible person."

Section 573.001 (c) (1) Health and Safety Code

If relying on a credible person, that person's information is documented on the *Notification of Emergency Detention* form.



Stabilize the scene using de-escalation techniques

"Officers should approach and interact with people who may have mental illness with a calm, non-threatening manner, while also protecting the safety of all involved."

- Criminal Justice/Mental Health Consensus Project
Council of State Governments
June 2002 - Page 41

De-Escalation Techniques

Officers ***should do*** the following:

- Remain calm and avoid overreacting.
- Indicate a willingness to understand and help.
- Speak simply and briefly, and move slowly.
- Remove distractions, upsetting influences, and disruptive people.
- Understand a rational discussion may not take place.
- Be friendly, patient, accepting, and encouraging.
- Remain firm and professional.
- Be aware a uniform, gun, and handcuffs may frighten the person.
- Reassure the person that no harm is intended.
- Recognize a person's delusions or hallucinations are real to him/her.
- Announce actions before initiating them.
- Gather information from family or bystanders.
- Give space; do not crowd the person.
- Introduce yourself.
- Find out the person's name and use it throughout interaction.
- Be patient.
- Focus on the person and use active listening.
- If the person is suicidal, discuss it with him/her.

- Emphasize the finality of committing suicide.
- Ask how you can help.

Officers ***should not do*** the following:

- Move suddenly, give rapid orders, shout.
- Force discussion.
- Maintain direct, continuous eye contact (staring).
- Touch the person (unless essential to safety).
- Crowd the person or move into his/her zone of comfort.
- Express anger, impatience, or irritation.
- Assume that a person who does not respond cannot hear.
- Use inflammatory language, such as "crazy," "psycho," or "mental."
- Challenge delusions or hallucinations.
- Play along with the person's delusions.
- Make promises you cannot keep.
- Lie.

Q. Should we sign an emergency detention based on a social workers recommendation?

It depends. As mentioned above, Texas peace officers may sign an emergency detention based on credible third party information. Because of their expertise in mental health, we should not ignore or overrule the recommendation of a mental health professional. It is better to err on the side of caution and take the person for an evaluation.

However, mental health professionals have to understand that Texas peace officers may take a person into custody involuntarily for an emergency detention only if the officer believes that the person is mentally ill and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained, and the officer believes there is not sufficient time to obtain a warrant before taking the person into custody. Sometimes, mental health professionals want a person taken into custody for emergency detention when the person does not meet these criteria. In these situations, we have to inform the mental health professional what we can and cannot do under the Texas Health and Safety Code and explain that we do not have the authority to take individuals into custody involuntarily if they do not meet the dangerousness criteria in the Code, even though they may be very ill.

Q. Can an emergency detention be completed if an individual is other than suicidal or homicidal?

Yes. The person may pose a substantial risk of serious harm to self or others without being suicidal or homicidal. An example is a person who is neglecting himself to the point that his health is at risk. The person may not be suicidal but, because of his mental illness, he is not adequately caring for himself. Another example is a person who is running on a freeway, almost getting hit by cars and trucks. The person may not be homicidal or suicidal but psychotic and may not realize he is on a freeway.

Q. Do I have to inform the person of the reason I am detaining him/her?

Yes. Peace officers shall immediately inform the person orally in simple, nontechnical terms of the reason for the detention and that a staff member of the facility will inform the person of his/her rights within 24 hours after the person is admitted to a facility.

Section 573.001 (g) (1) (2) Health and Safety Code

Q. When I transport a person to a facility on an emergency detention, does that mean the person will be treated? Does it mean the person is going to be committed?

An emergency detention does not guarantee admission, treatment, or commitment. During the evaluation, the mental health/medical personnel will decide if treatment is necessary and will decide if the person needs commitment.

Q. In our agency, we have to wait for a mental health professional to come to our scene to determine if the person meets the criteria for an emergency detention. Is this a requirement of the Health and Safety Code?

No. This requirement is not in the Health and Safety Code; it is a local requirement in some jurisdictions. Many officers across the state take individuals into custody for emergency detention with no evaluation by a mental health professional. All peace officers have the power to decide if the person meets criteria, take him/her into custody, and transport for evaluation.

Q. How long can a person be held in a facility on a Texas Peace Officer's Notification of Emergency Detention?

A person accepted for preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility, unless a written order for protective custody is obtained. The 48-hour period includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination.

Section 573.021 (b) Health and Safety Code

Q. Can the facility hold the person longer?

Yes, the facility may. The judge or designated magistrate may issue an Order of Protective Custody if the judge or magistrate determines that a physician has stated his opinion, and the de-

tailed reasons for his opinion that the proposed patient is mentally ill, and the patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending a hearing.

Section 574.022 (a) (1) (2) Health and Safety Code

The hearing must be held no later than 72 hours after the time that the proposed patient was detained under a protective custody order.

Section 574.025 (b) Health and Safety Code

Liability

Q. If I take a person into custody for an emergency detention and have to drive that person to El Paso State Hospital from east Texas and staff at the hospital determine he does not meet the criteria, which means they do not accept him, and I have to drive him back to east Texas, am I liable in any way?

No, as mentioned above, the Texas Health and Safety Code states: "A person who participates in the examination, certification, *apprehension, custody, transportation, detention,* treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable."

Section 571.019 (a) Health and Safety Code

We have spoken with probate judges across the state and none are aware of any lawsuit against an officer for the type of situation mentioned above. Where liability is a concern is when an officer does not take the person for help when he/she is in need of it and after the officer leaves the scene the person harms him/herself or others.



Importance of Collaboration

"The single most significant common denominator shared among communities that have successfully improved the criminal justice and mental health systems' response to people with mental illness is that each started with some degree of cooperation between at least two key stakeholders - one from the criminal justice system and the other from the mental health system."

- Criminal Justice/Mental Health Consensus Project

Council of State Governments

June 2002

Executive Summary, Section IV, p. xx

Response to Resistance

Q. Crisis intervention training, with the goal of verbally de-escalating individuals in serious mental health crisis, has become popular across the state. I have had crisis intervention training and whole heartedly endorse it. It has helped me verbally de-escalate the vast majority of situations I have encountered involving individuals in serious mental health crisis, rather than having to use force. However, once in a while, the techniques do not work and I do have to resort to physical force. What force may I employ to take individuals into custody for emergency detention when they have committed no crime?

As you say, crisis intervention training has been proven to work in the majority of situations. It is not perfect or infallible, however; you may have to respond to resistance in some situations. The goal is to provide care and treatment for individuals in serious mental health crisis. You may respond to resistance to the extent necessary to take the person into custody as long as the response is reasonable.

Q. May we handcuff a person we take into custody on an emergency detention who has committed no crime?

Yes. The use of handcuffs is not addressed in the Health and Safety Code. It is addressed differently by different agencies. Some agencies do not handcuff unless it is absolutely necessary.

Other agencies routinely handcuff as an officer safety precaution. Follow your department's policy.

If you do restrain the individual, you must note this on the *Notification of Emergency Detention* form. There is a question on the form: "Was the person restrained in any way?" You check off "yes" or "no."

Section 573.002 (d) Health and Safety Code

Q. May we force entry to take a person into custody on an emergency detention?

This question is frequently asked by Texas peace officers. Unfortunately, this issue is not addressed in the Health and Safety Code. You need to follow your department's policy.

Possible sources to help make a decision on this issue are: supervisors, the district attorney's office, and/or a probate judge. However, if exigent circumstances exist, such as an officer looking through a window and seeing an individual passed out on the kitchen floor and a pill bottle on the kitchen table, an officer has the power to enter without a warrant to prevent imminent harm.

These situations may be especially problematic for officers because in most cases, the person has committed no crime. Also, if the person is paranoid, forcing entry may trigger the fight-or-flight response in the person, which could lead to a response to resistance situation.

Paperwork

Q. What paperwork are we required to complete when taking a person to a facility under an emergency detention?

The only paperwork that can be required by any facility is the one-page *Notification of Emergency Detention* form (Appendix B). On the form it states: "*A mental health facility or hospital emergency department may not require a peace officer to execute any forms other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.*" A copy of the form can be found by accessing Section 573.002(d) of the Texas Health and Safety Code.

Section 573.002 (d) Health and Safety Code

Q. Does the new one-page *Notification of Emergency Detention* form have to be notarized?

No. There is no requirement or space on the state-mandated form for notarization.

Q. Often, we have a person who attempts suicide by overdosing. We immediately call for our emergency medical personnel, if they have not already been dispatched. They will transport the person to our local hospital. We do a follow-up at the hospital. Often, the hospital staff say they do not need

us to complete the *Notification of Emergency Detention* form. Is this appropriate? Should we be completing the form?

We do not need to complete the form if the hospital staff state they do not need it. We have the authority to take a person into custody and transport that person to a facility for evaluation. In this situation, the person was taken by emergency medical personnel to a hospital where he/she is being evaluated.

We recommend you make an incident report documenting that you verbally notified hospital staff that the person attempted suicide and that hospital staff stated they did not require the form. We also recommend you include the name of the hospital staff member(s) you spoke to.

Voluntary Admission

Q. Are Texas peace officers under any obligation to transport individuals who do not meet the criteria for emergency detention for voluntary admission to a psychiatric facility?

Texas peace officers have no legal obligation to transport any person who does not meet the criteria for emergency detention; however, officers may want to transport the person to help prevent him/her from decompensating to a more serious mental health crisis.

Some individuals meet the criteria for an emergency detention

and seek voluntary mental health services. An example is a person who is suicidal, realizes it, and calls for help. He or she may call the police for voluntary transport to a psychiatric facility. Even though this person is voluntary, he/she meets the criteria for emergency detention and it is our duty to transport him/her. The completion of a Notification of Emergency Detention form is not always required in these situations.

Follow your department's procedures in these situations.

Q. Periodically, I will transport a person who is suicidal and voluntary. Because the person is voluntary, I do not complete the *Notification of Emergency Detention* form. When I arrive at the facility, a staff member asks me to complete the *Notification of Emergency Detention* form. Why is this?

This happens in Houston also. Our mental health personnel explain that they ask us to complete the *Notification of Emergency Detention* form because if the person is at the facility voluntarily, he/she may leave at any time. By completing the form, the facility can detain the person and ensure he/she is evaluated.

Juveniles

Q. At what age may a person request mental health services without a parent or guardian?

A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request.

Section 572.001 (a) Health and Safety Code

Q. May we take a juvenile into custody on an emergency detention?

Yes. You must use the same criteria as when dealing with an adult. If you believe that the juvenile is mentally ill and because of that mental illness there is a substantial risk of serious harm to the juvenile or to others, unless the juvenile is immediately restrained, and you believe there is not sufficient time to obtain a warrant.

Q. What if the juvenile's parents or guardian are not present?

You may take the juvenile into custody if he/she meets the criteria for an emergency detention, regardless of the presence of the parent/guardian.

Seizure of Firearms

Q. What if the person I am detaining has a firearm in his/her possession?

Texas peace officers have the authority to immediately seize any firearm found in possession of the person being detained for an emergency detention. This authority was granted to Texas peace officers through Senate Bill 1189 (83rd Texas Legislature). After seizing a firearm, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure. This authority took effect September 1, 2013. (For more information on the seizure of firearms see Appendix A)

Section 573.001 (g) Health and Safety Code

Q. What if the person has weapons in his/her house? Should I confiscate those weapons also?

As noted above, Texas peace officers have the authority to seize a firearm in the person's **possession** when being taken in on an emergency detention. The law does **not** give peace officers the authority to seize weapons in the person's house. Follow your department's policy regarding the removal of weapons from a residence.

Transportation

Q. Where should I transport the person when detained under the Mental Health Code?

The Code states the officer shall immediately transport the person to the nearest appropriate inpatient mental health facility or a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

Section 573.001 (d) (1) (2) Health and Safety Code

Q. Can a person detained for an emergency detention be taken to a jail?

No. The Code states a jail or similar detention facility may not be deemed suitable except in an extreme emergency (hurricane, flood, etc.). If a person is detained in a jail or non-medical facility in an extreme emergency, s/he shall be kept separate from any person who is charged with or convicted of a crime.

Section 573.001 (e) (f) Health and Safety Code

Remember, we are talking about individuals who are being detained on an emergency detention because of their mental illness. There are no criminal charges involved. If, however, a person who is in serious mental health crisis commits a serious crime,

this is a different matter. If the district attorney's office accepts criminal charges on this person, this becomes a criminal matter and the person should be placed in jail.

Mentally ill prisoners present a problem for many agencies as many city and county jails do not have mental health professionals working in them. Because of this, the prisoner may have to be taken to a facility to be stabilized before taking him/her to jail. Agencies handle this differently across the state. Follow your department's policy regarding the filing of criminal charges on a person in mental health crisis.

Q. Can a civilian ever transport a person for emergency detention?

Yes. The Health and Safety Code states: "A guardian of the person or ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that the ward is mentally ill and because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained."

Section 573.003 (a) (1) (2) Health and Safety Code

Court-Ordered Mental Health Services

Q. We are called to transport a person on a court order. Shouldn't this be done by constables since this is a civil process? Are Texas peace officers the only ones who may transport these individuals?

Several different individuals may transport a patient for court-ordered mental health services in the following order of priority:

- a certified mental health officer
- the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient
- a representative of the local mental health authority
- a qualified transportation service provider
- the sheriff or constable
- a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses

Section 574.045 Health and Safety Code

Q. I have been told that when we transport a patient on a court order, we may not use a marked vehicle or be in uniform. Is this correct?

Yes. The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

Section 574.045 (e) Health and Safety Code

Q. May we restrain a patient we are transporting on a court order?

The Health and Safety Code states the patient may not be physically restrained *unless* necessary to protect the health and safety of the patient or of a person traveling with the patient.

Section 574.045 (g) Health and Safety Code

Q. Can a peace officer fill out an application for detention?

Yes. The Health and Safety Code states an adult may file a written application for the emergency detention of another person.

Section 573.011 Health and Safety Code

Q. If we are picking a person up on a court order, do we have the authority to force entry?

No. This is a civil court order/warrant. You have the right to force entry only if exigent circumstances are known to you, such as looking through a window and seeing a person about to harm himself. As mentioned above, this question is frequently asked by Texas peace officers. Unfortunately, this issue is not addressed in the Health and Safety Code. You need to follow your department's policy. Possible sources to help make a decision on this issue are: supervisors, district attorney's offices, and probate judges



A different mindset

"Non-engagement or disengagement are tactics that can be used if the member [officer] determines that contact or continued contact with the person will result in an undue safety risk to the person, the public and members ..."

- Portland Police Bureau

Mental Health Crisis Response Directive

850.20, Mental Health Crisis Response, 5.1.6.

EMTALA

Q. I have heard officers referring to federal EMTALA laws. Could you explain what these are?

The Emergency Medical Treatment and Active Labor Act (EMTALA) is a statute that governs when and how a patient may be (1) refused treatment or (2) transferred from one hospital to another when he is in an unstable condition.

EMTALA was passed as part of the Consolidated Budget Reconciliation Act of 1986, and it is sometimes referred to as "the Cobra Law." In fact, a number of different laws come under that general name.

EMTALA is Section 1867(a) of the Social Security Act, within the section of the U.S. Code that governs Medicare.

EMTALA applies only to "participating hospitals" under Medicare - i.e., to hospitals that have entered into "provider agreements" under which they will accept payment from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) under the Medicare program for services provided to beneficiaries of that program. In practical terms, this means that it applies to virtually all hospitals in the U.S., with the exceptions of the Shriners' Hospital for Crippled Children and many military hospitals. Its provisions apply to all patients, and not just to Medicare patients.

The avowed purpose of the statute is to prevent hospitals from rejecting patients, refusing to treat them, or transferring them to "charity hospitals" or "county hospitals" because they are unable to pay or are covered under the Medicare or Medicaid programs.

Source: emtala.com

The following two websites are sources for additional information on EMTALA:

- CMS.gov
- emtala.com

EMTALA states that any patient who "comes to the emergency department [requesting] ...examination and treatment for a medical condition ...[must be provided with]... an appropriate medical screening examination... [to determine if s/he is suffering from an] emergency medical condition." If s/he is, then the hospital is obligated to either provide him/her with treatment until s/he is stable or to transfer him/her to another hospital in conformance with the statute's directives.

In essence, then, the provisions of the statute are:

1. It imposes an affirmative obligation on the part of the hospital to provide a medical screening examination to determine whether an 'emergency medical condition' exists;

2. It imposes restrictions on transfers of persons who exhibit an "emergency medical condition" or are in labor, which restrictions may or may not be limited to transfers made for economic reasons;

3. It imposes an affirmative duty to institute treatment if an "emergency medical condition" does exist

Q. What is considered an "emergency medical condition" according to EMTALA?

A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

1. placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

2. serious impairment to bodily functions, or

3. serious dysfunction or any bodily organ

Q. Is a psychiatric crisis considered an emergency medical condition?

Yes

Q. Does a law enforcement officer have to return to a hospital to transfer the person once s/he has been medically cleared?

No. Once the person is taken to the hospital, federal EMTALA law requires the hospital to arrange for appropriate transfer, when necessary. EMTALA preempts any state law with which it is in conflict. EMTALA requires that a hospital accept any person who presents or is brought to the emergency room for the purpose of per-

forming a medical screening. If the ED staff determine the person has an emergency medical condition (**including psychiatric and substance abuse emergencies**), the hospital is then responsible for the person until the emergency has been stabilized, including the person's discharge or transfer from the hospital to another facility that has the capability and capacity to manage the person's condition. This includes, among other responsibilities, the duty to arrange a safe and appropriate method of transportation to the destination facility.

Q. Are there penalties for violating these requirements?

Yes. A hospital which negligently violates the statute may be subject to a civil money penalty (i.e., a fine, but without criminal implications) of up to \$50,000 per violation. If the hospital has fewer than 100 beds, the maximum penalty is \$25,000 per violation.

A physician who is responsible for providing an examination or treatment, including but not limited to an on-call physician, may be liable for a civil money penalty for signing the medical certificate if s/he knew or should have known that the benefits of transfer did not in fact outweigh the risks of transfer, or if s/he misrepresents

the patient's condition or the hospital's obligations under the statute.

Q. What is the phone number to call to make a complaint against a hospital for a violation of the EMTALA laws?

1-888-973-0022

The following article from *The Police Chief* magazine discusses EMTALA and is addressed to law enforcement personnel:

"How Police Can Use Hospital Laws to Speed Processing in Hospital Emergency Departments" by Dean J. Collins, Assistant Chief, Brookfield, Wisconsin, Police Department, and IACP Life Member; and Stephen A. Frew, JD, Vice President and Risk Consultant, Johnson Insurance Services, Madison, Wisconsin.

Note: Increasingly law enforcement agencies in Texas are utilizing EMTALA laws due to a lack of mental health resources in their communities, i.e., they are taking consumers in custody for an emergency detention to local hospital emergency departments rather than driving long distances to state or regional mental health facilities.



The need to be non-confrontational

"The essential difference between suspect encounter training, that officers traditionally receive, and how to approach the mentally ill is the need to be non-confrontational. Such a requirement to, in effect, switch gears is diametrically opposed to the way officers are routinely expected to control conflict. The same command techniques that are employed to take a criminal suspect into custody can only serve to escalate a contact with the mentally ill into violence."

- Police Magazine, "Handling the Mentally Ill: There are no shortcuts for officers"

March 1, 2000, by D. P. Van Blaricom

Medical Clearance

Q. The officers in our area have to wait with consumers while they are medically cleared before we can take the consumer to a mental health facility. Is this a requirement of the Health and Safety Code?

No. The acting Kerr County Attorney requested an Attorney General's Opinion on this issue in 2009. The summary of Texas Attorney General Greg Abbott's opinion states: *"An inpatient mental health facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under chapter 573, Health and Safety Code, to a medical facility for a medical evaluation prior to taking that person to the mental facility."*

However, there is no law preventing a facility from having this requirement. Some jurisdictions/facilities in the state have this requirement and some do not.

Attorney General Opinion No. GA-0753 (Appendix C)

Q. Medical clearance is a real problem in our area. It takes officers off of the street for hours. Are you aware of a state that has addressed this issue legislatively?

Yes. The state of Florida addressed this issue in the Baker Act, Chapter 394, Part I, Florida Statutes, also known as the Florida Mental Health Act. In the 2014 Baker Act User Reference Guide: The Florida Mental Health Act, it states: *"A law enforcement officer does not have to wait at a hospital or other receiving facility for the person to be medically screened, treated, or to have insurance verified. The officer's only duties are to present the person and the required paperwork and make a responsible handoff to the appropriate staff member. However, if the person is acting in a dangerous manner, beyond the ability of the facility staff to manage, the officer should stay to assist for a temporary period until hospital clinical or security staff can arrive. If the person has criminal charges, the officer's Department Policy should be followed."*

Mental Health Program Office & Department of Mental Health Law & Policy (2014). *2014 Baker Act Reference Guide: The Florida Mental Health Act*. Tallahassee, FL: Department of Children and Families, Mental Health Program Office; Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute

Hospital Security

Q. When we take a consumer to a hospital for medical clearance, the hospital tells us we have to wait with him/her as a security measure to ensure the person does not leave the hospital. Do we have to do this? Is this addressed in the Health and Safety Code?

This is not addressed in the Health and Safety Code and is handled differently across the state. The Bowie County Criminal District Attorney, by request of the Texarkana Chief of Police, requested an Attorney General's Opinion regarding a related issue in 2011. The request asked what agency is responsible for overseeing an individual in a hospital on an emergency detention - the agency who brought the individual to the hospital or the municipal law enforcement agency in whose jurisdiction the hospital is in? The Summary Attorney General's Opinion states: *"There is no provision in chapter 573, Texas Health and Safety Code, that expressly requires a particular law enforcement agency to oversee a mentally ill person once the person has been transported to a facility pursuant to section 573.002 emergency detention order. Because the Legislature has not enacted a statute that requires a specific law enforcement agency to oversee mentally ill persons, we cannot advise you that chapter 573 places a duty on any particular law enforcement agency over another."*

Attorney General Opinion No. GA-0877 (Appendix E)



The Control Paradox

By taking a less authoritative, commanding, physical, controlling approach with individuals in serious mental health crises you usually have more authority and control over them.

- Senior Police Officer Frank Webb
Houston Police Department

Prohibition of Firearms

Q. When we take consumers to our mental health facility for emergency evaluation we are told we are not allowed to take our firearms into the facility. Can the facility do this? Is this standard practice?

The prohibition of firearms from hospitals and mental health facilities is viewed negatively by most law enforcement personnel. This is not addressed in the Health and Safety Code. This is an administrative decision by the facility. It is standard practice, however, in virtually all facilities that we are aware of providing locked-down psychiatric services. If, however, the officer is responding to a call for service to that facility, the officer does **not** give up or secure his/her firearm.

Q. Did Florida also address this issue in its Baker Act?

Yes. In the 2014 Baker Act User Reference Guide: The Florida Mental Health Act, it states: *"The Baker Act prohibits firearms or deadly weapons from being brought onto the grounds of a hospital providing mental health services, including by law enforcement officers, unless specifically authorized by law or by the hospital administrator. Law enforcement officers may choose to lock their firearms in their vehicle prior to entering a facility or may place the weapons in a lock-box at the facility, if one exists."*

Mental Health Program Office & Department of Mental Health Law & Policy (2014). 2014 Baker Act Reference Guide: The Florida Mental Health Act. Tallahassee, FL: Department of Children and Families, Mental Health Program Office; Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute

State Hospitals

Q. How many state mental health hospitals are there in Texas and where are they located?

There are ten hospitals (eleven facilities as North Texas State has two campuses):

1. Austin State Hospital, Austin
2. Big Spring State Hospital, Big Spring
3. El Paso Psychiatric Center, El Paso
4. Kerrville State Hospital, Kerrville
5. North Texas State, Vernon Campus
6. North Texas State, Wichita Falls Campus
7. Rio Grande State Center, Harlingen
8. Rusk State Hospital, Rusk
9. San Antonio State Hospital, San Antonio
10. Terrell State Hospital, Terrell
11. Waco Center for Youth, Waco

(See map in Appendix H)

Q. How many beds are available in the state hospitals for people we bring in on emergency detention?

As of November 25, 2014, the total number of beds available in the state's mental health hospitals (all combined) for persons picked up by law enforcement on an Emergency Detention Order (civil beds) was 1,498. On that date, there were 1,112 patients in the facilities.

The number of beds available statewide for forensic patients (court-ordered) on that date was 965. Further, there were 1,105 patients on that date (they exceeded bed capacity).

The total patients - civil and forensic - on November 24, 2014, was 2,217. This lack of hospital beds is a problem for the state and is a primary reason for the long transports by peace officers. (See Open Records Request in Appendix F.)

Jail Diversion

Q. I have been hearing a lot lately about jail diversion. Why is this such a big issue?

Because the jails and prisons have been flooded with mentally ill prisoners, thereby becoming the insane asylums of the 21st century. As the number of psychiatric hospitals and psychiatric hospital beds have been significantly declining, both in Texas and nationally, the number of prisoners with serious mental illness

has been significantly increasing. The vast majority of these mentally ill prisoners are charged with petty, nuisance-type crimes, such as trespassing because they are looking for a place to sleep and shoplifting because they are hungry. Some mentally ill inmates are booked literally hundreds of times on these types of charges.

One example of the criminalization of the mentally ill is the Harris County, Texas jail. According to Captain Ronny R. Taylor of the Harris County Sheriff's Office Criminal Justice Command, the average daily population of the Harris County Jail between January and July 2015 was 8,800 inmates. During that time period, they averaged approximately 2,441 (27.48%) inmates per day on some type of prescribed psychotropic medication. The result is that the Harris County jail has become the largest mental health hospital in the state (refer to the number of patients in the Texas state mental health hospitals on previous page).

Inmates with mental illness are the most costly and problematic inmates. Problematic because it is difficult for them to follow the strict regimentation of the jail environment and costly because of the expensive psychotropic medications they take. Both mental health and criminal justice professionals believe it is best for all concerned for mentally ill inmates, *charged on petty crimes*, to be treated for their mental illness rather than incarcerated. Thus the move to divert, *when appropriate*, the mentally ill from the criminal justice system into treatment has become an important criminal justice issue.

The **key** to jail diversion is the patrol officer/deputy who takes the individual for treatment rather than jail, when appropriate.

Co-Responder Units

Q. I have heard people talking about co-responder units. Could you explain what they are and how they work?

A co-responder program is when you have a response to an individual in serious mental health crisis by both law enforcement and mental health personnel. In some programs, the officer/deputy responds and a mental health professional also responds and they meet on the scene. In other programs, such as in Houston, the officer and mental health professional ride together as partners.

Houston's program is called the Crisis Intervention Response Team (CIRT). The mental health personnel in Houston are all master's-level clinicians from The Harris Center for Mental Health and IDD. Houston's CIRT units respond to all Special Weapons and Tactics (SWAT) calls when available, conduct jail assessments (assess inmates exhibiting mental health problems to determine if they need to be removed from the jail) when available, respond to the most serious Crisis Intervention Trained (CIT) calls, check by with officers on scenes as a resource, and conduct proactive and follow-up investigations.



Time, patience, information, and ventilation

"Officers should first take time, if possible, to survey the situation in order to gather necessary information and avoid hasty and potentially counterproductive decisions and actions. Officers should avoid approaching the subject until a degree of rapport has been developed. All attempts should be used to communicate with the person first by allowing him to ventilate."

- Police Magazine, "Handling the Mentally Ill: There are no shortcuts for officers"

March 1, 2000, by D. P. Van Blaricom

Proactive Programs

Q. Most of what we do in police work is reactive; especially responding to the mentally ill. We tend to respond to the same people over and over again. Are there any proactive programs to deal with this issue?

Yes. The Los Angeles Police Department has a program called the Case Assessment and Management Program (CAMP). This program identifies and tracks repeat consumers and constructs customized responses to their problems in an attempt to keep them out of crisis. The program co-locates a police detective with psychologists and social workers from the county mental health agency in the police department facility. This team develops long-term solutions to an individual's needs on a case-by-case basis.

Houston has a similar program called the Chronic Consumer Stabilization Initiative (CCSI). An officer in the department's Mental Health Division works with case managers from The Harris Center for Mental Health and IDD to develop individualized strategies to keep Houston's most chronic consumers - those accounting for the most police calls for service - out of crisis and thus reducing or eliminating the need for future police response. Houston's program is extremely successful with an overall 60 percent reduction in police calls for service, hospitalizations, arrests, and other services/responses for the consumers on the program.

The consumers placed on these proactive programs are voluntary. These types of programs are not effective if the consumer does not want help.

Elopement

Q. I have heard the terms "elope" and "elopement" used in reference to mental health facilities. What do these terms mean in that context?

Dictionary.com defines elope as "to leave without permission or notification; escape: (of a person with a mental disorder or cognitive impairment) to leave or run away from a safe area or safe premises." Dictionary.com defines elopement as "an act or instance of leaving a safe area or safe premises, done by a person with a mental disorder or cognitive impairment." The Portland (Oregon) Police Bureau, in its Mental Health Crisis Response policy, defines elope as "To abscond, depart, leave, or walk away."

Q. Periodically, we are called to a mental health facility because a patient eloped. We are asked to try to find the person. How should we handle these requests?

If an adult is on voluntary status and **does not** meet the criteria for involuntary placement (emergency detention), law enforcement should not be notified by the facility. If the person is on voluntary status and **does** appear to meet the criteria for involuntary placement, law enforcement should be requested to take the person to a facility for evaluation. If the person elopes while on involuntary examination, law enforcement should be notified to take the person into custody for delivery to a facility for evaluation.

*Health Insurance Portability and Accountability Act
(HIPAA) Privacy Rule*

Q. What is the HIPAA Privacy Rule?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides that Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule sets out how and with whom PHI may be shared. The Privacy Rule also gives individuals certain rights regarding their health information, such as the rights to access or request corrections to their information.

Q. Who must comply with the HIPAA Privacy Rule?

HIPAA applies to health plans, health care clearinghouses, and those health care providers who conduct certain health care transactions electronically (e.g., billing a health plan). These are known as covered entities. Hospitals, and most clinics, physicians and other health care practitioners are HIPAA covered entities. In addition, HIPAA protects PHI held by business associates, such as billing services and others, hired by covered entities to perform services or functions that involve access to PHI.

Q. Who is not required to comply with the HIPAA Privacy Rule?

Many entities that may have health information are not subject to

the HIPAA Privacy Rule, including:

- employers
- most state and local police or other law enforcement agencies
- many state agencies like child protective services, and
- most schools and school districts.

**While schools and school districts maintain student health records, these records are in most cases protected by the Family Educational Rights and Privacy Act (FERPA) and not HIPAA. HIPAA may apply, however, to patient records at a university hospital or to the health records of non-students at a university health clinic.

Q. Under what circumstances may a HIPAA covered entity disclose PHI to law enforcement?

1. A HIPAA covered entity may disclose PHI to law enforcement with the individual's signed HIPAA authorization.

2. A HIPAA covered entity may also disclose PHI to law enforcement without the individual's signed HIPAA authorization in certain instances, including:

-To report PHI to a law enforcement official reasonably able to preempt or lessen a serious and imminent threat to the health or safety of an individual or the public

-To report PHI that the covered entity, in good faith, believes to be evidence of a crime that occurred on the premises of the covered entity

-To alert law enforcement to the death of the individual, when there is a suspicion that the death resulted from criminal conduct

-When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity

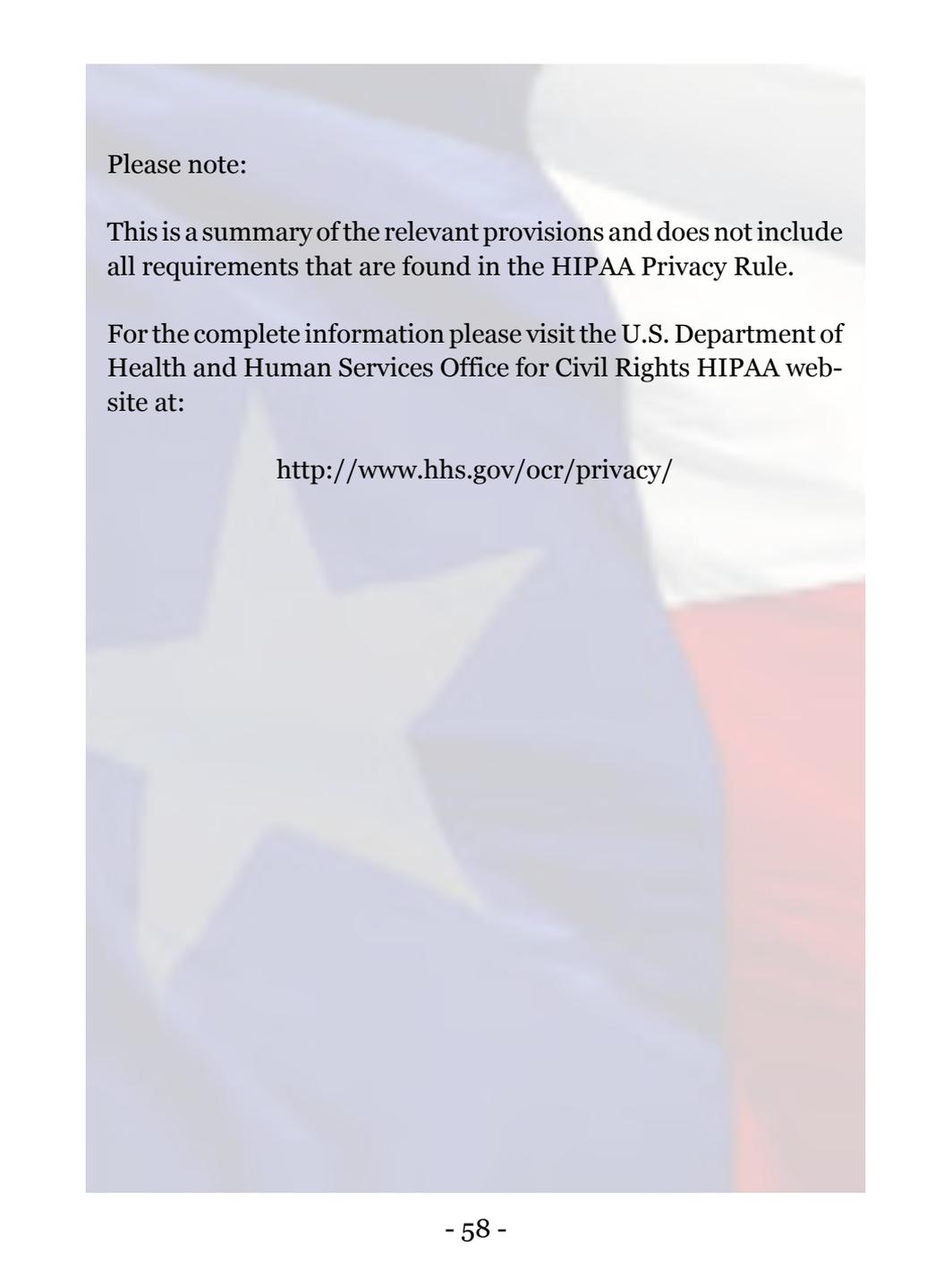
-To report PHI to law enforcement when required by law to do so (such as reported gunshots or stab wounds)

-To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used)

-To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person

-To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree)

**Child abuse or neglect shall be reported, even without a parent's agreement, to any law enforcement official authorized by law to receive such reports.



Please note:

This is a summary of the relevant provisions and does not include all requirements that are found in the HIPAA Privacy Rule.

For the complete information please visit the U.S. Department of Health and Human Services Office for Civil Rights HIPAA website at:

<http://www.hhs.gov/ocr/privacy/>



Appendices

Appendix A

Seizure of Firearms

Houston Police Department Procedures

The following are the procedures of the Houston Police Department for the seizure of a weapon in possession of a person taken into custody on an emergency detention.

- The patrol officer seizes the firearm.
- The officer completes the department's three-page *Receipt and Notice of Rights for Seized Firearms* form and provides the consumer with a copy.
- The officer receives authority from a supervisor to place the weapon in the Property Division. A copy of the *Receipt and Notice of Rights for Seized Firearms* form is provided to Property Division personnel.
- The officer completes an incident report.
- A copy of the incident report is sent to the Mental Health Division.
- The Mental Health Division's firearms investigator receives a copy of the report.

The firearms investigator does the following:

- Sends a certified letter of the seizure to the consumer and a family member or point of contact
- Conducts an ATF trace of the firearm and conducts an NCIC/TCIC check of the person
- Contacts the court and requests the disposition of the case
- If the person was not committed, provides written notice to the person that the firearm may be returned to him/her
- If the person was committed, provides written notice the person is prohibited from owning, possessing, or purchasing a firearm and that the person may petition the court that entered the commitment
- If prohibited, the firearm may be released to the person's designee

For more information on this process, see Article 18.191, Code of Criminal Procedure.

Houston Police Department Firearms Form (Page 1)

1 of _____



RECEIPT AND NOTICE OF RIGHTS FOR SEIZED FIREARMS

Incident# _____

Section 573.001, Health and Safety Code, Emergency Detention, authorizes a peace officer, without a warrant, to take a person into custody if the officer has a reason to believe and does believe that the person is mentally ill and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained and believes that there is not sufficient time to obtain a warrant before taking the person into custody. A peace officer who takes a person into custody may immediately seize any firearm found in possession of the person. After seizing a firearm the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Pursuant to the Texas Health and Safety Code, Chapter 573.001, Emergency Detention, the firearms listed below were seized from you on _____ (date).

List make, model, caliber, serial number and ammunition:

1. _____
2. _____
3. _____

NOTE: *Use Receipt and Notice of Rights - Additional Items* if extra fields are needed.*

Code of Criminal Procedure, Article 18.191, Disposition of Firearm seized from certain persons with Mental Illness, authorizes a law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article. The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency.

List an address of an immediate family member or point of contact:

1. Last, First M. _____ Address _____
 () _____ City, State Zip _____
 Phone number _____

Once approved for release according to the Code of Criminal Procedure, Article 18.191, all property will be available at:

The Houston Police Department Property Division
 1201 Washington Avenue
 Houston, Texas 77002
 (832) 394-4000

I acknowledge receipt of a copy of this notice

Date _____

Signature of Person Notified _____

Mailing Address _____

I, _____ (Officer's Name/Title) declare under penalty of perjury under the laws of the State of Texas, that I served the above named person with a copy of the above notice, and this declaration is executed on _____ (Date) at _____ (City), Texas.

Signature of Officer Serving Notice _____ Badge # _____

THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY

Houston Police Department Firearms Form (Page 2)



RECEIPT AND NOTICE OF RIGHTS FOR SEIZED FIREARMS

2 of ____

ADDITIONAL ITEMS

Incident # _____ - _____

List make, model, caliber, serial number and ammunition.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

I acknowledge receipt of a copy of this notice

Date

Signature of Person Notified

Mailing Address

I, _____
(Officer's Name/Title) declare under penalty of perjury under the laws of the State of Texas, that I served the above named person with a copy of the above notice, and this declaration is executed on _____ (Date)
at _____ (City), Texas.

Signature of Officer Serving Notice Badge # _____

THIS RECEIPT DOES NOT CONSTITUTE RECOGNITION OF LEGAL TITLE TO ABOVE PROPERTY

Houston Police Department Firearms Form (Page 3)

CODE OF CRIMINAL PROCEDURE Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection (f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee: (1) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(3) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.

Austin Police Department Firearms Form (Page 1)

Forms provided by Sergeant Michael King, Crisis Intervention Team, Austin Police Department, for inclusion in this Guide



AUSTIN POLICE DEPARTMENT NOTICE OF PROCEDURES REGARDING SEIZED FIREARM

Austin Police Department Incident # _____

On the date of _____ (Month/day/year) the following person, _____, (subject's name) was taken into custody under Health and Safety Code Section 573.001 and was in possession of a firearm that was seized for safe keeping by the Austin Police Department.

In accordance with Texas Code of Criminal Procedure Art 18.191(b), this is a written notice to the person listed above of the procedures and options for the return of the seized firearm by the Austin Police Department.

An investigation by the Austin Police Department has shown the following: (please check one)

- _____ (full name), MAY LAWFULLY POSSESS a firearm or ammunition and is not in violation of 18 U.S.C. Section 922(g).

If according to this letter you may lawfully possess a firearm please contact the following office for details on returning the seized firearm:

Austin Police Department Evidence Room
512-974-6690

- _____ (full name), is PROHIBITED FROM POSSESSING firearms or ammunition according to 18 U.S.C. Section 922(g).

If according to this letter you are prohibited from possessing firearms or ammunition please review the information on the next page regarding the procedures and options for the seized firearm. After reviewing this information please contact:

Austin Police Department Crisis Intervention Unit
512-854-3450 or 512-974-5000
715 E. 8th Street

WRITTEN REQUEST FOR THE RETURN OF THE FIREARM MUST BE RECEIVED BY THE AUSTIN POLICE DEPARTMENT NO LATER THAN _____ (DATE). PLEASE FOLLOW THE INSTRUCTIONS LISTED ABOVE AND CONTACT THE APPROPRIATE OFFICE REGARDING THE FIREARM.

Austin Police Department Firearms Form (Page 2)



AUSTIN POLICE DEPARTMENT **NOTICE OF PROCEDURES REGARDING SEIZED FIREARM**

Austin Police Department Incident # _____

On the date of _____ (month/day/year) the following person,
_____, (subject name) was taken into custody under Health
and Safety Code Sec. 573.001 and was in possession of a firearm(s) that was seized for safe keeping by the
Austin Police Department.

In accordance with Texas Code of Criminal Procedure Art 18.191(b), this is a written notice to the closest
immediate family member as identified by the person listed above or reasonably identifiable by the Austin
Police Department of the following procedures for the return of a seized firearm.

**Please contact the subject listed above and provide them with this
form on the law and procedures for disposition of firearm.**

**A WRITTEN REQUEST TO THE AUSTIN POLICE DEPARTMENT MUST BE SUBMITTED NO
LATER THAN 121 DAYS FROM THE DATE THIS NOTICE WAS MAILED,
_____ (DATE).**

**If you have any questions contact the
Austin Police Department Crisis Intervention Unit at:
512-854-3450 or 512-974-5000
715 E. 8th Street**

Austin Police Department Firearms Form (Page 3)



AUSTIN POLICE DEPARTMENT RECEIPT FOR SEIZED FIREARM AND PROCEDURES

Austin Police Department Incident # _____

On the date of _____ (Month/day/year) the following person,
_____, (subject's name) was taken into custody under Health
and Safety Code 573.001 and was in possession of a firearm that was seized for safe keeping by the Austin
Police Department.

The firearm(s) seized for safe keeping was identified as:

- 1) Make _____ Model _____
Serial # _____ Caliber _____
Described as _____
- 2) Make _____ Model _____
Serial # _____ Caliber _____
Described as _____
- 3) Make _____ Model _____
Serial # _____ Caliber _____
Described as _____
- 4) Make _____ Model _____
Serial # _____ Caliber _____
Described as _____

This is a written notice to _____ (subject's name) informing you to be prepared to receive a certified letter within 30 days of this event mailed to your last known address from the Austin Police Department. This certified letter will inform you of the procedures and options for the seized firearm(s) and if you are lawfully allowed to possess a firearm or prohibited from possession under 18 U.S.C. Section 922(g). Please review the information on the next page regarding your rights and procedures for the disposition of the seized firearm.

**If you have any questions contact the
Austin Police Department Crisis Intervention Unit at:
512-854-3450 or 512-974-5000
715 E. 8th Street**

Austin Police Department Firearms Form (Page 4)



AUSTIN POLICE DEPARTMENT **NOTICE OF PROCEDURES REGARDING SEIZED FIREARM**

PLEASE REVIEW THE FOLLOWING STATE LAW ON PROCEDURES AND RIGHTS

TEXAS CODE OF CRIMINAL PROCEDURE Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);
(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection (f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.

PD 0222 A 30

Aug 2013

Appendix B

State of Texas One-Page Notification of Emergency Detention Form

Notification -- Emergency Detention NO. _____

Date: _____ Time: _____

**THE STATE OF TEXAS
FOR THE BEST INTEREST AND PROTECTION OF:**

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____
_____, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained)
_____ evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

For the above reasons, I present this notification to seek temporary admission to the (name of facility) _____ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) _____ on an emergency basis.

6. Was the person restrained in any way? Yes No

PEACE OFFICER'S SIGNATURE

BADGE NO. _____

Address: _____ Zip Code: _____

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

Appendix C

Attorney General Opinion on Medical Clearance No. GA-0753



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Ms. Ilse Bailey
Acting Kerr County Attorney
County Courthouse, Suite BA-103
700 Main Street
Kerrville, Texas 78028

Opinion No. GA-0753

Re: Whether a peace officer who has taken a person into custody under chapter 573 of the Health and Safety Code may be required to transport that individual to a medical facility for evaluation prior to taking that person to a mental health facility (RQ-0809-GA)

Dear Ms. Bailey:

The Texas Mental Health Code, codified as subtitle C of title 7, Health and Safety Code (consisting of sections 571.001 through 578.008) pertains to the care and treatment of mentally ill individuals. See TEX. HEALTH & SAFETY CODE ANN. chs. 571–578 (Vernon 2003 & Supp. 2009). Chapter 573 provides for the emergency detention of a person who is believed to be mentally ill and a risk to him or herself or to others. See *id.* ch. 573. You ask whether a peace officer who takes a person into custody under chapter 573 may be required to transport that person to a medical facility for a medical evaluation prior to taking that person to a mental health facility.¹ You explain that the local “inpatient mental health facilities require that proposed patients be ‘medically cleared’ before they will accept the person for mental health treatment.” Request Letter at 1.

A peace officer may take custody of and transport a person under chapter 573 in two circumstances. First, chapter 573, subchapter A, authorizes a peace officer to take a person into custody, without a warrant, in narrow, specified circumstances. See TEX. HEALTH & SAFETY CODE ANN. § 573.001(a) (Vernon 2003). The peace officer taking a person into custody under section 573.001 is required to “immediately transport the apprehended person to: (1) the nearest appropriate

¹Request Letter at 1 (*available at* <http://www.texasattorneygeneral.gov>) (original request from Honorable M. Rex Emerson, former Kerr County Attorney).

inpatient mental health facility;² or (2) a mental health facility³ deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.” *Id.* § 573.001(d) (footnotes added). The peace officer is then required to “immediately file an application for detention after transporting a person to a facility.” *Id.* § 573.002(a).

Second, chapter 573, subchapter B, authorizes any adult to file a written application for the emergency detention of another person. *See id.* § 573.011(a). Upon certain findings by the judge or magistrate regarding a person’s mental illness and risk of harm, the “magistrate shall issue to an on-duty peace officer a warrant for the person’s immediate apprehension.” *Id.* § 573.012(d) (Vernon Supp. 2009). The “person apprehended . . . shall be transported for a preliminary examination in accordance with Section 573.021 to: (1) the nearest appropriate inpatient mental health facility; or (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.” *Id.* § 573.012(e).

As we consider your question, we examine chapter 573 mindful that in construing statutes courts seek first to determine the Legislature’s intent. *See Leland v. Brandel*, 257 S.W.3d 204, 206

²Inpatient mental health facility” means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

- (A) a facility operated by the department [Texas Department of Mental Health and Mental Retardation];
- (B) a private mental hospital licensed by the Texas Department of Health;
- (C) a community center, facility operated by or under contract with a community center or other entity the department [Texas Department of Mental Health and Mental Retardation] designates to provide mental health services;
- (D) a local mental health authority or a facility operated by or under contract with a local mental health authority;
- (E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the Texas Department of Health; or
- (F) a hospital operated by a federal agency.

TEX. HEALTH & SAFETY CODE ANN. § 571.003(9) (Vernon Supp. 2009).

³“Mental health facility” means:

- (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; or
- (C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.

Id. § 571.003(12).

(Tex. 2008). Courts look to the statute's plain language under the assumption that the Legislature meant what it said and that its words are the surest guide to its intent. See *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865–66 (Tex. 1999). Where language of a statute is unambiguous and its meaning clear, courts give effect to the statute according to its terms. See *id.*

The plain language of subsections 573.001(d) and 573.012(e) directs a peace officer to transport a person in custody under chapter 573 to only two types of facilities: (1) an "inpatient mental health facility,"⁴ or (2) a "mental health facility." TEX. HEALTH & SAFETY CODE ANN. § 573.001(d) (Vernon 2003), 573.012(e) (Vernon Supp. 2009). The two subsections contain no grant of authority to an inpatient mental health facility or mental health facility. See *id.* §§ 573.001(d) (Vernon 2003), 573.012(e) (Vernon Supp. 2009). Specifically, neither subsection 573.001(d) nor subsection 573.012(e) authorize such facilities to direct a peace officer in any manner, much less to require a peace officer to transport a person in custody under chapter 573 to a facility other than one authorized under chapter 573. See *id.* §§ 573.001(d) (Vernon 2003), 573.012(e) (Vernon Supp. 2009); see also generally TEX. CODE CRIM. PROC. ANN art. 2.13 (Vernon 2005) (setting out duties and powers of peace officers but containing no provision authorizing mental health facilities to direct a peace officer). Moreover, chapter 573 contains no grant of authority allowing an inpatient mental health facility or mental health facility to reject a person transported by a peace officer under chapter 573 for lack of a medical evaluation and clearance. See TEX. HEALTH & SAFETY CODE ANN. ch. 573 (Vernon 2003 & Supp. 2009). Because we must give effect to the statute's plain language and because the statute contains no grant of authority to such facilities, we conclude that an inpatient mental health facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under chapter 573 to a medical facility for a medical evaluation prior to taking that person to the mental facility.⁵

We received several briefs informing us of the potential economic, health, and policy implications of our opinion.⁶ We recognize that the transportation of involuntary patients by law enforcement implicates a number of complex issues. While our opinion addresses the narrow legal issue before us, the broader economic, health, and policy matters are appropriately addressed by the Legislature.

⁴We recognize that the term "inpatient mental health facility" is modified by the words "nearest" and "appropriate." *Id.* §§ 573.001(d)(1) (Vernon 2003), 573.012(e)(1) (Vernon Supp. 2009). Similarly, the term "mental health facility" is limited to one that is "deemed suitable by the local mental health authority." *Id.* §§ 573.001(d)(2) (Vernon 2003), 573.012(e)(2) (Vernon Supp. 2009). Whether a particular "inpatient mental health facility" is nearest or appropriate, and whether a "mental health facility" is deemed suitable by the local mental health authority are questions that involve factual considerations and are thus outside the purview of an attorney general opinion. See, e.g., Tex. Att'y Gen. Op. No. GA-0726 (2009) at 3 ("We cannot find and resolve questions of fact in an attorney general opinion."). These fact questions, however, do not serve to expand the scope of subsections 573.001(d) and 573.012(e) such that the subsections include a facility that is neither an inpatient mental health facility or a mental health facility.

⁵Whether certain situations may trigger powers and duties of a peace officer outside of chapter 573 that would authorize or require the officer to take a person in custody to a medical facility is beyond the purview of your inquiry.

⁶See Brief from Kathryn Lewis, Advocacy Incorporated (Aug. 3, 2009); Brief from Sheree Hess, Hill Country Crisis Stabilization Unit (Aug. 7, 2009); Brief from Susan Stefan, Center for Public Representation (Aug. 3, 2009); Brief from Carvan E. Adkins, Texas Council of Community MHMR Centers, Inc. (Aug. 10, 2009) (all on file with Opinion Committee).

S U M M A R Y

An inpatient mental health facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under chapter 573, Health and Safety Code, to a medical facility for a medical evaluation prior to taking that person to the mental facility.

Very truly yours,


GREG ABBOTT
Attorney General of Texas

ANDREW WEBER
First Assistant Attorney General

JONATHAN K. FRELS
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Charlotte M. Harper
Assistant Attorney General, Opinion Committee

Appendix D

Attorney General Opinion on Transportation No. JC-0387

Tex. Att'y Gen. Op. No. JC-0387 (2001) -- John Cornyn Administration

Page 1 of 6



Office of the Attorney General - State of Texas
John Cornyn

June 5, 2001

<p>The Honorable Juan J. Hinojosa Chair, Committee on Criminal Jurisprudence Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910</p>	<p>Opinion No. JC-0387</p> <p>Re: Whether section 573.012 of the Health and Safety Code authorizes a municipal peace officer to execute an emergency-detention warrant (RQ-0345-JC)</p>
--	--

Dear Representative Hinojosa:

You ask whether section 573.012 of the Health and Safety Code authorizes a municipal peace officer to execute an emergency-detention warrant. We conclude that a municipal or county peace officer may execute an emergency-detention warrant under that provision.

Chapter 573 of the Health and Safety Code provides for the emergency detention of a person who appears to be mentally ill and a risk to himself or others. *See* Tex. Health & Safety Code Ann. ch. 573 (Vernon 1992 & Supp. 2001). Subchapter A authorizes a peace officer to take a person into custody without a warrant in certain circumstances. Upon doing so, the officer must immediately file an application for emergency detention. *See id.* §§ 573.001, .002 (Vernon 1992). Subchapter B provides a mechanism for any other adult to file a written application for the emergency detention of another person, *see id.* § 573.011, which must be reviewed by a judge or magistrate. *See id.* § 573.012 (a) (Vernon Supp. 2001). Section 573.012 provides that the magistrate must deny the application unless there is reasonable cause to believe that the person evidences mental illness and that there is a substantial risk the person may do serious harm to himself or others unless the person is immediately restrained, and "the necessary restraint cannot be accomplished without emergency detention." *Id.* § 573.012(b). Subsection (d) of section 573.012, the provision at issue in your request, provides that the magistrate "shall issue to an on-duty peace officer a warrant for the person's immediate apprehension" if the magistrate determines that the person satisfies the statutory criteria. *See id.* § 573.012(d). A person who is apprehended under an emergency-detention warrant must be transported to the nearest inpatient mental health facility, or other facility deemed appropriate by the county's mental health authority, for a preliminary examination. *See id.* § 573.012(e).

Once a person who has been apprehended arrives at the facility, a physician must examine the person within certain time limits, and the person may be

admitted to the facility only if the examining physician makes certain findings regarding the patient's mental health. *See id.* §§ 573.021 (Vernon 1992), 573.022 (Vernon Supp. 2001). Under section 573.022, a county mental health facility that has admitted a person for emergency detention under this section may transport the person to a facility of the single portal authority for the area; an appropriate inpatient mental health facility, if no single portal authority serves the area; or a facility deemed suitable by the county's mental health authority, if no single portal authority serves the area and an appropriate inpatient mental health facility is not available. *See id.* § 573.022(b) (Vernon Supp. 2001).

You ask about the proper construction of subsection (d) of section 573.012, which provides that, upon determining that a person meets the statutory criteria for emergency detention, "[t]he magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension." *Id.* § 573.012(d). You indicate that some officials in Hidalgo County interpret this provision to authorize only county peace officers to execute these warrants.⁽¹⁾ You ask, in essence, whether municipal peace officers may also execute an emergency-detention warrant issued under section 573.012. We conclude that a municipal peace officer may execute such a warrant.

When construing a statute, "our primary objective is to give effect to the Legislature's intent." *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 438 (Tex. 1997). To give effect to legislative intent, we construe a statute according to its plain language. *See RepublicBank Dallas v. Interkal, Inc.*, 691 S.W.2d 605, 607-08 (Tex. 1985); *Bouldin v. Bexar County Sheriff's Civil Serv. Comm'n*, 12 S.W.3d 527, 529 (Tex. App.-San Antonio 1999, no pet.). Statutory words and phrases must be "read in context and construed according to the rules of grammar and common usage," but those words and phrases "that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." Tex. Gov't Code Ann. § 311.011 (Vernon 1998). Subsection (d) of section 573.012 uses the general term "peace officer," which is broadly defined in the Code of Criminal Procedure to include both county and municipal officers, among others. *See* Tex. Code Crim. Proc. Ann. art. 2.12 (Vernon Supp. 2001) (including within the definition of "peace officer" sheriffs and their deputies, constable and deputy constables, and municipal police officers). Because subsection (d) of section 573.012 does not on its face distinguish between county and municipal peace officers for purposes of executing emergency-detention warrants, we think the statute uses the phrase "peace officer" consistently with the Code of Criminal Procedure definition.

Furthermore, subchapter A, which provides for emergency detention without a warrant, clearly authorizes any type of peace officer to detain within the officer's jurisdiction a person who evidences mental illness without a warrant on an emergency basis. *See* Tex. Health & Safety Code Ann. § 573.001(a) (Vernon 1992) ("*A peace officer, without a warrant, may take a person into custody if the officer . . .*") (emphasis added). A primary rule of statutory construction is that legislative enactments involving the same general subject matter and possessing the same general purpose are considered to be and are

construed in *pari materia*. See *Garrett v. Mercantile Nat'l Bank*, 168 S.W.2d 636, 637 (Tex. 1943); see also *Calvert v. Fort Worth Nat'l Bank*, 356 S.W.2d 918, 921 (Tex. 1962). We thus read subchapter B, in which subsection (d) of section 573.012 appears, together with subchapter A. Given that the legislature has authorized both municipal and county peace officers to take a person into custody without a warrant in subchapter A, we do not believe it would have intended to distinguish between county and municipal peace officers in subchapter B for purposes of executing emergency-detention warrants.

In your request letter, you explain the basis of the Hidalgo County officials' interpretation of the statute to prohibit municipal peace officers from executing these warrants. You suggest that there is now some concern that only a county peace officer may execute an emergency-detention warrant due to 1999 legislative amendments to chapter 573 and related provisions in chapter 574,⁽²⁾ the latter of which establishes a framework for court-ordered mental health services - civil commitment. Section 573.025, which was substantially amended in 1999,⁽³⁾ provides that a person apprehended or detained under chapter 573 "has the right . . . to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under section 573.022 or transported under an order of protective custody under Section 574.023." Tex. Health & Safety Code Ann. § 573.025(a)(6) (Vernon Supp. 2001). Section 573.026, added to chapter 573 in the same legislation,⁽⁴⁾ provides that a person "being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045." *Id.* § 573.026. Section 574.045 provides that a court may authorize the transportation of a committed patient or a patient who has been detained under section 573.022 to the designated mental health facility by a family member or friend, various civil officials, or if no other person is available, the sheriff or constable. See *id.* § 574.045. Significantly, section 574.045 does not include municipal peace officers in this list.

You inform us that certain officials interpret the references in sections 573.025 and 573.026 to section 574.045 to give "[an] apprehended person the right to have no other peace officer but the sheriff or constable transport the person." Request Letter, *supra* note 1, at 2. As a result, these officials "have now required that all mental health commitment warrants issued by the county courts at law and all justices of the peace be executed by the Hidalgo County Sheriff's Department, rather than the local police department where the subject is thought to be located." *Id.*

We conclude that this construction of section 573.012, subsection (d) based on sections 573.025 and 573.026 is misplaced. Neither of these provisions pertains to the authority to execute an emergency-detention warrant or to transport a person who is apprehended on such a warrant to the initial facility for preliminary examination. Section 573.025 gives a person who is apprehended or detained the right to be transported in accordance with section 574.045 "if the person is detained under Section 573.022." Tex. Health & Safety Code Ann. § 573.025(a)(6) (Vernon Supp. 2001). Similarly, section 573.026 provides that "[a] person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045." *Id.* § 573.026. Pursuant to section 573.022, however, a person is detained only after

a physician has made certain findings in a preliminary examination. *See id.* § 573.022(a) ("A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that: . . ."). Thus, the right under sections 573.025 and 573.026 to be transported in accordance with section 574.045 does not arise until after a preliminary examination.

Section 573.025 also gives a person the right to be "transported under an order of protective custody under Section 574.023." *Id.* § 573.025(a)(6). Like section 573.026, section 574.023 pertains to the transportation of a person after he or she is initially apprehended on an emergency-detention warrant and is not relevant to a person's initial apprehension. Again, chapter 574 establishes procedures for court-ordered mental health services. *See id.* ch. 574 (Vernon 1992 & Supp. 2001). Pending a hearing on an application for court-ordered mental health services, a person may be held in protective custody. *See id.* ch. 574, subch. B. Section 574.023 provides for protective custody orders directing a person authorized to transport a person under section 574.045 to take a proposed patient into protective custody and transport the person to a facility. *See id.* § 573.023. Thus the right under section 573.025 "to be transported in accordance with Sections 573.026 and 574.045, if the person is . . . transported under an order of protective custody under Section 574.023," *id.* § 573.025(a)(6), also does not arise until after a person's initial apprehension and preliminary examination.

Finally, we note that the legislative history of the 1999 amendments to these provisions regarding the transportation of detained persons and persons under protective custody is not to the contrary. The bill analyses suggest that the purpose of the legislation was to address problems in the transportation of persons from county facilities and courts to portal facilities and that it was not intended to address the initial apprehension and transportation of persons pursuant to emergency-detention warrants. *See Tex. S.B. 539, supra* note 2; Senate Comm. on Health Svcs., House Comm. on Public Health, Bill Analyses, Tex. S.B. 539, 76th Leg., R.S. (1999) (bill addresses problem of "mentally ill patients being transported from county jails and courts to state mental health facilities; apparently, many of these patients were spending long periods of time on buses making circular routes; being transported in buses without air-conditioning or heating; and being deprived of sufficient bathroom stops").

In sum, we conclude that section 573.012 of the Health and Safety Code authorizes a municipal peace officer to execute an emergency-detention warrant and to transport the person to a facility for preliminary examination. *See Tex. Health & Safety Code Ann. § 573.012(d), (e)* (Vernon Supp. 2001). A county peace officer may also execute such a warrant. A person who is actually admitted to a facility for emergency detention after a preliminary examination must be transported in accordance with section 574.045. *See id.* §§ 573.025, .026.

SUMMARY

Section 573.012 of the Texas Health and Safety Code authorizes a municipal or

county peace officer to execute an emergency-detention warrant. *See* Tex. Health & Safety Code Ann. § 573.012(d) (Vernon Supp. 2001). A person who is actually admitted to a facility for emergency detention after a preliminary examination must be transported in accordance with section 574.045. *See id.* §§ 573.025, .026.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

SUSAN D. GUSKY
Chair, Opinion Committee

Mary R. Crouter
Assistant Attorney General - Opinion Committee

Footnotes

1. Letter from Honorable Juan J. Hinojosa, Texas State Representative, to Honorable John Cornyn, Texas Attorney General at 2 (Feb. 1, 2001) (on file with Opinion Committee) [hereinafter Request Letter].
2. *See* Tex. S.B. 539, 76th Leg., R.S. (1999), enacted as Act of May 28, 1999, 76th Leg., R.S., ch. 1512, 1999 Tex. Gen. Laws 5233, 5234.
3. *See* Act of May 28, 1999, 76th Leg., R.S., ch. 1512, § 2, 1999 Tex. Gen. Laws 5233, 5234.
4. *See id.* § 3.

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Appendix E

Attorney General Opinion on Hospital Security No. GA-0877

Tex. Att'y Gen. Op. No. GA-0877 (2011) -- Greg Abbott Administration

Page 1 of 4



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

August 12, 2011

The Honorable Jerry D. Rochelle
Bowie County Criminal District Attorney
Bowie County Plaza
Post Office Box 3030
601 Main Street
Texarkana, Texas 75504

Opinion No. GA-0877

Re: Responsibility for an individual who is the
subject of an emergency detention order (RQ-
0952-GA)

Dear Mr. Rochelle:

You inquire about law enforcement responsibility for an individual who is the subject of an emergency detention order. ⁽¹⁾ Referring to an emergency detention order issued in response to a peace officer's application for emergency detention under section 573.002, Health and Safety Code, you first ask which law enforcement agency is responsible for overseeing the individual subject to the order. See Request Letter at 1.

Your brief indicates that members of the city police department and the county sheriff's department encounter persons who appear to be mentally ill and a danger to themselves or others. See Brief at 1. You also explain that these law enforcement officers regularly take such persons into custody and transport them to one of the two local hospitals. ⁽²⁾ See *id.* Your brief further states that the hospitals do not designate an employee who is responsible for preventing the person from leaving the hospital. See *id.* at 2. Finally, your brief explains that the Sheriff believes his department is not responsible for the person once the person has been delivered to the local hospital. See *id.* Rather, according to your brief, the Sheriff argues that his department is relieved of responsibility for the person and that responsibility is transferred to the city police department—because the hospitals lie within the city's jurisdiction. See *id.*

The Texas Mental Health Code, codified as subtitle C of title 7, Health and Safety Code, governs access to mental health care and treatment for mentally ill persons. See Tex. Health & Safety Code Ann. §§ 571.001-578.008 (West 2010). Specifically, chapter 573 authorizes a peace officer, ⁽³⁾ without a warrant, to take a person into custody for the emergency detention if they appear to be mentally ill and pose a risk to themselves or others. See *id.* § 573.001. A peace officer who makes an emergency detention "shall immediately transport the apprehended person to: (1) the nearest appropriate inpatient mental health facility; or [if unavailable,] (2) a mental health facility deemed suitable by the local mental health authority." *Id.* § 573.001(d); see also Tex. Att'y Gen. Op. No. GA-0753 (2009) at 3 (concluding that an "inpatient mental health facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under chapter 573 to a medical facility for a medical evaluation prior to taking that person to the mental facility"). Upon transporting the apprehended person to the mental health facility, the peace officer must immediately file an application for emergency detention and personally present it to a judge or magistrate. Tex. Health & Safety Code Ann. §§ 573.002, .012 (West 2010). The emergency detention warrant serves as an application for detention in a mental health facility. *Id.* § 573.012(f). The facility must "temporarily accept a person for whom an application for detention is filed" and perform certain examinations. *Id.* § 573.021(a); see *id.* §§ 573.021(b) (requiring preliminary examination within 48 hours), 573.021(c) (requiring physician to examine person within 12 hours); see also *id.* § 573.021(b) (providing that a person accepted for a preliminary examination may be "detained in custody" for specified time period).

Chapter 573 does not address your question. While chapter 573 imposes certain responsibilities on the mental health facilities that receive persons with mental illness, the Mental Health Code does not address a situation wherein the mental health facility is unwilling or unable to ensure persons remain safely in the facility while awaiting their preliminary examination. See *generally id.* ch. 573. Neither your briefing to this office nor our research has uncovered any provision in chapter 573 that imposes a duty on a particular law enforcement agency to oversee the person while the person remains in the hospital's care.

Because only the Texas Legislature is constitutionally empowered to make Texas law, this office is unable to construe a statutory requirement or duty when the Legislature has left the statute silent on the matter. See *Old Am. Cnty. Mutual Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex. 2004) (stating "because we presume that every word of a statute has been included or excluded for a reason, we will not insert requirements that are not provided by law"); see also *Goldman v. Torres*, 341 S.W.2d 154, 158 (Tex. 1960) (stating that reading language into a statute usurps the Legislature's power); Tex. Att'y Gen. Op. No. GA-0279 (2004) at 4-5 (recognizing the Attorney General's authority to render legal advice does not include authority to legislate). In this case, it is particularly difficult to imply a statutory requirement because the statute reflects a comprehensive scheme that the Legislature implemented to balance competing, compelling interests. See *Campbell v. State*, 68 S.W.3d 747, 760 (Tex. App.--Houston [14th Dist.] 2001), *aff'd*, 85 S.W.3d 176 (Tex. 2002) ("Commitment to a mental hospital is a weighty curtailment of one's liberty. Such a restriction on liberty requires the protections afforded by due process.") (citation omitted); see also Tex. Att'y Gen. Op. No. JM-360 (1985) at 4 (describing statutory predecessor to Mental Health Code as "a comprehensive code designed to provide access to humane care and treatment for persons suffering from severe mental illness" that also "sets out to safeguard [the person's] legal rights"). Thus, we cannot advise you that chapter 573 places a duty to oversee an individual transported under section 573.002 on any particular law enforcement agency to the exclusion of another.

Notwithstanding the absence of a specific duty under the Health and Safety Code, generally speaking, all Texas peace officers have a duty to preserve the peace. See Tex. Code Crim. Proc. Ann. art. 2.13(a) (West 2005) ("It is the duty of every peace officer to preserve the peace within the officer's jurisdiction."). Similarly, hospitals have some level of responsibility for their patients. Cf. *Boren v. Texoma Med. Ctr., Inc.*, 258 S.W.3d 224, 229 (Tex. App.--Dallas 2008, no pet.) (recognizing, in a tort context, that "[w]ithout the signed and executed detention order and warrant, Texoma had no lawful right to restrain, detain, or control" mentally ill patient). As a practical matter, we believe the Legislature intended for the Mental Health Code to facilitate treatment for mentally ill patients in an appropriate setting. See Tex. Health & Safety Code Ann. § 571.002 (West 2010) (detailing purposes of the Mental Health Code including to "facilitate treatment in an appropriate setting"). The Legislature's intent is best served if area hospitals and relevant law enforcement agencies share responsibility for ensuring that persons in need of mental health services remain safely in the facility for the necessary treatment.

Your second question is: "[o]nce court-ordered mental health services are ordered and the sheriff's office is ordered to transport the individual, does the sheriff immediately assume oversight of the individual?" Request Letter at 1. You tell us that there often is a delay between "the time the order is entered [and] the time the person is transported to the receiving facility due to lack of beds at the receiving facility." Brief at 3. Court-ordered mental health services implicate chapter 574 of the Health and Safety Code. See Tex. Health & Safety Code Ann. §§ 574.001-203 (West 2010) (chapter entitled "court-ordered mental health services"); see also *Shike v. State*, 961 S.W.2d 344, 346 (Tex. App.--Houston [1st Dist.] 1997, pet. ref'd) (recognizing that the Health and Safety Code distinguishes between "emergency detentions" and "court-ordered mental health services"). That chapter sets out the requirements for the provision of court-ordered, or involuntary, mental health services. See Tex. Health & Safety Code Ann. §§ 574.001 (West 2010) (pertaining to the application for court-ordered mental health services), 574.031 (setting out general provisions relating to hearing on application), 574.034 (providing for order for temporary mental health services), 574.035 (providing for order for extended mental health services). The chapter also provides for the protective custody of a person who is the subject of an application for court-ordered mental health services. See *id.* §§ 574.021 ("Motion for Order of Protective Custody"), 574.022 (providing for issuance of protective custody order). Chapter 574 also provides for the apprehension and transportation of a person subject to a protective custody order. See *id.* §§ 574.023 (providing for apprehension), 574.045 (providing for transportation). Specifically, section 574.045(h) requires that a "patient must be transported directly to the facility within a reasonable amount of time and without delay." *Id.* § 574.045(h); see also *id.* § 574.045(a) (listing persons appropriate to transport a committed patient or person detained under section 573.022 or 574.023, and including the sheriff or constable, if no other person listed is available). Apart from this provision, nothing in chapter 574 expressly states when the sheriff assumes oversight of the individual subject to court-ordered mental health services. Because the Legislature has not enacted a provision that specifically governs the situation explained in your brief, we can advise you only that chapter 574 requires the sheriff's office to transport a mentally ill person to a hospital within a "reasonable amount of time and without delay."

S U M M A R Y

There is no provision in chapter 573, Texas Health and Safety Code, that expressly

requires a particular law enforcement agency to oversee a mentally ill person once the person has been transported to a facility pursuant to a section 573.002 emergency detention order. Because the Legislature has not enacted a statute that requires a specific law enforcement agency to oversee mentally ill persons, we cannot advise you that chapter 573 places a duty on any particular law enforcement agency over another.

A sheriff's office must transport a person subject to court-ordered mental health services under chapter 574 within a reasonable amount of time and without delay.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

Daniel T. Hodge
First Assistant Attorney General

David J. Schenck
Deputy Attorney General for Legal Counsel

Jason Boatright
Chair, Opinion Committee

Charlotte M. Harper
Assistant Attorney General, Opinion Committee

Footnotes

1. See Letter and attached Brief from Honorable Jerry D. Rochelle, Bowie County Criminal District Attorney, to Honorable Greg Abbott, Attorney General of Texas at 1 (Mar. 8, 2011), https://www.oag.state.tx.us/opin/index_rq.shtml ("Request Letter" and "Brief," respectively).

2. The brief indicates that these hospitals have been deemed suitable by the local mental health authority as required by section 573.001(d). See Brief at 3. See also Tex. Health & Safety Code Ann. § 573.001(d) (West 2010) (identifying facilities to which a person believed to be mentally ill may be taken); *id.* § 571.003(12) (defining mental health facility to include certain parts of a general hospital).

3. You ask about only two law enforcement agencies, but under the Code of Criminal Procedure, a "peace officer" includes commissioned personnel from state, county, municipal, and other law enforcement agencies. See Tex. Code Crim. Proc. Ann. art. 2.12(1)-(36) (West Supp. 2010), *amended by Act of May 5, 2011, 82d Leg., R.S., ch. 85, § 3.001, 2011 Tex. Sess. Law Serv. 366, 436-37* (to be codified at Tex. Code Crim. Proc. Ann. art. 2.12(1)-(36)).

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Appendix F

Open Records Request RE: Number of Hospital Beds

Skillern, Rebecca

From: Pomerleau, Chad (HHSC) [mailto:Chad.Pomerleau@hhsc.state.tx.us]
Sent: Monday, April 02, 2018 12:49 PM
To: Skillern, Rebecca A.
Subject: RE: Request for information for Law Enforcement use

1,212 (504 civil and 708 forensic). 1,368 for forensic beds is accurate, with the caveat that not all beds are used for individuals on forensic commitment - but all these beds could be. We don't generally classify beds as forensic or civil. And these numbers don't include beds reserved for populations such as geriatric or adolescent.

Total number of beds available in the state's mental hospitals (all combined) for people picked up by law enforcement on an Emergency Detention Order (people who are a danger to themselves or others and need an emergency psychiatric evaluation)	1,368
Total number of these patients in the state's mental hospitals (all hospitals combined today)	1,212
Total number of beds statewide for forensic (court-ordered)	1,368
Total number of forensic patients (today)	1,301

Chad Pomerleau
Legislative and Communications Planner
State Operated Facilities
o: (512) 438-5660
c: (512) 952-2495



Appendix G

Scenario and Corresponding Form

Scenario

You are dispatched to an attempted suicide call. Mary Smith's husband called to say Mary took 10 Tylenol and was drinking alcohol. This is, by no means, your first contact with Mary. You had to intervene in a domestic violence call last month. Mary was attempting to assault her husband with a knife, and you know from fellow officers that Mary has attempted suicide at least three times before. Two times she had to be taken to the hospital to have her stomach pumped.

When you arrive at the scene, the husband is nowhere to be found. Mary is curled in a fetal position and will not talk about the overdose, except to say "Leave me alone. I'm okay now that he's gone."

Notification of Emergency Detention Form (Insufficient Information)

Notification -- Emergency Detention NO. _____

Date: 1-11-15 Time: 11:10 PM

**THE STATE OF TEXAS
FOR THE BEST INTEREST AND PROTECTION OF:**

Mary Smith, WF, DOB: 2-21-60

NOTIFICATION OF EMERGENCY DETENTION

Now comes F. M. Webb, a peace officer with (name of agency) Houston
Police Department, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained)
Mary Smith evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

Mary has attempted suicide before and there is a possibility she will do it again.

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

I heard she took 10 Tylenol .

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

Her husband

For the above reasons, I present this notification to seek temporary admission to the (name of facility) NeuroPsychiatric Cnt inpatient mental health facility or hospital facility for the detention of (name of person to be detained) Mary Smith on an emergency basis.

6. Was the person restrained in any way? Yes No

PEACE OFFICER'S SIGNATURE _____

BADGE NO. _____

Address: _____ Zip Code: _____

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

Notification of Emergency Detention Form (Sufficient Information)

Notification -- Emergency Detention NO. _____

Date: 1-11-15 Time: 11:10 PM

THE STATE OF TEXAS
FOR THE BEST INTEREST AND PROTECTION OF:

Mary Smith, WF, DOB: 2-21-60

NOTIFICATION OF EMERGENCY DETENTION

Now comes F.M. Webb, a peace officer with (name of agency) Houston
Police Department, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained) Mary Smith evidences mental illness.
2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

Mary is well known to me from an assault on her husband with a knife last month. She has a history of several serious attempts, and she attempted suicide again tonight. On my arrival, she would not talk to officers. In my opinion, she remains suicidal and she is totally without support.

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.
4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

Mary's husband, Jim Smith, called and reported that Mary overdosed on medications in an attempt to kill herself. My observation is that she is withdrawn, uncommunicative, and despondent.

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

Jim Smith, 1001 Mockingbird Lane, Houston, TX . Her husband
832-000-0000

For the above reasons, I present this notification to seek temporary admission to the (name of facility) NeuroPsychiatric Cnt inpatient mental health facility or hospital facility for the detention of (name of person to be detained) Mary Smith on an emergency basis.

6. Was the person restrained in anyway? Yes No

PEACE OFFICER'S SIGNATURE _____ JUDGE NO. _____

Address: _____ Zip Code: _____
Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer to execute any form other than this form as a predicate to accepting for temporary admission a person detained under Section 573.001, Texas Health and Safety Code.

Comments on Scenario

According to Dr. Daryl K. Knox, MD, Chief Medical Officer of The Harris Center for Mental Health and IDD, over-the-counter drugs can be lethal. Acetaminophen, the active ingredient in Tylenol, may be among the most dangerous medicines on the market. Too much acetaminophen can cause severe liver damage. Acetaminophen overdose is the leading cause for calls to the Poison Control Centers across the United States - more than 100,000 instances per year. Acetaminophen is an active ingredient in many over-the-counter cough and cold preparations. Acetaminophen is especially dangerous when mixed with alcohol.

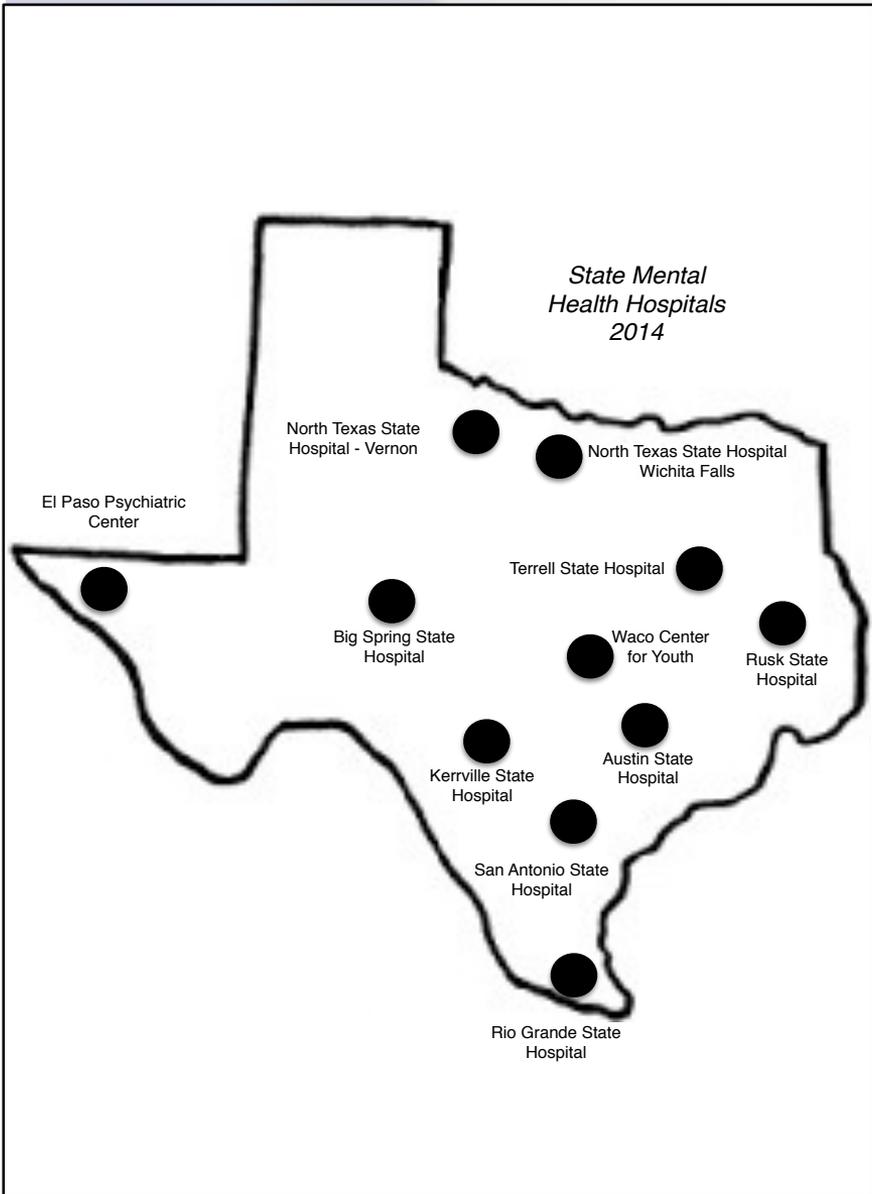
In situations involving the ingestion of a drug, local emergency medical services should be called to the scene to medically evaluate the person.

If Mary truly wants to kill herself, she does not want help. Saying "Leave me alone. I'm okay now that he's gone." could be said to get the officers to leave so she can complete the suicide.

The fact that Mary has a history of past suicide attempts, has been involved in a disturbance with her husband, is found in a fetal position, and is despondent, are red flags pointing to the very real possibility Mary is suicidal.

If not sure as to the seriousness of the person threatening to commit suicide, we recommend erring on the side of caution and bringing the person for an emergency psychiatric evaluation.

Appendix H



Appendix I

Bills of the 84th Texas Legislature: SB 359

Senate Bill 359, authored by State Senator Royce West (D), addressed the issue of emergency departments and hospitals not having the authority to hold an individual who initially requests mental health services, then subsequently requests to leave. This provides hospital employees with few options other than calling law enforcement in the case of emergency.

SB 359 provided that a mental health facility, a hospital licensed under Chapter 241 (Hospitals) of the Health and Safety Code, or a freestanding emergency medical care facility licensed under Chapter 254 (Freestanding Emergency Medical Care Facilities) of the Health and Safety Code may detain a person who voluntarily requested treatment if a physician at the facility believes the person has a mental illness and that due to that mental illness there is a substantial risk of harm to the person or others, and believes there is not sufficient time to file an application for emergency detention or order of protective custody. The detention may not last longer than four hours.

The bill also clarified that a peace officer may enter a facility to initiate an emergency detention after the four-hour hold has run. Supporters of the bill indicated there have been instances in which officers have declined to enter the facility to initiate detention because the subject is already in a safe place.

As proposed, SB 359 amended current law relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities to temporarily detain a person with mental illness.

This bill was vetoed by Governor Abbott. Governor Abbott stated:

"The Fourth, Fifth, and Fourteenth Amendments to the United States Constitution limit the state's authority to deprive a person of liberty. Under our constitutional tradition, the power to arrest and forcibly hold a person against his or her will is generally reserved for officers of the law acting in the name of the people of Texas. By bestowing that grave authority on private parties who lack the training of peace officers and are not bound by the same oath to protect and serve the public, SB 359 raises serious constitutional concerns and would lay the groundwork for further erosion of constitutional liberties.

Medical facilities have options at their disposal to protect mentally ill patients and the public. Many hospitals already keep a peace officer on site at all times. For smaller facilities, law enforcement are always just a phone call and a few minutes away. Medical staff should work closely with law enforcement to help protect mentally ill patients and the public. But just as law enforcement should not be asked to practice medicine, medical staff should not be asked to engage in law enforcement, especially when that means depriving a person of the liberty protected by the Constitution."

PROCLAMATION
BY THE
Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 359 as passed by the Eighty-Fourth Texas Legislature, Regular Session, because of the following objections:

The Fourth, Fifth, and Fourteenth Amendments to the United States Constitution limit the state's authority to deprive a person of liberty. Under our constitutional tradition, the power to arrest and forcibly hold a person against his or her will is generally reserved for officers of the law acting in the name of the people of Texas. By bestowing that grave authority on private parties who lack the training of peace officers and are not bound by the same oath to protect and serve the public, SB 359 raises serious constitutional concerns and would lay the groundwork for further erosion of constitutional liberties.

Medical facilities have options at their disposal to protect mentally ill patients and the public. Many hospitals already keep a peace officer on site at all times. For smaller facilities, law enforcement are always just a phone call and a few minutes away. Medical staff should work closely with law enforcement to help protect mentally ill patients and the public. But just as law enforcement should not be asked to practice medicine, medical staff should not be asked to engage in law enforcement, especially when that means depriving a person of the liberty protected by the Constitution.

Since the Eighty-Fourth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.



IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 1st day of June, 2015.

Handwritten signature of Greg Abbott in black ink.

GREG ABBOTT
Governor of Texas

ATTESTED BY:

Handwritten signature of Carlos Cascos in black ink.

CARLOS CASCOS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:05 P.M. O'CLOCK

JUN 01 2015

Appendix J

Bills of the 84th Texas Legislature: SB 1129

Senate Bill 1129, authored by State Senator Judith Zaffirini (D), amends current law relating to certain transportation of persons with mental illness following commitment. In response to safety concerns regarding transportation, SB 1129 requires that a patient committed for mental health reasons be restrained only during the patient's apprehension, detention, or transportation. The bill requires that the method of restraint allow the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

SB 1129 amends current law relating to the transportation of a person with mental illness. ***This bill passed and became effective June 17, 2015.***

84R7406 LEH-F

By: Zaffirini

S.B. No. 1129

A BILL TO BE ENTITLED

AN ACT

relating to the transportation of a person with a mental illness.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 574.045, Health and Safety Code, is amended by adding Subsection (1) to read as follows:

(1) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

BILL ANALYSIS

Senate Research Center
84R7406 LEH-F

S.B. 1129
By: Zaffirini
Health & Human Services
3/18/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Persons under emergency detention and experiencing a mental health crisis have been subjected to restraining practices that increase a person's risk of positional asphyxiation. Such positions include a person being placed face down, hog-tied, or in hobble restraints that could restrict the ability to breathe and result in death. These tactics raise safety concerns for persons experiencing a mental health crisis during transport to a medical facility.

S.B. 1129 requires a person under an emergency detention for mental health reasons to be restrained in such a way that the person would be able to sit upright without undue difficulty. Ambulances transporting persons under emergency detention in these cases would be exempt from this requirement.

As proposed, S.B. 1129 amends current law relating to the transportation of a person with a mental illness.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 574.045, Health and Safety Code, by adding Subsection (l), as follows:

(l) Authorizes a patient restrained under Subsection (g) (prohibiting the patient from being physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient) to be restrained only during the apprehension, detention, or transportation of the patient. Requires that the method of restraint permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

SECTION 2. Effective date: upon passage or September 1, 2015.

SUBJECT: Regulating the transportation of a person with a mental illness

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Raymond, Rose, Keough, Naishtat, Peña, Price, Spitzer
0 nays
2 absent — S. King, Klick

SENATE VOTE: On final passage, April 30 — 31-0 on local and uncontested calendar

WITNESSES: For — Kathryn Lewis, Disability Rights Texas; (*Registered, but did not testify*: Jolene Sanders, Easter Seals Central Texas; Cate Graziani, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Carole Smith, Private Providers Association of Texas; Lee Johnson, Texas Council of Community Centers; Mark Hanna, Texas Society For Clinical Social Work)

Against — AJ Louderback and Gerald Yezak, Sheriffs' Association of Texas; (*Registered, but did not testify*: Roy Boyd, R. Glenn Smith, and Micah Harmon, Sheriffs' Association of Texas)

On — (*Registered, but did not testify*: Kerry Raymond, Department of State Health Services)

BACKGROUND: Health and Safety Code, sec. 574.045 establishes the requirements for the transportation of a mental health patient. Sec. 574.045(g) provides that the patient cannot be physically restrained unless necessary to protect the safety of the patient or the attendant. If the treating physician or attendant determine that physical restraint is necessary, that person must document the reason and length of time for which the restraints are needed. Upon arrival at the facility, the attendant must deliver the document to the facility, and the document must be included in the patient's clinical record.

SB 1129
House Research Organization
page 2

DIGEST: SB 1129 would specify that a mental health patient restrained under Health and Safety Code, sec. 574.045(g) could be restrained only during the patient's apprehension, detention, or transportation. The bill would require that the method of restraint allow the patient to sit in an upright position without undue difficulty unless the patient was being transported by ambulance.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: SB 1129 would increase the safety of mental health patients being transported by prohibiting the use of prone and supine restraints. Law enforcement officers receive restraint training for persons under emergency detention, but current law does not prohibit techniques that severely limit mobility and could threaten a patient's health.

While restraints are sometimes needed during transport, they should be used only when absolutely necessary and should still allow a person to sit upright. Not allowing a person to sit upright while the person is being transported could increase the risks of respiratory and cardiac problems for some individuals.

Mental health care facilities already use the same best practices for restraining a person that this bill would establish for apprehending, detaining, and transporting mental health patients. Specifying the manner in which a person could be restrained also could decrease liability for transporters, and the bill would not create any independent cause of action.

The bill would not create any undue burden for law enforcement because law enforcement organizations have stated that they do not utilize the types of inappropriate restraint practices that would be prohibited by this bill. Establishing those restrictions in statute would ensure that those practices were not used.

The bill would not outlaw or prohibit the use of restraints when transporting mental health patients, so law enforcement and other transporters would continue to have discretion in using restraints as long as they met the modest requirements of the bill. SB 1129 also would not require law enforcement organizations to modify their vehicles in any way, so it would not impose any cost on those agencies.

**OPPONENTS
SAY:**

SB 1129 could create an untenable situation for law enforcement officers transporting mental health patients. The proposed requirement that a patient be able to sit up without “undue difficulty” during transportation is ambiguous. It is unclear what undue difficulty would mean, and law enforcement could be susceptible to suits for minor violations. The bill also could put mental health patients’ safety at risk by limiting the time and manner in which a patient could be restrained, which could result in more injuries during transportation, and thus more litigation.

The bill is unnecessary because it is based on a few isolated incidents in which transporting a mental health patient went wrong elsewhere in the United States. Inappropriately restraining mental health patients in a way that could threaten their health is not a problem in Texas and is not a practice used by sheriffs’ departments.

The bill would limit law enforcement officers’ flexibility when transporting a mental health patient. Mental health patients can be difficult to control while being transported, and this bill could threaten the safety of law enforcement officers who were transporting an individual and lead to damage to law enforcement vehicles if a person was not adequately restrained.

Currently, law enforcement vehicles are not equipped to safely transport a patient while allowing the patient to sit up at all times. This bill could result in the need to purchase special harnesses or other types of restraints without providing any funding for this purpose.

Appendix K

Bills of the 85th Texas Legislature: SB 344

Senate Bill 344, by State Senator Royce West (D-Dallas), allows the execution of a memorandum of understanding (MOU) between a law enforcement agency and an emergency medical services provider regarding the transfer of a person detained under Section 573.001 to a mental health facility. Such an MOU must address responsibility for the cost of transport. The required MOU is subject to local LMHA and county approval of its cost-related contents. Acceptance of the person for transfer is permissive. The existing notification of detention that officers file with a facility upon transport is still completed by the officer, but is filed at the facility by the emergency medical services provider who has accepted transfer.

SB 344 amends current law relating to the authority of emergency medical services personnel of certain emergency medical services providers to transport a person for emergency detention.

Prior to this bill, when a peace officer took a person into custody without a warrant under Section 573.001 of the Texas Health and Safety Code, because the officer believed the person had a mental illness and presented a danger to self or others, that officer had to transport the person to a mental health facility. Permitting emergency services personnel to transport that person to such a facility better serves public health by providing a more appropriate means of transport, and enhances public safety by permitting law enforcement personnel to resume their duties more quickly.



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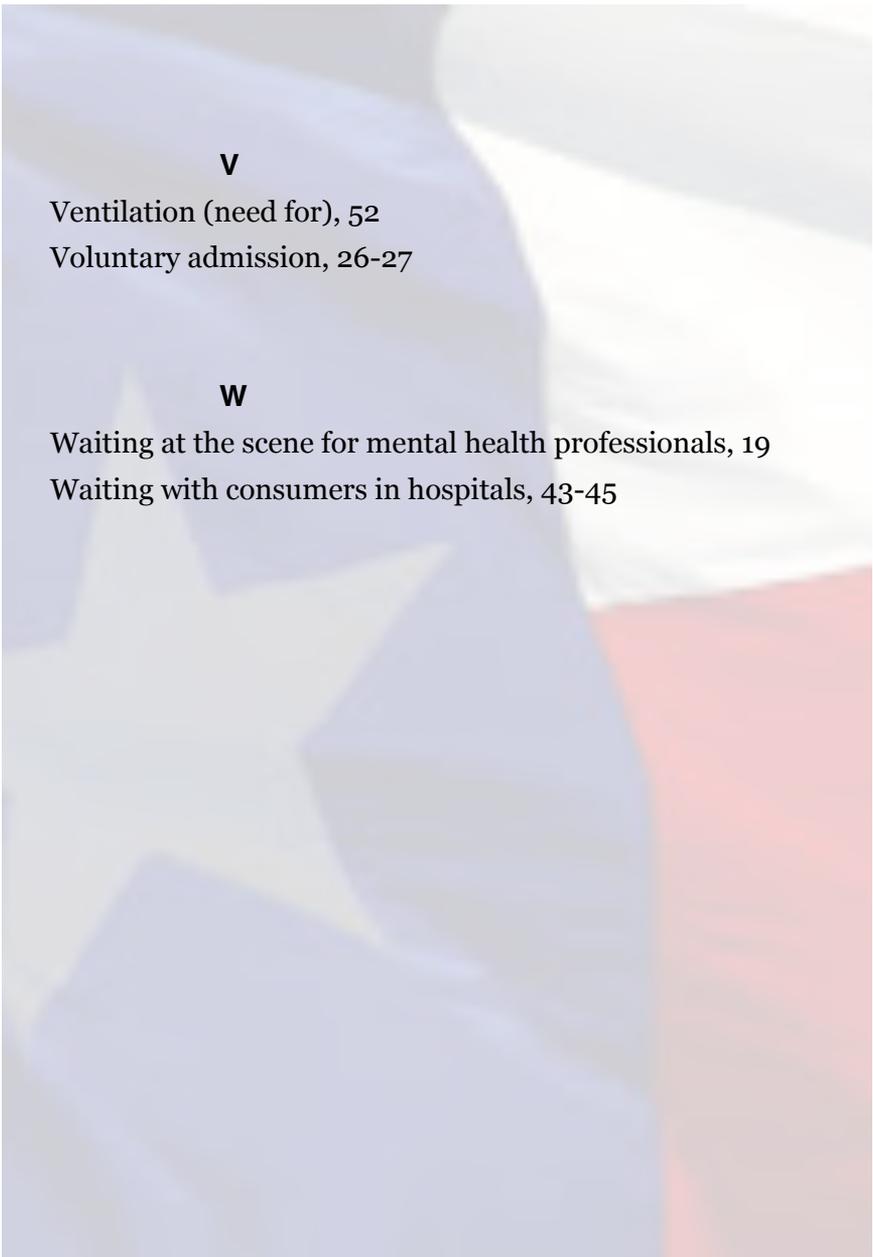
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