

Emergency Detention Warrants

Texas Justice Court Training Center
© Copyright 2023. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvs, Suite 530, Austin, TX, 78744.

1

What We Will Cover

- What is an Emergency Detention (or Mental Health) Warrant?
- Application to Magistrate
 - Procedure and Standard for Issuance of Warrant
 - Transportation Issues
- Application by Physician
- Emergency Apprehension by:
 - Peace Officer
 - Guardian
- Recurring Issues and Questions
- Stakeholder Meetings
- Additional Resources

2



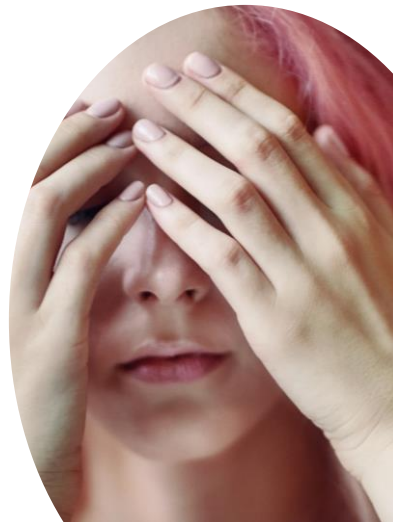
What is an Emergency Detention Warrant?

- An Emergency Detention (or Mental Health) Warrant is a warrant that may be issued by a justice of the peace, sitting as a magistrate, for emergency apprehension and detention of a person who is believed to be mentally ill or chemically dependent.

3

What is an Emergency Detention Warrant?

- The purpose of the warrant is to keep a person from harming themselves or someone else and to get them immediately to a facility for evaluation and treatment.



4

Application
for
Emergency
Apprehension

- Any adult may file an application for emergency apprehension and detention by filing a written application with a judge or magistrate.
- The application must be presented personally to the judge or magistrate.
 - Except for physicians (discussed below).
-- Health & Safety Code § 573.011, 573.012(a),(h)

5

Application
for
Emergency
Apprehension

- A judge with probate jurisdiction may require by administrative order that applications are presented personally to that court
- Or if the judge is not available that they are held by staff and presented to another judge or magistrate as soon as practicable.
 - -- Health & Safety Code § 573.012(a)

6

Requirements for Application

- The application must state:

- (1) that the person has signs of mental illness;
- (2) that the person shows a **substantial risk of serious harm** to himself or others;
- (3) a specific description of the risk of harm;
- (4) that the **risk of harm is imminent** unless the person is immediately restrained;

7

Requirements for Application

- (5) that the applicant has reason to believe and does believe these things and that those beliefs are derived from **specific recent behavior, overt acts, attempts, or threats**;
- (6) a detailed description of the specific behavior, acts, attempts, or threats; and
- (7) a detailed description of the applicant's relationship to the person whose detention is sought.

-- Health & Safety Code § 573.011(b)

8

Issuance of Warrant

- The magistrate must review the application and **may** interview the applicant.
- The magistrate **shall deny the application unless** the magistrate finds that there is reasonable cause to believe that:
 - (1) the person evidences mental illness;
 - (2) the person evidences a substantial risk of serious harm to himself or others;

9

Issuance of Warrant

- (3) the risk of harm is imminent unless the person is immediately restrained; and
 - (4) the necessary restraint cannot be accomplished without emergency detention.
- Health & Safety Code § 573.012(b)

10

Issuance of Warrant

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

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

-- Health & Safety Code §
573.012(c)

11

Emergency Apprehension: Issuance of Warrant

- If the magistrate finds that each criterion is satisfied the magistrate shall issue a warrant to an on-duty peace officer for the person's immediate apprehension.

-- Health & Safety Code §
573.012(d)

12



Issuance of Warrant

- A person apprehended under such a warrant shall be transported for a preliminary examination 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.
- Health & Safety Code § 573.012(e)

13



Issuance of Warrant

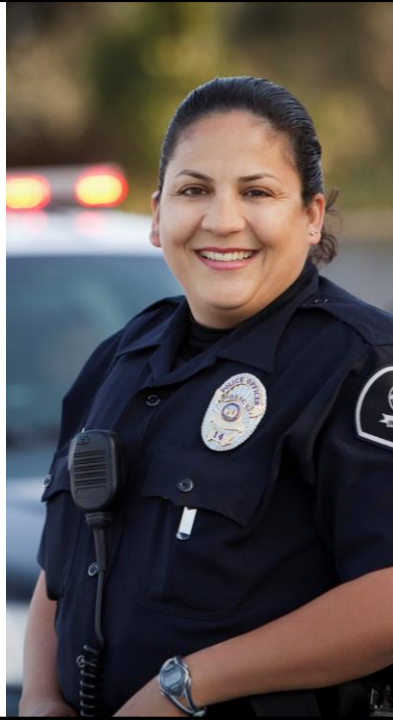
- The warrant serves as an application for detention in the facility.
 - The warrant and a copy of the application for the warrant must be immediately transmitted to the facility.
- Health & Safety Code § 573.012(f)

14

May a Peace Officer Refuse to Serve the Warrant?

- No!
- The Attorney General has determined that the law enforcement officer to whom the Warrant is directed may not refuse to execute the warrant.

-- See Handout 1: Atty. Gen. Op. KP-0206 (May 16, 2018)



15



Attorney General Opinion

- KP-O206 (May 16, 2018):
 - A magistrate may direct an emergency detention warrant to any on-duty peace officer regardless of the location within the county of the person who is the subject of the warrant.
 - A peace officer executing an emergency detention warrant has a duty to ensure the transport of the person subject to the warrant to an appropriate facility pursuant to Health & Safety Code § 573.012(e); and

16

Attorney General Opinion

- A peace officer refusing to transport a person to an appropriate facility is liable for contempt (but an action for contempt would have to be brought by a court having specific jurisdiction over mental health proceedings).



17



How Long Does the Officer Have to Execute the Warrant?

- The warrant requires the person's "immediate apprehension" since it has been found that there is reason to believe the person shows a substantial risk of serious harm to himself or others.
 - Health & Safety Code § 573.012(e)
- Therefore, the warrant should be executed immediately.

18

What Happens Next?

A facility must temporarily accept a person subject to a warrant for a preliminary examination.

They may be detained for up to 48 hours (subject to possible extension if the 48-hour period ends on a weekend or legal holiday or before 4:00 p.m. on the next business day, or due to inclement weather).

What happens after that depends upon their assessment by a psychiatrist and other factors and is beyond the scope of the warrant.

19

Emergency Apprehension: Application by Physician



- A judge or magistrate may permit a physician to submit an application by:
 - Email with the application attached as a secure document in PDF format; or
 - Secure electronic means, including satellite transmission, closed-circuit television transmission, or another two-way electronic communication that is secure, available to the judge or magistrate, and provides full 2-way sight and sound.
- Health & Safety Code § 573.012(h)

20

Emergency Apprehension: Application by Physician

- Then the judge or magistrate may transmit a warrant to the applicant by digital signature or with the warrant attached as a PDF
 - The judge or magistrate must provide for a recording of the presentation of an application, preserved until the patient or proposed patient has been released or discharged.
 - The patient may obtain a copy of the recording with reasonable payment to cover costs. If indigent, the court must provide a copy without charge.
 - Health & Safety Code § 573.012(h-1) and (i)

21



Emergency Apprehension: Peace Officer

- A peace officer may take a person into custody **without a warrant** if the officer:
 - (1) has reason to believe and does believe that:
 - (A) the person is mentally ill; and
 - (B) 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

22

Emergency Apprehension: Peace Officer

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

-- Health & Safety Code § 573.001(a)

23

Emergency Apprehension: Peace Officer

- An officer doing so must take the individual to the nearest available inpatient mental health facility or another suitable mental health facility; **or**
- Transfer the person to EMS personnel in accordance with a memorandum of understanding executed under H&S Code § 573.005 for transportation to such a facility.

-- Health & Safety Code § 573.001(d) and (f)



24



Emergency Apprehension: Peace Officer

- H & S Code § 573.001(d)(2):
 - Allows a law enforcement officer to transfer the person to EMS
 - And have EMS transport the person to a facility under a memorandum of understanding
- The jail must not be used except in “extreme emergency” and the person must be kept separate from inmates.
 - Health & Safety Code § 573.001(e) and (f)

25

Emergency Apprehension: Peace Officer

- The officer must 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 their rights within 24 hours.
 - Health & Safety Code § 573.001(g)

26

Emergency
Apprehension:
Peace Officer

- The officer may immediately seize any firearms which must be dealt with under Art. 18.191 of the Code of Criminal Procedure.

-- Health & Safety Code § 573.001(h)

27

Emergency
Apprehension:
Peace Officer

- The officer must immediately file a notice of emergency detention with the facility.
 - See Handout 2
- If EMS transports the person to the facility, then they "shall immediately file with the facility the notification of detention completed by the peace officer who made the request."

-- Health & Safety Code § 573.002(a)

28

Emergency
Apprehension:
Peace Officer

- A mental health facility or hospital emergency department may not require a peace officer or EMS personnel to execute any other form as a predicate to accepting the person.

-- Health & Safety Code §
573.002(b),(d) and (e)

29

Emergency Apprehension:
Guardian

- The guardian of a ward who is at least 18 may transport the ward to an inpatient mental health facility for evaluation without the assistance of a peace officer if:
 - (1) the ward is mentally ill; and
 - (2) 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.

-- Health & Safety Code § 573.003

30

Emergency Apprehension: Guardian

- After transporting the ward to the facility, the guardian must immediately file an application for emergency detention with the facility.
- The guardian shall immediately provide written notice of the filing of the application to the court that granted the guardianship.

-- Health & Safety Code § 573.004

31

Recurring Issues and Questions

- May the sheriff refuse to transport the person if they think it is too far to drive?
 - No. See KP-0206 (Handout 1)
- May a municipal peace officer serve an emergency detention warrant?
 - Yes. See KP-0206 and JC-0387 (Handouts 1 and 3)

32

Recurring Issues and Questions

- What if law enforcement takes the person to the emergency room and then refuses to transport them to the LMHA?
 - They are required to transport them to a facility. KP-0206 (Handout 1)
- What if law enforcement makes little or no effort to detain the person? What can a JP do? Does the warrant expire?
 - Remedy is contempt but need to try to work this out. The warrant does not expire. See Q1 on Handout 4.

33

Recurring Issues and Questions

- May a Justice of the Peace refuse to sign an Emergency Detention Order?
 - Yes, if they do not find reasonable cause to believe that each of the requirements is met. See Q2 on Handout 4.
- May a Justice of the Peace refuse to sign any Emergency Mental Health Warrants in the future or even consider an application for one?
 - No. See Q3 on Handout 4.

34

Recurring Issues and Questions

- How should I respond to a request by a nursing home for an Emergency Mental Health Warrant for a person who has Alzheimers?
 - The definition of mental illness in Section 571.003(14) of the Health & Safety Code excludes dementia.

35

Recurring Issues and Questions

- But a mental health warrant might still be appropriate if the person evidences some other form of mental illness and an applicant for a warrant has reason to believe and does believe that the person shows a substantial risk of serious harm to himself or others. Health & Safety Code § 573.011(b).
- If the person does not evidence mental illness, then a warrant is not available.
- See Q4 on Handout 4.

36

Recurring Issues and Questions

- On Emergency Detention Orders can we have a Mental Health Facility email or fax the application to us if a psychiatrist or doctor is not present at the time an EDO is requested by a family member or other person (nurse, LPC)? We have a Mental Health Facility in our county and we may get a phone call in the middle of the night for an EDO and the psychiatrist may not be at facility at that time.
 - No. See Q5 on Handout 4.

37

Recurring Issues and Questions

- Should an emergency mental health warrant be provided to an applicant to take to an agency for service or should the court be contacting the agency where the address for proposed patient resides to pick up and execute the mental health warrant?
 - Neither. See Q6 on Handout 4.

38

Recurring Issues and Questions

- If the person who is to be detained has changed locations and cannot immediately be found, how long does the warrant remain in effect before the applicant would have to submit a new or updated application?
 - The warrant does not expire. See Q7 on Handout 4.

39

Recurring Issues and Questions

- I would like the training center's thoughts on whether or not a Magistrate is statutorily authorized to send someone under apprehension for emergency detention to a general hospital emergency room, without the ER being "deemed a suitable mental health facility by the local mental health authority." (HSC 573.012)(e)(2).
 - No. See Q8 on Handout 4.

40

Recurring Issues and Questions

- Can a Justice of the Peace sign a Commitment Order when a person has been diagnosed with Mental Illness by an emergency room medical person that had been brought in by a Police Officer's Emergency Detention Order or does the order need to go to a CCL Judge or County Judge?
 - Generally no. See Q9 on Handout 4.
- Can a Mental Warrant be executed in an adjoining county?
 - Yes. See Q10 on Handout 4.

41

Stakeholder Meetings

- If possible, try to meet once a month with all the key stakeholders in your county, including the LMHA, JPs, County Judge, Sheriff's office, and other professionals and discuss what is working and what is not working.
- Don't let this turn into a gripe session about the lack of resources – everyone already knows that!
- It may take some time to make progress but it is worth it!



42

Stakeholder Meetings

- One effective way to accomplish this is using Sequential Intercept Mapping.
- This is a model for providing more effective community-based responses for people suffering from mental or substance abuse disorder.
- Many of these people often end up in the criminal justice system.
- See Handout 5.



43

Additional Resources

- Judicial Commission on Mental Health: <http://texasjcmh.gov/>
- TJCTC Mental Health Webpage: <http://www.tjctc.org/Mental-Health.html>
- OCA's Mental Health Training page: <http://www.txcourts.gov/publications-training/training-materials/mental-health/>

44

Additional Resources

- Forms: <https://www.tjctc.org/tjctc-resources/forms.html> > Magistrate Duties Forms
- Magistration Deskbook (3d ed. Jan. 2022) at pages 86 – 90: <https://www.tjctc.org/tjctc-resources/Deskbooks.html>