



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2018

The Honorable Renee Ann Mueller
Washington County Attorney
100 East Main, Suite 200
Brenham, Texas 77833

Opinion No. KP-0206

Re: Authority of a magistrate to designate a specific peace officer or law enforcement agency to execute an emergency detention warrant under subsection 573.012(d) of the Health and Safety Code (RQ-0204-KP)

Dear Ms. Mueller:

You ask a series of questions regarding which peace officers have the responsibility to transport a person subject to an emergency detention warrant issued pursuant to subsection 573.012(d) of the Health and Safety Code.¹ Chapter 573 governs the emergency detention of a person evidencing mental illness who may pose a substantial risk of imminent serious harm to himself or others if not immediately restrained. *See* TEX. HEALTH & SAFETY CODE §§ 573.0001–.026. Subchapter B of chapter 573 authorizes any adult to file a written application for the emergency detention of such a person and requires a judge or magistrate to review the application. *See id.* §§ 573.011 (providing for application), .012(a)–(b) (providing for issuance of warrant). Upon review, if certain requirements are met, “[t]he magistrate shall issue to an on-duty peace officer a warrant for the person’s immediate apprehension.”² *Id.* § 573.012(d). The statute provides:

(e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

¹*See* Letter and Brief from Honorable Renee Ann Mueller, Washington Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–2 (Dec. 27, 2017), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter” and “Brief,” respectively).

²The magistrate must find “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; (3) the risk of harm is imminent unless the person is immediately restrained; and (4) the necessary restraint cannot be accomplished without emergency detention.” TEX. HEALTH & SAFETY CODE § 573.012(b).

(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). You tell us that the City of Brenham police department and the Washington County sheriff's department disagree about which of the two is responsible for transporting the person apprehended if the location of the apprehension is within Brenham city limits.³ Brief at 1. "The dispute revolves around geographical principles and jurisdiction," you state, noting that the "primary point of contention . . . is whether a magistrate has authority to require a specific law enforcement agency to execute a warrant pursuant to [subsection 573.012(d)], regardless of where the subject to be transported is encountered or located." *Id.* at 3; *see also* Request Letter at 1.

Subsection 573.012(d) directs a magistrate to issue the warrant for apprehension "to an on-duty peace officer." TEX. HEALTH & SAFETY CODE § 573.012(d). Article 2.12 of the Code of Criminal Procedure defines "peace officer" to include, among others, "sheriffs" and "their deputies," and "marshals or police officers of an incorporated city, town, or village." TEX. CODE CRIM. PROC. art. 2.12(1), (3). As this office previously concluded, subsection 573.012(d) "uses the phrase 'peace officer' consistently with the Code of Criminal Procedure definition" and "does not on its face distinguish between county and municipal peace officers for purposes of executing emergency detention warrants." Tex. Att'y Gen. Op. No. JC-0387 (2001) at 2. Thus, a magistrate⁴ may direct the emergency detention warrant to any on-duty peace officer listed in article 2.12 of the Code of Criminal Procedure, regardless of the apprehended person's location within the county.

Next, you ask whether the responding peace officer or law enforcement agency must "respond and transport the person" pursuant to section 573.012(e). Request Letter at 1. Although subsection 573.012(e) provides that "[a] person apprehended under this section *shall be transported* for a preliminary examination" without directly identifying the person or entity providing the transportation, the statute contemplates that the peace officer apprehending the person also takes responsibility for transporting the person. TEX. HEALTH & SAFETY CODE § 573.012(e) (emphasis added); *see also Boren v. Texoma Med. Ctr., Inc.*, 258 S.W.3d 224, 226 n.1 (Tex. App.—Dallas 2008, no pet.) (stating that a warrant issued pursuant to subsection 573.012(d) is "for the person's immediate apprehension *and transportation* to a mental health facility for a preliminary examination" (emphasis added)), 25 TEX. ADMIN. CODE § 412.176(a)(1) (2018) (Dept. of State Health Services, Emergency Detention) (directing state mental health facilities to accept for preliminary examination "a person who has been apprehended *and transported* . . . by a peace officer in accordance with" section 573.012 (emphasis added)); Tex. Att'y Gen. Op. No. JC-0364 (2001) at 2 (noting that pursuant to section 573.012, "a peace officer

³You do not ask about a peace officer's responsibility to transport such a person without a warrant pursuant to subchapter A of chapter 573, acknowledging that under that subchapter "the encountering officer or deputy is responsible" for transporting the person to a facility for evaluation, whoever that may be. Brief at 1. Thus, we address only the transportation of a person pursuant to subchapter B.

⁴Your first two questions ask about the authority of "a magistrate, specifically a Justice of the Peace." Request Letter at 1. The authority bestowed by subsection 573.012(d) does not distinguish among the various officers who may serve as a magistrate. *See* TEX. CODE CRIM. PROC. art. 2.09 (defining "magistrates" to include, among others, "justices of the peace").

transports an apprehended person who is believed to be mentally ill” to the appropriate facility). Thus, a court would likely determine that a peace officer executing an emergency detention warrant also has a duty to ensure the person is transported to the appropriate facility.

Next, you ask whether “there are any jurisdictional elements associated with a warrant issued pursuant to” section 573.012(d), such that the location of the person encountered would determine whether transportation is a municipal or county law enforcement responsibility. Request Letter at 1. Subsection (d) of section 573.012 contains no jurisdictional element on the warrant issued to an on-duty peace officer. The only location-based element of section 573.012, in subpart (e) of that section, determines the destination of the transport (“the nearest” mental health facility), not who provides the transport. *See* TEX. HEALTH & SAFETY CODE § 573.012(e).

You also ask whether the Brenham police department or the Washington County sheriff’s department may “refuse to transport persons subject to warrants” under section 573.012. Request Letter at 1–2. Among other duties, a peace officer “shall . . . execute all lawful process issued to the officer by any magistrate or court.” TEX. CODE CRIM. PROC. art. 2.13(b)(2). In addition, a person apprehended under an emergency detention warrant “shall” be transported to an appropriate facility. TEX. HEALTH & SAFETY CODE § 573.012(e). The word “shall” imposes a duty. TEX. GOV’T CODE § 311.016(2). Under these provisions, a peace officer may not refuse to transport a person he or she apprehends pursuant to an emergency detention warrant.

Finally, you ask whether “a designated law enforcement officer, or the head of a particular law enforcement agency [who] refuses to execute a warrant pursuant to section 573.012(d)” may be held in contempt.⁵ Request Letter at 2. “If any sheriff or other officer shall willfully refuse . . . to execute any . . . legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt . . . at the discretion of the court.” TEX. CODE CRIM. PROC. art. 2.16. The local probate court or court having probate jurisdiction handles proceedings under the Texas Mental Health Code, which includes chapter 573. *See generally* TEX. HEALTH & SAFETY CODE §§ 571.001–578.008 (Texas Mental Health Code), *id.* § 571.012 (specifying the hours of availability of the probate judge, a magistrate, or the court with probate jurisdiction for mental health proceedings). In Washington County, the county court and the county court-at-law both exercise this jurisdiction, and such courts may punish for contempt.⁶ *See* TEX. GOV’T CODE §§ 21.002 (generally giving courts contempt power), 25.0004(b) (specifying that “[a] statutory county court or its judge may punish for contempt as prescribed by general law”). Thus, a subsequent action for contempt could likely be brought in those courts to enforce a magistrate’s emergency detention warrant issued pursuant to section 573.012(d).

⁵Your question contemplates “the issuing magistrate” holding the person in contempt. Request Letter at 2. However, because “contempt is a broad and inherent power of a court,” we focus our inquiry on a court’s power to enforce an emergency detention warrant issued pursuant to subsection 573.012(d). *In re Reece*, 341 S.W.3d 360, 364 (Tex. 2011) (emphasis added); *see also* TEX. GOV’T CODE § 21.002 (“a court may punish for contempt”).

⁶The constitutional county court of Washington County “has the general jurisdiction of a probate court.” TEX. GOV’T CODE § 26.339. The county’s singular statutory county court also exercises probate jurisdiction concurrently with the constitutional county court. *See id.* §§ 25.2411 (“Washington County has one statutory county court, the County Court at Law of Washington County.”), .0003(d) (providing generally that “a statutory county court has, concurrent with the county court, the probate jurisdiction provided by general law for county courts”).

S U M M A R Y

A magistrate may direct an emergency detention warrant issued pursuant to subsection 573.012(d) of the Health and Safety Code to any on-duty peace officer listed in article 2.12 of the Code of Criminal Procedure, 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 a person subject to the warrant to an appropriate facility pursuant to subsection 573.012(e). Subsection 573.012(d) contains no jurisdictional element that would determine whether municipal or county law enforcement bears the responsibility for transporting a person to an appropriate facility pursuant to subsection 573.012(e). A peace officer refusing to transport a person to an appropriate facility pursuant to subsection 573.012(e) is liable for contempt. Such an action for contempt could likely be brought by a court having specific jurisdiction over mental health proceedings.

Very truly yours,



KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee

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

_____ BADGE NO.

PEACE OFFICER'S SIGNATURE

Address: _____ Zip Code:

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, Health and Safety Code, and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005, Health and Safety Code.



June 5, 2001

The Honorable Juan J. Hinojosa
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. JC-0387

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)

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

¹Letter 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].

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

²See 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.

³See Act of May 28, 1999, 76th Leg., R.S., ch. 1512, § 2, 1999 Tex. Gen. Laws 5233, 5234.

⁴See *id.* § 3.

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 a 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.

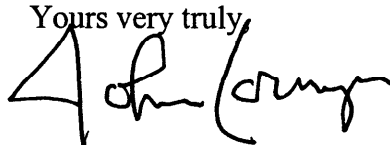
Finally, we note that the legislative history of the 1999 amendments to these provisions regarding the transportation of detained persons and persons under protective custody is not to the contrary. The bill analyses suggest that the purpose of the legislation was to address problems in the transportation 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.

S U M M A R Y

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,

A handwritten signature in black ink, appearing to read "John Cornyn", written over a vertical line that serves as a separator between the signature and the typed name below.

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

Handout 4: TJCTC Legal Board Questions

Q1. What recourse does a JP have if an EDO has been issued and sent to the local police department, twice, and they make very little attempt to detain the subject and take them to the nearest mental health facility. I have had to issue two warrants in the last 10 days for the same person. The PD is driving by but not actually making an attempt to serve the warrant. The petitioner has had to complete two applications because if the warrant is over 3 or 4 days old the mental health facility will not evaluate the person. This particular person is in need of immediate evaluation due to his ongoing mental issues.

A. First of all, we are not aware of any law to support the mental health facility refusing to evaluate a person if a warrant is over 3 or 4 days old. The statute does not provide an 'expiration date' and there are no cases or AG opinions that provide an expiration date for emergency mental health detention warrants. This seems to imply that they are treated like arrest warrants, which do not expire unless they are recalled by the issuing magistrate or judge (and of course, if at any point there is no longer an imminent threat, the warrant should be recalled). It might be useful to have a conversation with the facility leadership to find out where this policy came from and if it could be changed. If your county has a mental health board or similar entity, it may be useful to involve them in the conversation as well.

Regarding the officers not making an attempt to execute the warrant and transport the individual to the mental health facility – an officer can technically be held in contempt for willfully refusing to execute any legal process that they have a duty to execute. However, Attorney General Opinion KP-0206 suggests that any contempt proceedings for refusing to execute an emergency mental health warrant would need to take place before a court having specific jurisdiction over mental health proceedings rather than before the magistrate who issued the warrant. And in any case, pursuing contempt in a situation like this will often lead to greater political and practical issues down the road. We would recommend having a conversation with the police chief to find out what the problem is and to see if execution of these warrants can be improved. Here again, if your county has a mental health board or similar entity, it may be useful to include them in the conversation as well.

Q2. May a Justice of the Peace refuse to sign an Emergency Detention Order?

A. Yes, a justice of the peace (acting as a magistrate) may refuse to sign an application for an emergency detention warrant. In fact, Section 573.012(b), Health and Safety Code, states that the magistrate “shall deny the application” **unless** the magistrate finds 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; (3) the risk of harm is imminent unless the person is immediately restrained; and (4) the necessary restraint cannot be accomplished without emergency detention. If the magistrate does not find reasonable cause to believe that each of these requirements is met, then the application should be denied. For more information please see the Magistration Deskbook (3d ed. Jan. 2022) at pages 86 – 90.

Q3. I am very familiar with Health and Safety Code 573. I understand the parameters that we have to go by to issue a mental health warrant. Can you give me the law where it says that I must issue the warrant if all the conditions are met. I am not a mental health professional. When "an adult" comes into my office and wants to request a mental warrant against someone, they sign the application but I have had instances where they did not tell the truth on the application. I know they are swearing to the application but that really means nothing. Meanwhile, I issue the warrant and the person's civil liberties are taken away and then later I find out that what was on the application was not the truth. Now I have an upset person who went to a mental facility for no reason. So I am thinking that I will not be issuing any more mental warrants because again, I am not a mental health professional and I don't like sending people to mental facilities who don't need to be there. I understand that I could call mental assessors to do the application, but I don't want to do that based on past experiences. Some know less than I do about mental health. Basically, I don't want to issue mental warrants anymore. Is there a law that says I even have to review the application someone wants to submit. At this point, I want to tell people when they call or come to my office for a mental warrant that I am not doing them anymore so they don't need to come in. Would I be breaking the law and if so, what law is it. Sorry for the long question, however, there are many and I mean many JP's that are struggling with the same issue as I covered. Thanks so much.

A. We do not believe it advisable to simply refuse to issue a mental warrant ever again in any case, regardless of the facts of that case. While we understand your frustration when a person files an application for a mental warrant based upon a misrepresentation of the facts, we do not think that is a sufficient basis for never issuing a mental detention warrant in the future. We would note that Section 27.001, Government Code, states that the JP's bond is conditioned that the justice will "faithfully and impartially discharge the duties required by law." Further, Canon 3(A) of the Code of Judicial Conduct, states: "The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law." Canon 3(B)(1) states: "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate." Canon 3(B)(9) states: "A judge should dispose of all judicial matters promptly, efficiently and fairly." Issuance of a mental detention warrant under Health & Safety Code § 573.012 is a magistrate function to which these provisions of the Code of Judicial Conduct would arguably apply.

But this does not mean you do not have considerable discretion in considering whether or not to grant an application requesting the issuance of a mental detention warrant. Section 573.012 states:

ISSUANCE OF WARRANT. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by

administrative order may provide that the application must be:

- (1) presented personally to the court; or
- (2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

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

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

demonstrated by:

- (1) the person's behavior; or
- (2) evidence of severe emotional distress and deterioration in the person's mental

condition

to the extent that the person cannot remain at liberty.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

So the warrant should be issued only if you find that each of the criteria in Subsection (b) are met.

If the affidavit filed by the applicant contains materially false statements of fact that caused a person to be wrongfully apprehended and detained, the person may have a claim against the applicant or the applicant might be subject to prosecution for the filing of a false statement.

Q4. I understand that we can't sign an EDO on a person that has been diagnosed with dementia but what if they are a harm to themselves and others? Like if they become physical with a family member what can and is there something we can do?

A. While it's true that the definition of mental illness in Section 571.003(14) of the Health & Safety Code excludes dementia, an Emergency Detention Order might still be appropriate if the person evidences some other form of mental illness and an applicant for an EDO 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 an EDO is not available. Other orders, such as a peace bond or an emergency protective order, would not really apply to this situation.

Q5. 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.

A. Health & Safety Code Sec. 573.012(h) only permits electronic applications for EDOs by physicians. A family member or other staff is not permitted to do so. See p. 88 of the Magistration Deskbook.

Q6. 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?

A. Neither. If the judge finds that the requirements for an emergency mental health warrant are met, then the warrant should be issued to an on-duty peace officer for the person's immediate apprehension and transportation for a preliminary examination in accordance with Section 573.001(d), Health and Safety Code. Please read page 74 of the Magistration Deskbook (2d ed. April 2020) and Chapter 3C concerning Emergency Mental Health Warrants generally.

Q7. Health and Safety Code 573.012 (d) says: "The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied." 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?

A. The statute does not provide an 'expiration date' and there are no cases or AG opinions that provide an expiration date for emergency mental health detention warrants. This seems to imply that they are treated like arrest warrants, which do not expire unless they are recalled by the issuing magistrate or judge.

The court should use discretion and common sense in determining when to recall an unexecuted emergency mental health detention warrant.

Q8. 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). My concern is, does a general hospital

emergency room meet the definition of a mental health facility (Health and Safety Code, Sec. 571.003 (12)); or an inpatient mental health facility (HSC Sec. 571.003 (9)). I don't believe that a general hospital emergency room is "that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided." (Sec. 571.003 (12)(C)) If the emergency room of a general hospital was an authorized place to instruct a peace officer to take a person, wouldn't the statute reflect that? Sec. 571.003 (7) defines a General Hospital. I am inclined to believe the statute would directly say "General Hospital" if this was appropriate. Instead, HSC 571.003 (12)(C) specifically defines a mental health facility as "that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided.." I believe that if a simple emergency room was appropriate the statute would have said simply "General Hospital"; the definition is already under Sec. 571.003 (7). Instead, I interpret the statute to be referring to General Hospitals with psychiatric floors. i.e. the identifiable part of the hospital that diagnosis, treats, and cares for the mental health patients. Finally, What constitutes "Deeming a facility a suitable mental health facility" by the local MHMR? Verbal confirmation? Written declaration?

A. We agree that the definitions for the facilities where a person could be sent on an emergency detention order wouldn't include a general hospital ER unless it were deemed a suitable mental health facility by the local MHMR.

As far as what constitutes "deeming" by the local MHMR, the statute doesn't specify how this is to be done. We think any type of communication would be fine, but having it in writing is probably the best practice.

Q9. 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?

A. Generally, no. Justices of the Peace can issue Emergency Detention Orders to have the person brought in for evaluation, but an order committing a person has to come from a county court or county court-at-law. Chapter 574 of the H&S Code does allow those courts to designate other magistrates to issue protective custody orders, but only if those magistrates have the qualifications of the office that is making the designation. So, for example, someone designated by a county court-at-law judge would also have to be an attorney.

Q10. Can a Mental Warrant be executed in an adjoining county? The person say is visiting a friend in the adjoining county and is causing a disturbance. Can we execute the metal warrant we he is located in that county?

A. There is nothing in Health & Safety Code § 573.012 that would limit the execution of a warrant for the emergency detention of a person suffering from a mental illness to the county in which the warrant is issued. Therefore, a warrant issued in your county could be executed in the adjoining county.

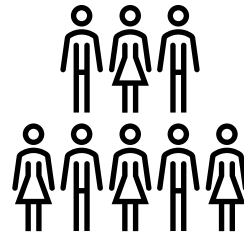
Working with Stakeholders: What is Sequential Intercept Mapping?



1

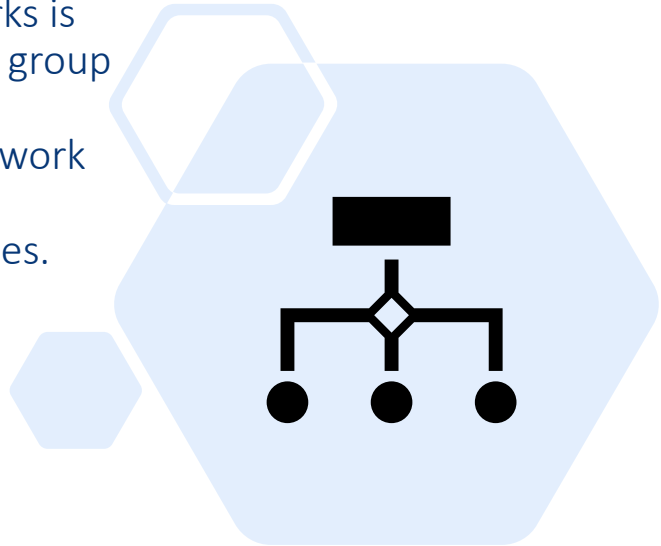
What stakeholders are involved in mental health and the criminal and civil justice system in your county?

Brainstorm a list together.

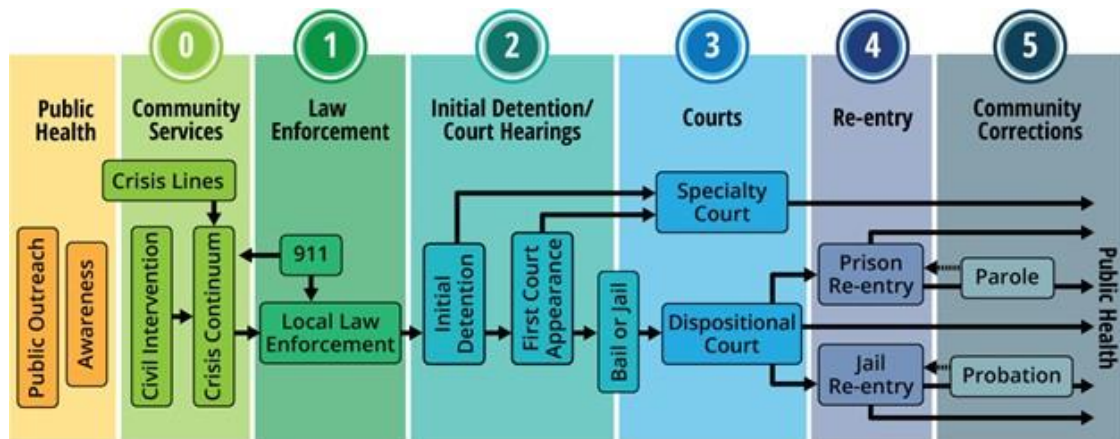


2

The most common reason that people use process frameworks is to help them understand and group processes into a classification structure to understand how work gets accomplished and the relationship between processes.
-Holly Lyke-Ho-Gland



3



What is the Sequential Intercept Model?

4

Intercept 0: Community Services

What fits in this intercept?

- Hospitals
- Crisis lines – Mental health crisis line, suicide crisis line, substance use crisis line
- Department of Health and Human Services – Adult and Child protective services, Medicaid, food stamps
- Local mental health authority
- Public health districts
- Mobile crisis response teams
- Local service programs for mental health/substance abuse

5

Intercept 1: Law Enforcement

What fits in this intercept?

- Emergency medical services
- Dispatch/911
- Law enforcement

6

Intercept 2: Initial Detention & Initial Court Hearings

What fits in this intercept?

- Jail and jail staff
- Justices of the peace and/or magistrates
- Psychologists who may conduct competency evaluations

7

Intercept 3: Jails & Courts

What fits in this intercept?

- Jail and jail staff
- Jail programming if available
- Assessment and treatment resources
- Specialty courts

8

Intercept 4: Reentry

What fits in this intercept?

- Department of Health and Human Services
- Housing assistance
- Medication support
- SNAP reemployment
- Emergency community support

9

Intercept 5: Community Supervision & Community Supports

What fits in this intercept?

- Probation department
- Therapy resources

10

What are you
looking for?



11

What are you looking for?

- Information gaps and kinks in the system
- Opportunities for collaboration
- Ways to better information share
- Improved processes
- Identifying areas where increased funding through grants could help

12

SIM Mapping Vision for Texas

Provide accessible mapping and training with the Sequential Intercept Model to all Texas counties.

Accomplish this through partner organizations working together and sharing information.

13

Texas has a Menu of SIM Mapping Options



PRA provides SIM Mapping for fee (about \$25,000), through third-party grants, and for free through scholarships.

MMHPI provides an in-depth data analysis of county data across the SIM for fee (about \$8,000) or through third-party grants.

JCMH provides free SIM Mapping, specializing in Intercepts 2 and 3

HHSC provides free SIM Mapping

14

14

Public Health	0 Community Services	1 Law Enforcement	2 Initial Detention / Court Hearings	3 Courts	4 Re-entry	5 Community Corrections
<p>Create Cross-Systems Review Meetings</p>	<p>Use Alternatives to the Criminal Justice System</p> <p>Community Services and Civil Law System</p> <ul style="list-style-type: none"> Crisis Services Outpatient Commitment Assisted Outpatient Court Inpatient Civil Commitment Guardianship Psychiatric Advanced Directives 	<p>Encourage Pre-Arrest Diversion</p> <ul style="list-style-type: none"> Law Enforcement Must Divert MH cases when appropriate CCP 16.23 Use Pre-arrest Diversion Programs or Policies 	<p>Identify Early & Divert</p> <ul style="list-style-type: none"> Court Liaison Jail Booking TLETS CCQ Magistration CCP 15.17 Notice Reqts. CCP 16.22 MH/ID Bond CCP 17.032 Transfer to Outpatient Civil Commitment 16.22(c)(5) <p>Ensure Jail Best Practices</p> <ul style="list-style-type: none"> Access to 24/7 telepsychiatry? Tex. Gov't Code 511.009(a)(19) Provided their prescription MH Medications as required by law. Tex. Gov't Code 511.009(d). <p>Appoint an Attorney</p> <ul style="list-style-type: none"> Right to Counsel CCP 1.051 Procedures for Appointing Counsel CCP 26.04 	<p>Eliminate the Wait: Right Size Competency Restoration Services</p> <ul style="list-style-type: none"> Treatment & diversion alternatives Transfer to Outpatient Civil Commitment CCP 16.22 (c)(5) Inpatient Civil Commitment Re-evaluation after stabilization Outpatient Competency Restoration Jail-Based Competency Restoration Involuntary Medication State Hospital Inpatient Competency Restoration Services <p>Seek Mental Health Courts, Veterans, Trafficking, and other Specialty Courts</p> <p>Specialty Programs / Specialty Courts / Specialty Dockets</p> <p>Review case for Insanity / Lack of Responsibility</p> <p>Alternative Sentencing</p>		