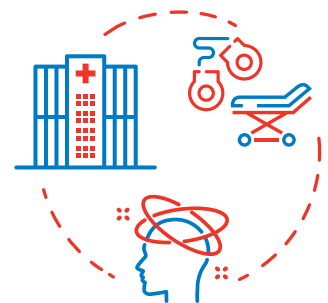




When a person experiences a psychiatric crisis, temporary hospitalization at an inpatient mental health facility may be necessary. Individuals have the opportunity to voluntarily admit themselves for treatment. In some cases, however, law enforcement and the judicial system intervene to pursue a mental health hold so a physician can determine whether the individual requires hospitalization. **Because Texas has too few psychiatric beds to meet the state's current need, individuals in crisis often are directed to hospital emergency departments for emergency evaluation,** stabilization and treatment before a bed at an inpatient mental health facility becomes available.

Additionally, the variation in processes occurring across Texas' 254 counties sometimes leads to breakdowns in how the system is intended to work and can jeopardize the safety of the persons the system is supposed to protect.

This document outlines the multi-step process to secure a mental health hold – emergency detention and order of protective custody – for an individual experiencing a psychiatric crisis.



Emergency Detention (ED)

GENERALLY NO MORE THAN 48 HOURS

A warrant, if issued by a judge, or a warrantless ED, if executed by law enforcement, to obtain a **medical assessment** to determine whether an individual, who evidences an imminent, substantial risk of serious harm to self or others, needs court-ordered or involuntary hospitalization.

Order of Protective Custody (OPC)

GENERALLY LONGER THAN 48 HOURS

A court ordered **mental health commitment** issued by a judge for an individual who refuses hospitalization and is found to be mentally ill to the degree that there is a substantial risk of serious harm to self or others unless the person is immediately restrained.

Emergency Detention Process

EITHER

Custody

OR



Peace Officer Warrantless Detentions

Law enforcement takes an individual into custody without a warrant, if the person is believed to be mentally ill and poses a substantial risk of serious harm to self or others and there is not enough time to get a warrant. Law enforcement can form the belief based on a credible person's presentation, conduct of an individual or circumstances under which the person is found.



Emergency Detention Warrants

As an alternative to a peace officer warrantless detention, **any adult may file an application for the emergency detention** of another person alleging the same circumstances as a peace officer ED.

Generally, a warrant application must be presented personally to a judge or magistrate; however, a physician is permitted to submit an application electronically if allowed by the judge or magistrate.

Transport

2

Peace Officer Warrantless Detentions

Law enforcement immediately transports the individual to the nearest appropriate inpatient mental health facility. If a bed at an inpatient mental health facility isn't available, law enforcement may take the individual to a mental health facility deemed appropriate by a local mental health authority, which often is a hospital emergency department.

Although state law doesn't provide explicit authority for law enforcement to transport an individual to a general hospital, the authority is suggested by the definition of "mental health facility" found in chapter 571 of the Mental Health Code. The definition of a "mental health facility" includes "that identifiable part of a general hospital in which diagnosis, treatment and care for persons with mental illness is provided."



Emergency Detention Warrants

A warrant issued by the judge or magistrate allows the immediate apprehension of the person who was the subject of the application.

Each year, nearly
1 in 20 adults
experience a
serious mental illness.



Detention / Warrant



3

Peace Officer Warrantless Detentions

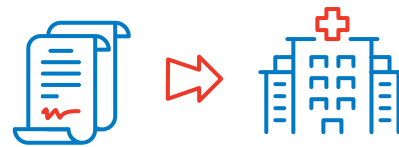
"Notification of Detention" is filed.

Immediately after transporting the individual to the facility, the law enforcement agent or EMS personnel who transported the individual must file a "Notification of Detention." EMS personnel may transport an individual to the facility if law enforcement requests it and there is a memorandum of understanding.

The "Notification of Detention" form describes to the facility why law enforcement believes that the risk of harm is imminent to the individual or others and provides other information related to the individual and the incident.

Emergency Detention Warrants

The warrant serves as an application for detention in the facility. The warrant and a copy of the application must be immediately transmitted to the facility.



4

Detention

Under either a peace officer ED or an ED warrant, an individual may be detained for up to 48 hours without an order of protective custody. If the 48-hour period ends on Saturday, Sunday, legal holiday or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day.

5

Physician Exam

A physician examines the individual, as soon as possible, within 12 hours after he or she is apprehended by law enforcement and transported to the facility. To continue the emergency detention, a physician must state in writing:

- That the individual has a mental illness.
- That the individual evidences a substantial risk of serious harm to self or others.
- The described risk of harm is imminent unless the individual is immediately restrained.
- That the ED is the least restrictive means of restraint.
- Details of the individual's mental illness, the specific risk of harm and specific detailed information from which the physician formed the opinion.



6

Release or Filing of OPC

The individual is released if he or she no longer meets the criteria for an ED or if an order of protective custody is sought. If, after the examination, the physician believes that the individual being held continues to exhibit signs of mental illness and evidences a substantial risk of serious harm to self or others, a county or district attorney or another adult, such as the physician, may file with the court an application for an order of protective custody.



7

OPC Application

The application must state that the person filing the application believes and has reason to believe that the individual meets the criteria authorizing the court to issue the OPC. It also must include a certificate of medical examination for mental illness prepared by a physician who has examined the individual not earlier than three days before the motion is filed.

8

OPC Issued

Judge issues OPC, if, based on the application and certificate of medical examination, he or she determines that a physician has stated detailed reasons for his or her opinion that the individual has a mental illness and poses a substantial risk of serious harm to self or others. If a fair determination cannot be made from the application and certificate alone, the judge may require additional evidence.



9

Transport to Inpatient Facility

Once the OPC is issued, the following designees, in the order of priority, immediately must transport the individual to an inpatient mental health facility deemed suitable by the LMHA for the area.

- A special officer for mental health assignment.
- The facility administrator of the designated mental health facility, unless the administrator notifies the court that the facility personnel are not available to transport the individual.
- A representative of the LMHA, who shall be reimbursed by the county, unless the representative notifies the court that the LMHA personnel are not qualified to ensure the safety of the individual during transport.
- A qualified transportation service provider.
- The sheriff or constable.
- A relative or other responsible person who has a proper interest in the individual's welfare.
- If a bed is not available at an inpatient mental health facility, the individual remains at the original facility to which law enforcement or EMS transported the individual.



10

Attorney Appointed

Once the OPC is signed, the judge appoints an attorney to represent the individual, if he or she does not have one.



11

Written Notice

The OPC application. The application must state that the person filing the application believes and has reason to believe that the individual meets the criteria authorizing the court to issue the OPC. It also must include a certificate of medical examination for mental illness prepared by a physician who has examined the individual not earlier than three days before the motion is filed.

12

Hearing

No later than 72 hours after the time that the individual was detained under the OPC, a hearing is held to determine if:

- There is probable cause to believe that the individual under the OPC presents substantial risk of serious harm to self or others to the extent that the he or she cannot be at liberty pending the hearing.
- A physician has stated detailed reasons for his or her opinion that the individual has a mental illness.



12

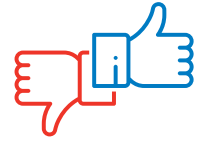
Hearing (Continued)

If the period for the hearing ends on a Saturday, Sunday or legal holiday, the hearing is held on the next business day that is not a legal holiday. At the hearing, the individual and the individual’s attorney have an opportunity to present evidence to challenge the allegation that the individual presents a substantial risk of serious harm to self or others. The state may prove its case based on the physician’s certificate of medical examination filed in support of the initial motion.

13

Judge’s Decision

Judge orders the individual to remain in protective custody, if, after the hearing, he or she determines that the individual presents a substantial risk of serious harm to self or others to the extent that he or she cannot remain at liberty.



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Return to Facility

The judge arranges for the individual to return to the inpatient mental health facility, or other suitable facility, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the statutory notification of probable cause hearing for the hospital. A copy of the statutory notification and supporting evidence must be filed with the court that entered the original OPC.



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Court-Ordered Treatment

Judge orders the individual to remain in protective custody, if, after the hearing, he or she determines that the individual presents a substantial risk of serious harm to self or others to the extent that he or she cannot remain at liberty.



In 1930, the Texas Hospital Association was founded by a handful of hospital administrators who recognized the value of working together to provide superior health care. Since then, the health care industry has changed dramatically – and so has THA. Today, THA is one of the largest, most respected health care associations in the country and the only statewide organization that represents the interests of all Texas hospitals and health care systems.

