

Memorandum



To: Supreme Court Advisory Committee

From: Judicial Administration Subcommittee

Date: August 16, 2022

Re: Referral relating to SB 362

I. Matter referred to subcommittee

The Texas Supreme Court has requested recommendations regarding (1) a proposed addition to the Rules of Judicial Administration addressing forms to be used for emergency mental health proceedings under Chapters 573 and 574 of the Texas Health and Safety Code; and (2) a review of the proposed forms.

The referral stems from Senate Bill 362 enacted by the 86th Legislature in 2019 directing the Supreme Court of Texas to (1) “adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code” and (2) “adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues.”¹ Chapter 573 of the Health and Safety Code governs emergency detention. In response, the Supreme Court created the Task Force for Procedures Related to Mental Health (“Task Force”) to make recommendations consistent with Senate Bill 362’s directives.

The Task Force first met on December 2, 2019, and began its work by focusing on Senate Bill 362’s directive to adopt rules or implement measures to create consistency and increase access to the judicial branch for mental health issues. The work was divided into three subcommittees: (A) Legislative Recommendations; (B) Technology Solutions for Emergency Detention Warrants; and (C) Forms. These subcommittees continued to meet and work throughout 2020, 2021, and 2022 to develop legislative proposals, reports, and forms.

This work is described in greater detail in **Exhibit A** to this memo, an August 2022 report by the Judicial Commission on Mental Health (“JCMH”) on SB 362.

The referral to the Supreme Court Advisory Committee encompasses only the forms aspect of the Task Force’s work with respect to emergency detention. The Committee is not being asked to make recommendations with respect to legislative proposals or technology solutions.

¹ See Act of May 15, 2019, 86th Leg., R.S. ch. 582 §26 (S.B. 362).

Here is an overview of the Task Force’s discussions regarding the use of forms in relation to SB 362’s directive to streamline processes governing emergency detention.

. . . Members of the Task Force advised that this directive stemmed from several stakeholders represented on the Task Force: the Texas Medical Association, the Texas Hospital Association, and the Federation of Texas Psychiatry (collectively, “Medical and Hospital Associations”). Specifically, the Medical and Hospital Associations raised concerns that the emergency detention and civil commitment processes are inefficient because they are too localized and lack uniformity, even in a single hospital region, and that this inefficiency is particularly problematic in these time-sensitive, crisis situations. For example, a hospital physician may be required to complete twenty different versions of the same form to initiate the emergency detention process because each judge in the hospital’s region requires a different form.

To address these concerns, the Medical and Hospital Associations requested that the Supreme Court require the use of the Task Force-approved forms *related to emergency detention* to promote efficiency in the emergency detention process. Alternatively, the Medical and Hospital Associations requested that the Supreme Court adopt a rule prohibiting courts from rejecting these forms. The Task-Force approved forms related to emergency detention include:

- Application for Emergency Detention
- Advisement to Patient Under Emergency Detention
- Motion for Protective Custody
- Order for Protective Custody
- Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services
- Application for Order to Administer Psychoactive Medication (Forensic)
- Application for Order to Administer Psychoactive Medication (Non-Forensic)

The Forms subcommittee ultimately did not recommend a rule, primarily based on feedback from the Honorable Guy Herman. The Honorable Guy Herman, Presiding Statutory Probate Judge of Texas, stated that he requested feedback on this matter from the Texas probate judges and that they were opposed to both rules suggested by the

Medical and Hospital Associations because they preferred to allow each county to use or require any form according to local needs and practices.

However, JCMH staff recommend that the Supreme Court adopt a rule that prohibits courts from rejecting the Task-Force approved forms on emergency detention. Such an approach would ensure that court users can rely on the acceptability of a Task-Force approved form, while allowing judges and court users the flexibility to continue using locally-preferred forms. It would also streamline and promote efficiencies in the emergency detention process, consistent with Senate Bill 362's directive.

JCMH staff recommend that such a rule be placed in the Rules of Judicial Administration, which are written for judges and court staff. Specifically, JCMH staff suggest placement in Rule 10 of the Rules of Judicial Administration, governing local rules, because the Supreme Court and Texas Court of Criminal Appeals have proposed amendments to Rule 10 that would, among other things, expand its application to local forms.² These proposed amendments are expected to take effect on January 1, 2023.

Such a rule is not unprecedented, and language previously approved by the Court may prove helpful in drafting a rule. For example, Texas Rule of Civil Procedure 145, titled "Payment of Costs Not Required," provides: "The clerk . . . may return [a form] for correction only if it is not sworn—not for failure to attach evidence of any other reason." In several form-related administrative orders, the Court has also used similar language: "Use of the approved [form] is not required. However, a trial court must not refuse to accept the [form] simply because [the person filing the form] used a form or is not represented by counsel. If the [form] is used, the court should attempt to rule on the claim without regard to non-substantive defects."³

² Preliminary Approval of Amendments to Rule 3a of the Texas Rules of Civil Procedure, Rule 1.2 of the Texas Rules of Appellate Procedure, and Rule 10 of the Texas Rules of Judicial Administration (Misc. Docket No. 22-9026).

³ *See, e.g.*, Order Approving Revised Protective Order Forms (Misc. Docket No. 22-9053); Final Approval of Amendments to Texas Rules of Civil Procedure 306a, 503, 505, 508, 509, 510, 663a, and 664a; of Texas Rules of Civil Procedure 679a and 679b; and of a Form Notice of Protected Property Rights, Instructions for Protected Property Claim Form, Protected Property Claim Form, and a Form Order Appointing Receiver (Misc. Docket No. 22-9031); Order Approving Revised Uniform Forms – Divorce Set One (Misc. Docket No. 13-9085).

JCMH staff have made plain-language and stylistic revisions to the Task-Force approved forms on emergency detention to make the emergency detention forms more user-friendly and promote consistency. Additionally, JCMH staff have expanded the information given to the patient in the Advisement to Patient under Emergency Detention form to include information that would be helpful to patient under emergency detention, but not required by Section 573.025 of the Texas Health and Safety Code, governing the rights of such patients.

The Judicial Administration Subcommittee used these JCMH recommendations as the starting point for the discussion below.

III. Subcommittee discussion and recommendation

Based on the referral's limited scope, the subcommittee addressed two points: (1) a proposed addition to Rule of Judicial Administration 10 regarding use of forms in this mental health context; and (2) review of proposed forms attached as Appendix B to the JCMH's August 2022 report with an eye towards readability and understandability.

A. Proposed addition to Rule of Judicial Administration 10

Rule 10 ____

[With respect to procedures under Chapters 573 and 574 of the Texas Health and Safety Code,] use of approved forms is not required. **[If a form is used,]** the court should attempt to rule on the requested relief without regard to non-substantive defects in the filing **[or whether the filing party is represented by counsel].**

Discussion regarding the bracketed language focused on the following considerations.

- The Texas Supreme Court has given preliminary approval to amendments to Texas Rule of Civil Procedure 3a, Texas Rule of Appellate Procedure 1.2, and Texas Rule of Judicial Administration 10; among other changes, these amendments address the use of local forms. This specific referral was limited to forms pertaining to procedures in mental health matters under Chapters 573 and 574. The full Supreme Court Advisory Committee may wish to consider whether a broader rule governing use of forms generally is warranted.
- The full Committee also may wish to consider whether a directive to rule on the merits of requested relief without regard to non-substantive defects in a filing should have broader application beyond this specific mental health context.

- There was some sentiment among the subcommittee members for stronger rule language requiring the use of the JCMH-approved forms unless use of an alternative form is approved by the presiding judge of an administrative judicial region.
- The bracketed reference to representation by counsel echoes discussions around other topics involving the use of forms by pro se filers in the family law context. This is another context in which pro se filing may be more prevalent.
- The subcommittee also raised a question as to whether redaction may be required for portions of the approved forms under Texas Rule of Civil Procedure 21c governing privacy protection for filed documents.

B. Proposed revisions to forms

The subcommittee's proposed revisions are attached as **Exhibit B** to this memo.