



**Report to the Supreme Court Advisory
Committee on Senate Bill 362, 86th Legislature**

August 2022

Judicial Commission on Mental Health

TABLE OF CONTENTS

I.	Introduction.....	3
II.	Consistency and Access Measures.....	3
	A. Legislative Recommendations	3
	B. Technology Solutions.....	5
	C. Forms.....	5
III.	Recommended Rule on Forms.....	7
IV.	Appendix A.....	9
V.	Appendix B.....	19

I. Introduction

In 2019, the 86th Legislature enacted Senate Bill 362 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. Task Force members include: the Honorable Brent Carr (Chair), Monique Allen, the Honorable Bill Boyce, the Honorable Danny Dominguez, Dr. Melissa Eshelman, Dr. Robert Greenberg, the Honorable Clay Harrison, Dr. Courtney Harvey, the Honorable Barbara Hervey, the Honorable Guy Herman, the Honorable David Jahn, Lee Johnson, Major Mike Lee, Beth Mitchell, the Honorable Roxanne Nelson, Denise Oncken, the Honorable Robin Ramsey, Professor Brian Shannon, David Slayton, the Honorable John Specia, the Honorable Ralph Swearingin, and Steve Wohleb.²

II. Consistency and Access Measures

The Task Force first met on December 2, 2019, and began its work by focusing on Senate Bill 362’s second directive: adopting rules or implementing 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.

A. Legislative Recommendations

Based on the work of the Legislative Recommendations subcommittee, the Task Force recommended five legislative proposals that were ultimately submitted to the Texas Judicial Council, in August 2020, as part of the JCMH’s Legislative Recommendations and Reports. These proposals are discussed in more detail below and shown in **Appendix A**. Although three of the proposals were included in both House and Senate bills by the 87th Legislature, none of the bills advanced past the committee stage.

(1) Clarification of Officer’s Duties Upon Presenting a Person for Emergency Mental Health Services

First, the Task Force proposed amending section 573.012 of the Texas Health and Safety Code to clarify that a peace officer has no duty to remain at a facility or emergency room after the officer has delivered a person for emergency mental health services with the proper completed documentation.

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

² Order Creating Task Force for Procedures Related to Mental Health (Misc. Docket No. 19-9094); Amended Appointments to Task Force for Procedures Related to Mental Health (Misc. Docket No. 19-9111).

(2) Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Second, the Task Force proposed expanding section 573.012 of the Texas Health and Safety Code to allow, in addition to physicians, other licensed or credentialed professionals (like physician’s assistants, nurse practitioners, phycologists, and certain master’s-level mental health professionals or social workers) to make an electronic application for an emergency detention warrant. This proposal was made in response to feedback that there are circumstances, particularly in less populated areas, where a physician is not available to make an electronic request at the time an emergency detention warrant is needed. Under the Task Force’s proposal, an application for an emergency detention warrant by those other than physicians would be limited to situations where the subject of the application is currently receiving care at a hospital or facility operated by a local mental health authority.

(3) Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Third, the Task Force proposed amending to section 573.012 of the Texas Health and Safety Code, Issuance of Warrant, to authorize a peace officer to seize a firearm found in possession of a person who is apprehended under the authority of a warrant for an emergency detention issued by a magistrate. The Task Force’s proposed amendment would grant the peace officer the same authority the peace officer already has under section 573.001(h) of the Texas Health and Safety Code, Apprehension by Peace Officer Without Warrant. Additionally, the amendment would allow for an orderly disposition of a seized firearm under article 18.191 of the Texas Code of Criminal Procedure, Disposition of a Firearm from Certain Persons with Mental Illness.

(4) Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders

Fourth, the Task Force proposed amending section 574.106 of the Texas Health and Safety Code to allow mandatory blood draws for patients admitted to the state hospitals for involuntary psychoactive medication administration purposes. This practice is medically necessary to ensure treating physicians have the ability to monitor medication levels in an effort to determine whether the medications are having their desired effect or need adjustment.

(5) Authorization to Delay the Arrest of a Mental Health Patient, Detained under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or Other Low-level Offense, until the Patient’s Mental Health Condition has been Stabilized

Fifth, the Task Force proposed amending chapter 15 of the Texas Code of Criminal Procedure to delay the arrest of a mental health patient, who has been detained under an emergency detention or order of protective custody and then harms another person or property, until the patient’s mental health condition has stabilized. Other alternative statutory amendments and solutions were also proposed.

B. Technology Solutions for Emergency Detention Warrants

Texas hospitals, like other hospital emergency rooms throughout the nation, are seeing increasing numbers of psychiatric patients seeking emergency mental health evaluations.³ Most hospitals, however, are not well-equipped to handle mental health crises. The Emergency Medical Treatment and Labor Act requires hospitals to stabilize patients in need of care before discharging them. In Texas, hospitals lack the authority to initiate emergency detentions without a warrant or to hold patients for further treatment and observation. This lack of authority to hold patients creates potential liability and regulatory risks for hospitals and inhibits the delivery of the best care for patients.

In response to these issues, the Technology Solutions for Emergency Detention Warrants subcommittee discussed how to improve the process of obtaining emergency detention warrants for individuals in hospital emergency rooms and identified a model system—the DWI Reporting System (“LEADRS”)—that could be used to develop a similar system for hospitals to obtain warrants for emergency detention. LEADRS was created in 2003 with funding from the Texas Department of Transportation and is an internet-based system that allows law enforcement to more quickly seek warrants for blood draws in DWI cases. LEADRS works by having officers answer a series of questions in text boxes, drop menus, and check boxes. Once completed, all information is used to complete a DWI case report and all forms associated with a DWI arrest, which are then electronically sent to the judge with the warrant. The average time to get a DWI warrant with this technology is 15-20 minutes. All transmissions are encrypted, and no information is stored on personal devices.

Ultimately, the Task Force, by a vote of ten to two, endorsed the concept of further exploring the possibility of adding technology solutions for physician-requested emergency detention warrants to augment existing statutory authority. The two dissenting members opposed a technology solution because they would prefer to see any problems resolved by education, collaboration, and enforcement of existing law that allows for warrantless emergency detentions in one of three ways: (i) a peace officer conducts a warrantless emergency detention by bringing a person into a hospital emergency department under an emergency detention and filing a notice of detention with the facility; (ii) a peace officer providing security at the hospital does a warrantless emergency detention when the person attempts to leave against medical advice; or (iii) a peace officer is contacted by the facility to effectuate a warrantless emergency detentions. The Office of Court Administration has agreed to continue exploring technology solutions in light of the Task Force’s recommendation.

C. Forms

The Forms subcommittee identified six categories of forms to review:

- (1) Emergency Detention Forms**
 - Notification of Emergency Detention
 - Application for Emergency Detention
 - Magistrate’s Order and Warrant for Emergency Detention
 - Advisement to Patient Under Emergency Detention

- (2) Order of Protective Custody Forms**

³ ACEP EMERGENCY MED. PRACTICE COMM., CARE OF THE PSYCHIATRIC PATIENT IN THE EMERGENCY DEPARTMENT – A REVIEW OF THE LITERATURE (2014), <https://www.acep.org/globalassets/uploads/uploaded-files/acep/clinical-and-practice-management/resources/mental-health-and-substance-abuse/psychiatric-patient-care-in-the-ed-2014.pdf>.

- Duties of Attorney
 - Motion for Protective Custody
 - Order for Protective Custody
 - Notification of Probable Cause Hearing
 - Probable Cause Hearing Elections/Motions/Orders
- (3) Court-Ordered Mental Health and IDD Services Forms**
- Mental Health General Information Form
 - Application for Court-Ordered Mental Health Services
 - Certificate of Examination for Mental Illness
 - Order Transferring Venue
 - Motion to Have Patient Examined/Order to Submit
 - Order Setting Hearing on Application for Extended Commitment
 - Notice to Patient of Extended Commitment Hearing
 - Patient's Elections & Attorney's Certification to Court for Ext./Temp. Commitment Hearings
 - Motion for Continuance
 - Judgment and Orders for Court-Ordered Mental Health Services
 - Writs of Commitment
 - Motion/Orders for Modification/Transfer
 - Motion to Dismiss
 - Application/Order for Inspection of Records
 - Application for Placement/IDD & Residential Commitment Order
- (4) Jail and Magistration Forms**
- Screening Forms
 - 16.22 Interview Orders
- (5) Incompetency to Stand Trial Forms**
- Certificate of Medical Examination for Mental Illness
 - Certification of Competency Evaluator Credentials (TCOOMMI Form)
 - Order to Determine Eligibility for Outpatient Competency Restoration
 - Order of Commitment for Restoration to Competency
 - 60-Day Extension of Commitment for Restoration to Competency
 - Temporary Order of Civil Commitment: Charges Pending
 - Extended Order of Civil Commitment: Charges Pending
- (6) Court-Ordered Administration of Psychoactive Medication Forms**
- **Criminal Court:**
 - Order on State's Motion to Compel Involuntary Administration of Court-Ordered Medication
 - **Probate Court:**
 - Non-Forensic:
 - Application for Court-Ordered Psychoactive Medication
 - Order Setting Hearing on Application for Court-Ordered Psychoactive Medication
 - Notice to Patient of Hearing on Court-Ordered Psychoactive Medication

- Patient’s Elections & Attorney’s Certification to Court
- Result of Hearing on Court-Ordered Psychoactive Medication
- Order to Administer Psychoactive Medication
- Motion for Writ of Attachment
- Order Denying Application to Administer Psychoactive Medication
- Forensic:
 - Application to Authorize Administration of Psychoactive Medication
 - Certification of Medical Examination
 - Order Authorizing Administration of Forced Medication
 - Writ of Attachment

The Forms subcommittee met many times in 2020 and 2021 to review, discuss, and compile a collection of the above forms for judges and court users to encourage consistency and streamline court processes. Ultimately, the Task Force approved 68 model forms that are posted on the [JCMH website](#). These forms have been converted to a consistent format and standardized for use across the state, and, on the JCMH website, users are warned that the forms do not constitute legal advice and are not endorsed by the high Courts.

III. Recommended Rule on Forms

After completion of the above work, the Forms subcommittee shifted its focus to addressing Senate Bill 362’s first directive to the Supreme Court: to “adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code,” 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.⁴ 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."⁵

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 revised forms are attached as **Exhibit B**.

⁴ 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).

⁵ 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).

IV.
Appendix A

1. Clarification of Officer’s Duties Upon Presenting a Person for Emergency Mental Health Services	10
2. Expansion of the Types of Personnel Who May Make an Electronic Application for Emergency Detention Warrant	11
3. Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention.....	13
4. Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders	17
5. Statutory Authority to Delay the Arrest of a Mental Health Patient, Detained Under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or other Low-level Offense, Until the Patient’s Mental Health Condition Has Stabilized	18

**Clarification of Officer's Duties Upon Presenting a Person for
Emergency Mental Health Services**

Amendment to Texas Health & Safety Code Section 573.012 by adding new section (d-2) as follows:

(d-2) A peace officer does not have a duty to wait at a hospital or other facility for the person to be medically screened, treated, or to have their insurance verified. The officer's duties are complete when the officer makes a responsible delivery of the person to the appropriate hospital or facility staff member along with the completed documentation required by this subchapter.

Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Amendment to Tex. Health & Safety Code, Sec. 573.012, as follows:

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive

communication of image and sound between the judge or magistrate and the

applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2) If the person who is the subject of an application is receiving care in a hospital or a facility operated by a local mental health authority, a judge or magistrate may permit an applicant who is either a physician, a physician's assistant, a nurse practitioner, or a non-physician mental health professional, as defined by Section 571.003

(15) (A)-(D) of the Texas Health and Safety Code, to submit an application under the provisions of subsections (h) and (h-1).

Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Amendment to Tex. Health & Safety Code, Sec. 573.012, adding a new subsection (d-1) as follows:

(d-1) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Amendment to Tex. Code of Criminal Procedure, Art. 18.191, as follows:

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 or 573.012, 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 or 573.012, 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 Sections 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 or 573.012, 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 or 573.012, 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 or 573.012, 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 or 573.012, 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 or 573.012, Health and Safety Code, may not be destroyed or forfeited to the state.

Authorization for blood draws to monitor blood levels of psychoactive medications involuntarily administered to patients in accordance with lawful orders

Amendment to Tex. Health & Safety Code §574.106 by adding new subsection (j-1), as follows:

(j-1) The authority to administer a medication involuntarily to a patient under subsection (a) includes the authority to obtain blood samples for analysis and conduct evaluations and laboratory tests that are reasonable and medically necessary to safely administer psychoactive medications.

Statutory authority to delay the arrest of a mental health patient, detained under an emergency detention or order of protective custody, who engages in conduct that may subject the patient to arrest for an assault or other low-level offense, until the patient’s mental health condition has been stabilized

Amendment to Chapter 15, Code of Criminal Procedure, by adding new section 15A, as follows:

Art. 15A.01. Deferral of Arrest for Nonviolent Offenders Receiving Emergency Mental Health or Intellectual Disability Services.

(a) In this article, “violent offense” shall mean an offense listed in Art. 42A.054 of this code. This article does not apply to a person who is charged with or subject to arrest for a violent offense.

(b) In this article “detained person” shall refer to a person who is being detained under Chapter 573, or Chapter 574, Subchapter B, of the Texas Health and Safety Code, who subsequent to the detention engages in conduct that would constitute a criminal offense at the facility where the person is being detained for emergency mental health services.

(c) An officer who has probable cause to make a warrantless arrest or who has a warrant for the arrest of a detained person for an offense other than a violent offense shall defer the arrest of the detained person until after the detained person has completed the detention for emergency mental health services.

(d) The deferral of arrest authorized by this article is subject to the approval of the head of the facility or designee. If the head of the facility or designee does not approve the deferral of arrest authorized by this article, the law enforcement officer may immediately take the person into custody.

(e) A copy of the notice of approval or disapproval of the deferral of the arrest by the head of the facility or designee, must be in writing and delivered to the officer seeking to arrest the detained person within one hour of the time the officer appears at the facility to make an arrest. A copy of the notice shall be filed by the facility with the court having probate jurisdiction over the person detained.

(f)A subsequent arrest of a detained person for whom an arrest was deferred will require a warrant based on probable cause.

(g)The facility where the detained person is located shall notify the law enforcement agency who sought the arrest of the detained person at least 12 hours prior to releasing the detained person.

(h)Nothing in this article shall be construed to limit any other lawful disposition of the acts for which an arrest was deferred.

V.
Appendix B

1. Application for Emergency Detention	21
2. Advisement to Patient under Emergency Detention.....	24
3. Motion for Protective Custody.....	26
4. Order for Protective Custody	28
5. Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services	30
6. Application for Order to Administer Psychoactive Medication (Patient with Criminal Justice Involvement)	33
7. Application for Order to Administer Psychoactive Medication (Patient without Criminal Justice Involvement)	38

Cause No. _____

(The court clerk will fill in this blank when you turn in this Application.)

The State of Texas for the

§
§
§
§
§
§
§
§

In the _____ Court

(The court clerk will fill in this blank when you turn in this Application.)

Best Interest and Protection of

(List the initial of the person you seek to protect.)

_____ County, Texas

(The court clerk will fill in this blank when you turn in this application.)

Application for Emergency Detention
(Sec. 573.011, Texas Health and Safety Code)

1. My full name is _____.

2. I am _____ years old.

3. My address is _____.

4. My phone number is _____.

5. My email address is _____.

6. I have reason to believe and do believe that the following person has a mental illness:

_____. This person is called the "Proposed Patient."
(List the person's full name.).

7. I have reason to believe and do believe that the Proposed Patient presents a substantial risk of serious harm to themselves or to others, which I have described in specific detail below:

_____.

You should **not** fill in this portion of the Application. The judge or magistrate will complete it.

This Application was sworn to before me on _____.
(List the date.)

Judge/Magistrate (Print name here.)

Judge/Magistrate (Sign name here.)

Advisement to Patient under Emergency Detention

(To be completed by a peace officer. **The peace officer should return one copy to the court.**)

To: _____
(List the Patient's name.)

You are being temporarily detained at a facility to determine if you are suffering from mental illness and if you need mental health services for the protection of yourself and others. "Detained" means held.

You should know the following information:

1. You are being temporarily detained at _____ ("Facility").
(List the facility's name.)

2. The reasons for your temporary detention are: _____

_____.

3. A doctor must examine you in the first 12 hours of your temporary detention. The Facility will then decide whether to officially admit you for temporary detention. "Temporary detention" is sometimes called "emergency detention" and usually lasts for less than 48 hours unless a court orders a longer period.

4. Your temporary detention could result in a longer period of involuntary commitment to a mental health facility. "Involuntary commitment" means checking you in to a mental health facility without your consent.

5. You have the right to hire a lawyer of your own choosing. If you cannot afford to hire a lawyer, a lawyer will be appointed to represent you. You must be given a reasonable opportunity to communicate with your lawyer.

6. You also have the right to a reasonable opportunity to communicate with a member of your family or another person who has an interest in your health and safety.

7. If you communicate with a mental health professional, those communications may be used to determine if a longer period of detention is necessary.

8. You will be released from temporary detention if, after the doctor's examination, the Facility decides not to officially admit you.
9. Even if the Facility decides to officially admit you, you have the right to be released from temporary detention if the Facility administrator determines at any time that:
 - a. you no longer have a mental illness;
 - b. there is no longer a substantial risk of serious harm to yourself or others;
 - c. the risk of harm to yourself or to others is no longer imminent; or
 - d. temporary detention is no longer the least restrictive means of restraint necessary.
10. If you are released, you have the right to be taken back to the location where you were found, to your Texas home, or another suitable location, unless you are arrested or object to the return.

Signature of Patient

Date

Signature of Peace Officer

Date

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

(List the initial of the person you seek to protect.)

Motion for Protective Custody
(Sec. 574.021, Texas Health and Safety Code)
(To be completed by a county or district attorney.)

1. An application for court-ordered mental health services (“Application”) was filed in the Court and is still pending.
2. A Certificate of Medical Examination for Mental Illness (“Certificate”) is attached to this Motion. The Certificate was prepared by a physician (“Certifying Physician”) who examined _____ (“Proposed Patient”) within the three days before this Motion’s filing.
3. Movant has reason to believe and does believe that: (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing.
4. Movant’s belief is derived from:

(Check all that apply.)
 the representation of a credible person;
 the Proposed Patient’s conduct;
 the circumstances under which the Proposed Patient is found.
5. Movant asks the Court to determine—based on the information in the Application, this Motion, and the Certificate—that (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. However, Movant conditionally requests to present additional evidence if the Court decides that a fair determination cannot be made from the Application, Motion, and Certificate alone.

6. Movant asks the Court to issue an Order of Protective Custody, ordering that a peace officer or other designated person:

(Check one.)

take the Proposed Patient into protective custody and immediately transport the Proposed Patient to _____ (“Facility”).

maintain protective custody of the Proposed Patient at _____ (“Facility”).

7. Movant also asks the Court to order that the Proposed Patient be detained in the Facility until a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

Respectfully Submitted,

County/District Attorney Name and Contact Information

County/District Attorney Signature

Date

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

Order of Protective Custody

1. An Application for Court-Ordered Mental Health Services (“Application”) for _____ (“Proposed Patient”) was filed in this Court. A Motion for Protective Custody (“Motion”) was filed by the appropriate representative of the State. A Certificate of Medical Examination for Mental Illness (“Certificate”) was attached to the motion. The Certificate showed that the Proposed Patient was examined within the three days before the Motion’s filing, by _____ (“Certifying Physician”).

2. The Court has considered the Application, Motion, and Certificate.

3. (Check one.)

- The Court determines that the conclusions of the Applicant, Movant, and Certifying Physician are adequately supported by the information provided.
- The Court heard additional evidence.

4. Based on the Application, Motion, Certificate, and any additional evidence heard, the Court determines that the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion. The Court also determines that the Proposed Patient shows a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. The substantial risk of serious harm was evidenced by:

(Check all that apply.)

- the Proposed Patient’s behavior;
- evidence of severe emotional distress and deterioration in the Proposed Patient’s mental condition to the extent that the proposed patient cannot remain at liberty.

5. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is ordered** to:

(Check one.)

- take the Proposed Patient into protective custody and immediately transport the Proposed Patient to _____ (“Facility”),

which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

maintain custody of the Proposed Patient at _____ (“Facility”), which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

6. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is also ordered** to return a copy of this Order, signed by the facility’s representative, to the Court.

7. **This Order is effective for 72 hours from the below date and time, unless the expiration time falls on a weekend or legal holiday, then the Order expires the next business day at 4 p.m.**

Date and Time

Judge (Print name here.)

Judge (Sign name here.)

To be completed by the Facility:

The Proposed Patient was received at _____ (facility name)
on _____ (date).

Facility Representative (Print name here.)

Facility Representative (Sign name here.)

Title

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

(List the initial of the person you seek to protect.)

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

**Motion to Modify Court-Ordered Inpatient Mental Health Services to
Outpatient Mental Health Services**
(Sec. 574.061, Texas Health and Safety Code)

1. My name is _____.

2. I am a Mental Health Administrator at _____.
(List the name of the facility.)

3. I am the individual responsible for the court-ordered inpatient mental health services of the Patient, _____.
(List the name of the patient.)

4. The Court issued an Order for Inpatient Mental Health Services on _____ date that ordered the Patient to participate in involuntary inpatient mental health services at _____.
(List the name of the facility.)

5. The Order for Inpatient Mental Health Services provides for:

(Check one.)

temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.

extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I believe there has been a substantial change in the needs and condition of the Patient, and the Patient now requires a less restrictive environment. The detailed reasons for my opinion are:

_____.

7. I have attached a supporting Certificate of Medical Examination for Mental Illness, showing that the Patient was examined, within the seven days before this Motion’s filing, by

(List the name of the certifying physician.)

8. I ask the Court to modify the Order for Inpatient Mental Health Services to require the Patient to participate in outpatient mental health services.

Movant (Print your name here.)

Movant (Sign your name here.)

Date

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

(List the initial of the person you seek to protect.)

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Certificate of Notice
Motion to Modify Court-Ordered Inpatient Services to Outpatient Services

I certify that on _____ (date) I gave a copy of the Motion to Modify Court-Ordered Inpatient Services to Outpatient Services to the Patient.

The Patient:

(Check one.)

- requests a hearing
- does not** request a hearing.

Your Signature

Date

Patient Signature

Witness Signature

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

(List the initial of the person you seek to protect.)

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Application for Order to Administer Psychoactive Medication
(Patient with Criminal Justice Involvement)
(Sec. 574.104, Texas Health and Safety Code)

1. My name is _____.
2. (Check one.)
 I am a M.D.
 I am a D.O.
3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to _____ (“Patient”), regardless of Patient’s refusal.
(List the patient’s name.)
4. The Court issued an Order for Inpatient Mental Health Services on _____ (date) that ordered the Patient to participate in involuntary inpatient mental health services.
5. The current Order for Inpatient Mental Health Services provides for services under:
(Check one.)
 Chapter 46B of the Texas Code of Criminal Procedure, titled “Incompetency to Stand Trial.”
 Chapter 46C of the Texas Code of Criminal Procedure, titled “Insanity Defense.”
 Chapter 55 of the Texas Family Code, titled “Proceedings Concerning Children with Mental Illness or Intellectual Disability.”
6. I have diagnosed the Patient with the following condition(s): _____

 _____.
7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.

8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.

9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.

10. (Check all that apply.)

I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

I believe the Patient presents a danger, as set forth in Section 574.1065 of the Texas Health and Safety Code, to self or others in the mental health facility or correctional facility in which they are being treated for the following reasons:

14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:

- Hospital: _____ (List name of hospital.)
- Healthcare district
- County where the proceedings are pending
- Other County: _____
(List the name of the other county.)

(List the person you spoke with from that county.)

(List that person's phone number.)

(List the date you contact that person.)

(Attach paperwork from the other county to this Application.)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:
- a. appoint a lawyer to represent the Patient;
 - b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;
 - c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and
 - d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.
18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying

Date

Applicant (List your contact information here.)

Applicant (Sign your name here.)

Cause No. _____

The State of Texas for the

§
§
§
§
§
§
§
§
§
§

In the _____ Court

Best Interest and Protection of

_____ County, Texas

(List the initial of the person you seek to protect.)

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Application for Order to Administer Psychoactive Medication
(Patient without Criminal Justice Involvement)
(Sec. 574.104, Texas Health and Safety Code)

1. My name is _____.

2. (Check one.)
 I am a M.D.
 I am a D.O.

3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to _____ (“Patient”), regardless of Patient’s refusal.
(List Patient’s name.)

4. (Check one.)
 The Court issued an Order for Inpatient Mental Health Services on _____ (date) that ordered the Patient to participate in involuntary inpatient mental health services.
 An Application for Court-Ordered Mental Health Services has been filed and is still pending. I ask that this Application be heard on the same date as the Application for Court-Ordered Mental Health Services.

5. The current Order for Inpatient Mental Health Services or Application for Court-Appointed Mental Health Services provides for or requests:

- (Check one.)
 temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.
 extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I have diagnosed the Patient with the following condition(s): _____

- 7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.
- 8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.
- 9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.
- 10. I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

- 11. I believe that, if the Patient is treated with the psychoactive medication(s) listed in Exhibit A, the Patient's prognosis is:

12. I have considered the following alternatives to the psychoactive medication(s) listed in Exhibit A for treatment of the Patient:

13. I have determined that the alternatives listed in paragraph 12 will not be as effective as the administration of the psychoactive medication(s) listed in Exhibit A for the following reasons:

14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:
 Hospital: _____ (List name of hospital.)
 Healthcare district
 County where the proceedings are pending
 Other County: _____
(List the name of the other county.)

(List the person you spoke with from that county.)

(List that person's phone number.)

(List the date you contact that person.)

(Attach paperwork from the other county to this Application.)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:
- a. appoint a lawyer to represent the Patient;
 - b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;
 - c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and
 - d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.

18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying

Date

Applicant (List your contact information here.)

Applicant (Sign your name here.)