

Instructions for Friends and Family of a Person with a Psychiatric Problem that Requires Hospitalization Against His or Her Will

The commitment of an individual requires adherence to the temporary commitment procedures codified in the Texas Mental Health Code. Thus, certain paperwork must be on file before the Mental Health Court – i.e., the Probate Court – can issue an Order of Protective Custody (“OPC”) to restrain a mentally ill individual who presents a substantial risk of serious harm to his or her person or others.

This primer is intended to instruct a relative or friend of an individual in need of services (proposed patient) on how to initiate a temporary mental health commitment by filing the necessary paperwork, as detailed below, during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday).

Mental Health Warrant (Emergency Detention)

This is a warrant issued by a judge or magistrate ordering the pick-up and delivery of a possibly mentally ill person to a mental health facility for evaluation. The order allows the mental health facility to hold the person for up to 48 hours for evaluation. After that time, the person must be released, checked in to the facility voluntarily, or held under further court orders and proceedings. A mental health warrant is issued based on the application of any person, signed under oath, stating the reasons for which mental health evaluation is required.

Peace Officers also have authority to detain without an order or warrant persons who seem to be experiencing a mental illness causing them to be an immediate danger to themselves or to others. A person brought to a mental facility under a peace officer emergency detention is treated in the same way as a person under a mental health warrant order.

Order of Protective Custody (“OPC”)

An order of protective custody may be issued by a judge upon the request of a county or district attorney in order to continue to hold a patient in a mental health facility pending hearing on an application for court-ordered temporary mental health services.

After an OPC is signed, the court appoints an attorney ad litem for the patient. That attorney will interview the patient and represent his or her best interests in court.

The Court must hold a hearing within 72 hours of signing the OPC to determine if probable cause exists to continue the OPC in effect. Within 14 days of signing the OPC, the court must hold a hearing on the application for temporary mental health services.

Process Regarding Required Paperwork

Because the physician’s certificate is of utmost importance in the temporary commitment process, it should be the first document obtained. For detention to begin or continue, a physician who has seen the proposed patient within the last five days must complete, and sign

before a notary public, a physician's certificate of mental illness. If the patient has a private physician/psychiatrist or attends an ATCIC Outpatient Clinic, the patient's physician can complete the initial certificate. If the proposed patient does not have a doctor, the proposed patient can be taken to an emergency room of any local hospital to obtain the required physician's certificate.

If an *Application for Court Ordered Mental Health Services* is not yet on file, the District Attorney's office can provide an application to complete.

All of the paperwork needs to be given to the Deputy Clerk or Clerk in the Mental Health Section of the County Clerk's Office. Assuming all the required paperwork has been filed, the case will be presented to the Judge. The Judge decides whether to issue the OPC, and – if the OPC is issued – appoints an attorney to represent the proposed patient and sets the hearing dates.

It is important to understand that the Judge and his staff cannot discuss anything about the pending case because such discussions would violate the law governing the proposed patient's right to privacy and the Code of Judicial Conduct's prohibition against ex parte conversations about the merits of the case. Please respect the Court's prohibition against discussing the case. The Court and its staff must abide by the law.

Before the Court can issue an OPC, all of the following must be on file with the County Clerk, Mental Health Section of the Probate Division of Hays County Courthouse located at 712 S. Stagecoach Trail, San Marcos, Texas 78666:

1. A **sworn** *Physician's Certificate of Mental Illness* demonstrating that the substantial risk of serious harm exists;
2. An *Application for Court Ordered Mental Health Services*;
3. A *General Information Sheet*; and
4. A *Motion for Protective Custody*.

Temporary Mental Health Services

If the court makes the necessary findings to determine that a patient requires further treatment for mental illness, the court may order that the patient be confined in the mental health facility for up to 45 days. This 45-day period is considered temporary mental health services. The patient will be released when the physician treating him or her determines that release is medically warranted.

One of the predicates to an order for temporary mental health services is that there be, on file with the Court, two certificates signed by a physician stating that mental health services are medically necessary and are in the patient's best interest. One of the certificates must be signed by a psychiatrist.

There are fees charged in mental health cases. The amount of and/or authority for these fees come from the Texas Legislature, and Hays County cannot deviate from Texas law. That being said, under some circumstances, it is possible to have court costs waived for public facility

commitments if the proposed patient is indigent. Proving indigence requires a pauper's affidavit. However, no cost of commitment to a private facility shall be borne by the public; therefore, no waiver of court costs is available for private-facility commitments.

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