

Texas
County
Mental
Health Law
Plan
Pilot Project



Class 1: Civil Commitment
January 26, 2024

Kristi Taylor, J.D. Kama Harris, J.D.
Michael Gomez, J.D. Daniela Chisolm, J.D.



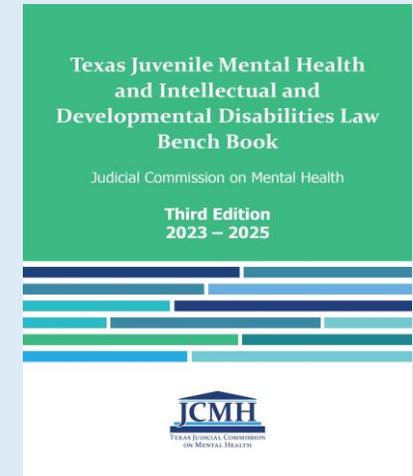
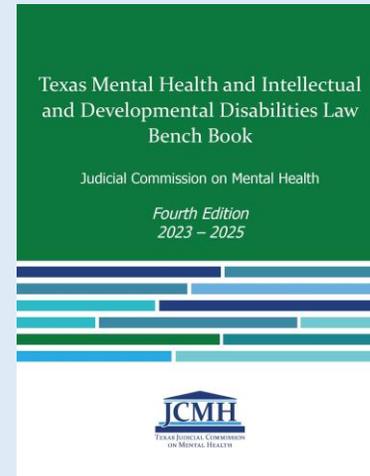
The mission of the Judicial Commission on Mental Health is to engage and empower court systems through collaboration, education, and leadership, thereby improving the lives of individuals with mental health needs, substance use disorders, and intellectual and developmental disabilities.

The JCMH created strategies under three main categories

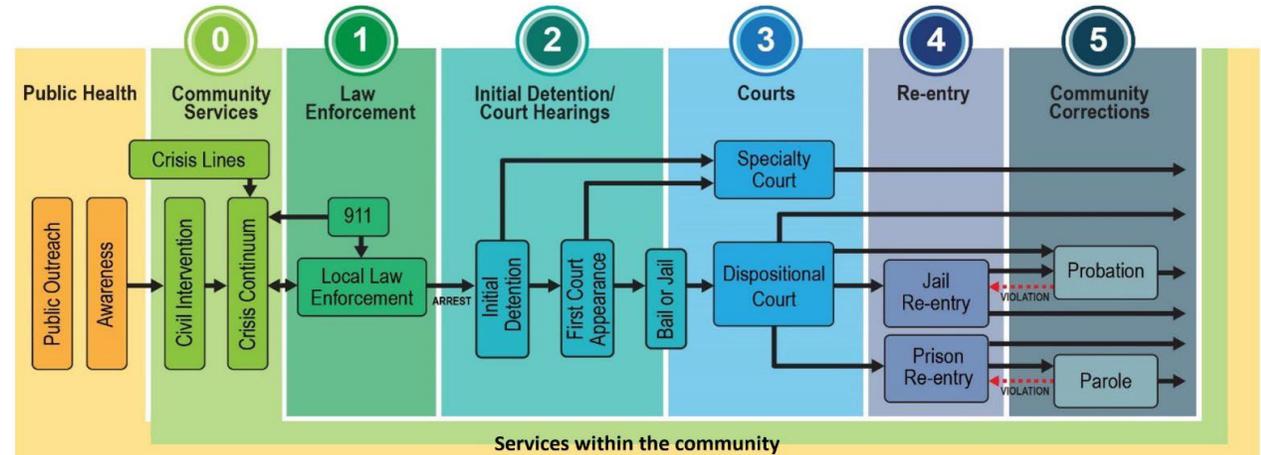
Collaborate

Judges
 Prosecutors/ Criminal Defense Attorneys
 Law Enforcement
 Hospitals
 Local Mental Health Authorities

Educate



Lead
e.g., Resource Mapping Using Sequential Intercept Model



Problems in Mental Health Systems

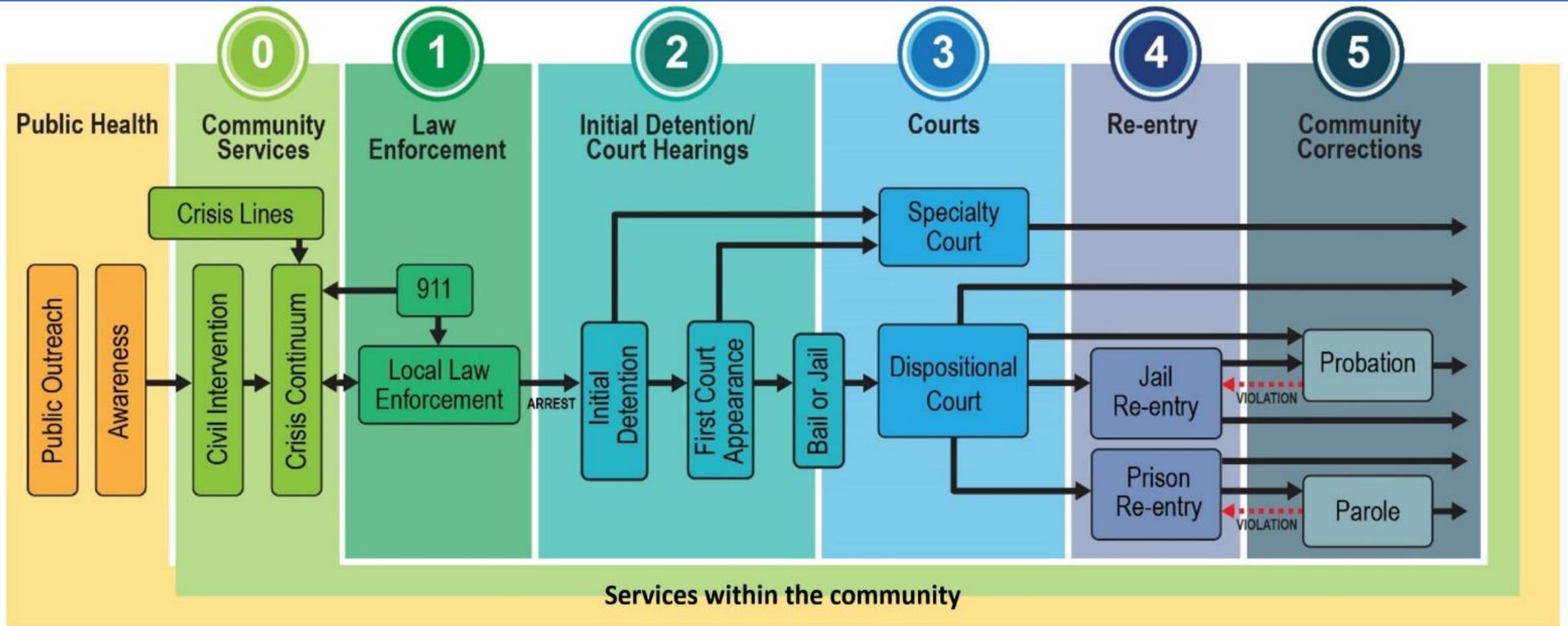
COMPLICATED LAWS THAT
REQUIRE COORDINATION

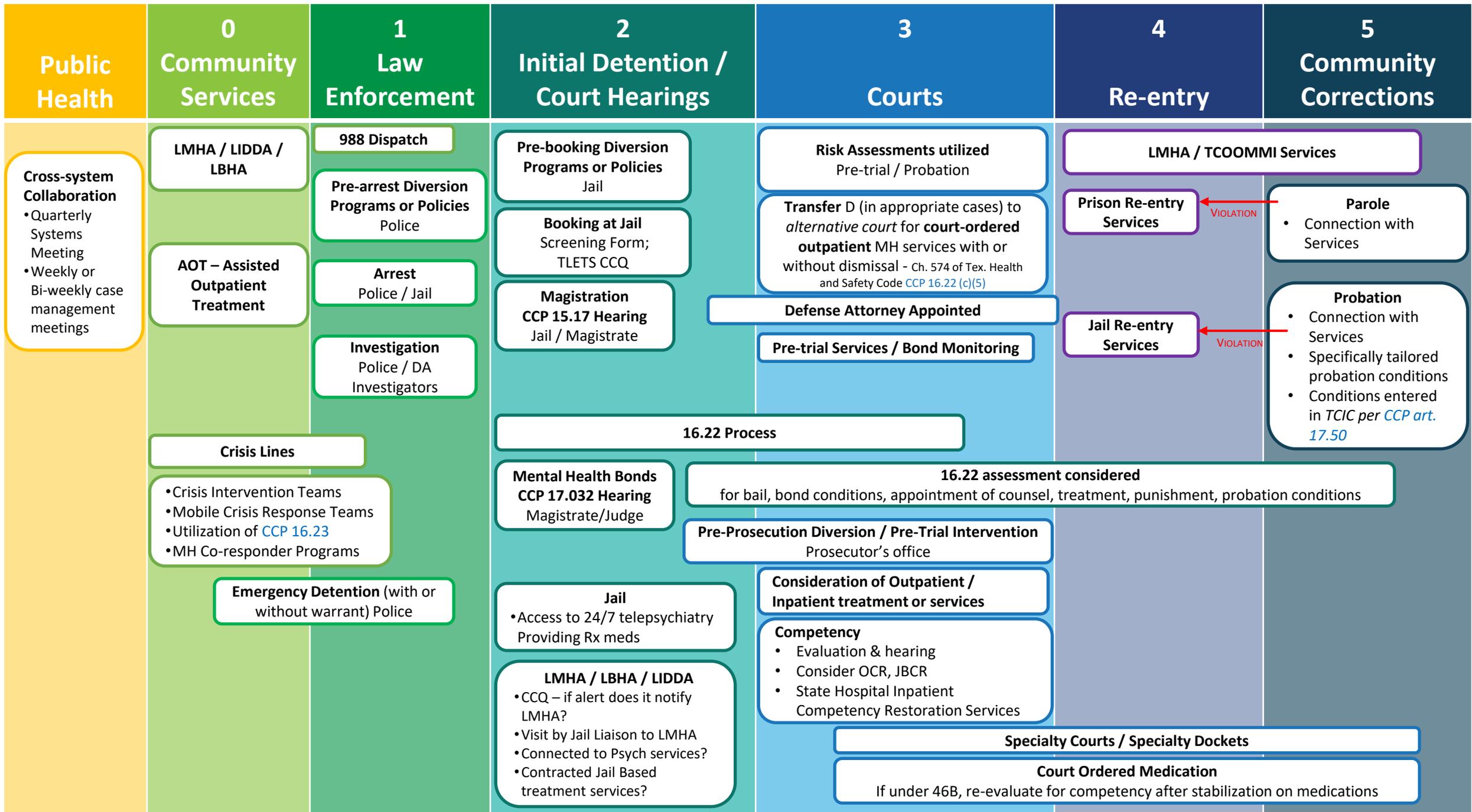
A Lack of Coordination
and Knowledge that leads
to the system itself serving
as a barrier to appropriate
treatment and diversion.

Greater numbers of
people deteriorating in jail
when diversion was
possible.

Frustration and blame
between stakeholders.

Sequential Intercept Model





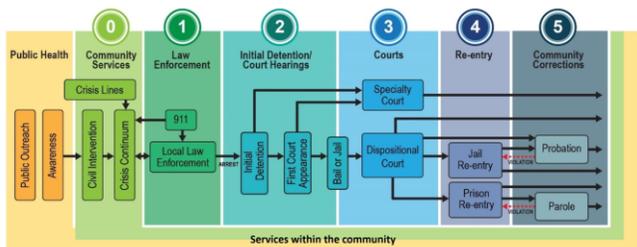
VIOLATION

VIOLATION



TEXAS COUNTY MENTAL HEALTH LAW PLAN

Checklist



Implementation

Four Virtual Classes

- 1) Civil Commitment: Jan. 26th 12-1:30
- 2) Early Identification: Feb. 9th 12-1:30
- 3) Specialty Courts: Feb. 21st 12-1:30
- 4) Competency Restoration: Mar. 8th 12-1:30

** plus **

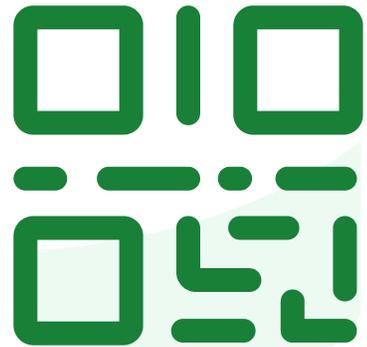
Individual Local Checklist Workshops



Guest Speakers

- Michael Gomez, Chief Trial Attorney, Mental Health Division, El Paso County, Texas
 - Daniela Chisolm, Assistant County Attorney, Mental Health Division, El Paso County, Texas
- 

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What County are you representing?

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Workshops Using the County Mental Health Law Plan Checklists

Intercept 3 Courts

Diversion

- Are diversion alternatives being considered for individuals when appropriate? Are diversion alternatives well known in the county? If not, is there a point of contact for this information?
- Are risk assessments utilized in the pretrial process?
- Is our pretrial office assisting clients with MI and IDD with accessing treatment and working toward diversion?
- Does the county have a process for pretrial diversion by “Dismiss & Transfer?” i.e., transferring cases to alternative courts for court-ordered outpatient mental health services with or without dismissal? [H&S Code Ch. 574; CCP art. 16.22\(c\)\(5\).](#)
- Does the county have a process to ensure the defendant has current, necessary medications to assist with recovery and stabilization?
 - Is there a process set out to re-evaluate for competency after stabilization is reached on medications for 46B defendants? [CCP art. 46B.0755.](#)
- Are stakeholders trained on the court-ordered medication legal process? [H&S Code § 574.103-.106; CCP art. 46B.086.](#)
- Does my county have a streamlined process for conducting the civil medication hearing and then the criminal medication hearing, for a 46B defendant, as necessary?
- Are the probate courts and criminal courts working together to expedite the required two-step hearing process? [H&S Code § 574.103-106](#) and [CCP art. 46B.086.](#)

Mental Health Courts

- Is my County required to have a Mental Health Court Program? [Gov't Code § 125.005\(a\).](#)
 - Counties with a population greater than 200,000 are required to establish a mental health court program unless the county applies for and does not receive state or federal funding for such a program.
- Does my county have a mental health court program as defined by [Gov't Code § 125.001](#)?
 - If not, have I consulted with the JCMH on how to determine the need and capacity to create a mental health court program?
 - If yes, is the referral process in written form and shared with referral sources?
 - Who are the referral sources (e.g., prosecutors, defense attorneys, judges)? Are they familiar with identification of individuals with mental illnesses and understand potential judicial responses?
- Are our mental health court programs successfully utilizing peers to leverage prior experience and trust into success for current defendants?
- Are we measuring and reporting outcomes to effect change?

Mental Health Law Plan Template Preview

[YOUR] County Mental Health Law Plan

I. Involuntary Commitment

A. Emergency Detentions

i. Procedures

a) With a Warrant

- Not Used. Judges do not hear emergency detention applications.
- Used. Judges hear ED applications.
 - Type of Judges Allowed to hear ED cases in [THIS] county:
 - All magistrates within county.
 - Local Judge with Probate Jurisdiction
 - Other _____
 - *Link* to administrative order, if applicable.
 - Hours judges are available to hear ED applications:
 - 24/7
 - 9am-5pm weekdays
 - 9am-5pm weekdays & weekends
 - Other _____
 - Method of accepting applications
 - Electronic (Dr. and LMHA workers): *contact info*
 - Non-electronic: *contact info / Procedure*

b) Without a Warrant

- Not Used. No peace officer may make an APOWW.
- Used. Apprehension by a Peace Officer without a Warrant
 - Entities allowed to do APOWW in [THIS] County:
 - All law enforcement agencies and entities and officers.
 - Specific agencies (Local PD, SO, etc.)
 - Any officer within the specific agencies.
 - Only specific teams within those specific agencies (CIT, MCU, etc.) _____
 - Specific teams only _____
 - Other _____
 - Availability of APOWWs
 - Specific hours only: _____
 - Specific locations only: _____
 - Other _____
 - Who to contact for APOWW:
 - For public: *contact info*
 - For hospitals: *contact info*

ii. Forms

- Link to SCOT form and local forms.

iii. Detention Logistics

a) Locations to Facility

- Local emergency rooms:
 - Name and contact info.
- Specific mental health facilities:
 - Name and Contact info.
 - Direct contact to check for bed availability: _____
- Other: _____

b) Transportation from Facility

- To emergency room
 - Contact info (Police, EMS, SO, etc.)
- To mental health facility
- Upon Release

▶ B. Orders of Protective Custody

▶ C. Court Ordered Mental Health Services

Understand: Pilot Program Goals

Resources/Input

- Checklist
- Template
- Technical Assistance
- Bench Books
- and other tools

Activities

- Pilot Program to determine if MH Law Plans are beneficial

Output

- MH Law Plans encourage collaboration, efficiency, cost-savings, and accountability to county mental health law systems

Outcome

MH Law Plans will lead to fewer people with MI or IDD in the criminal justice system when diversion is possible and appropriate

Benefits to the Pilot Counties

--Clarifies roles within counties

--Streamlines complex MH processes

--Provides access to FREE resources

--Identifies MH best practices

--Creates accountability

Agenda

- | | |
|-----------------|---|
| 12:00 PM | Welcome and Overview |
| 12:10 PM | Emergency Detention |
| 12:40 PM | OPC + Application for Court-Ordered Mental Health Services |
| 1:00 PM | AOT Courts |
| 1:15 PM | Involuntary Medications |

How familiar are you with Emergency Detentions?



- I have personally issued/ been involved in an Emergency Detention Process
- I have seen it done before / know the basics
- I am familiar with the concept
- I am completely new

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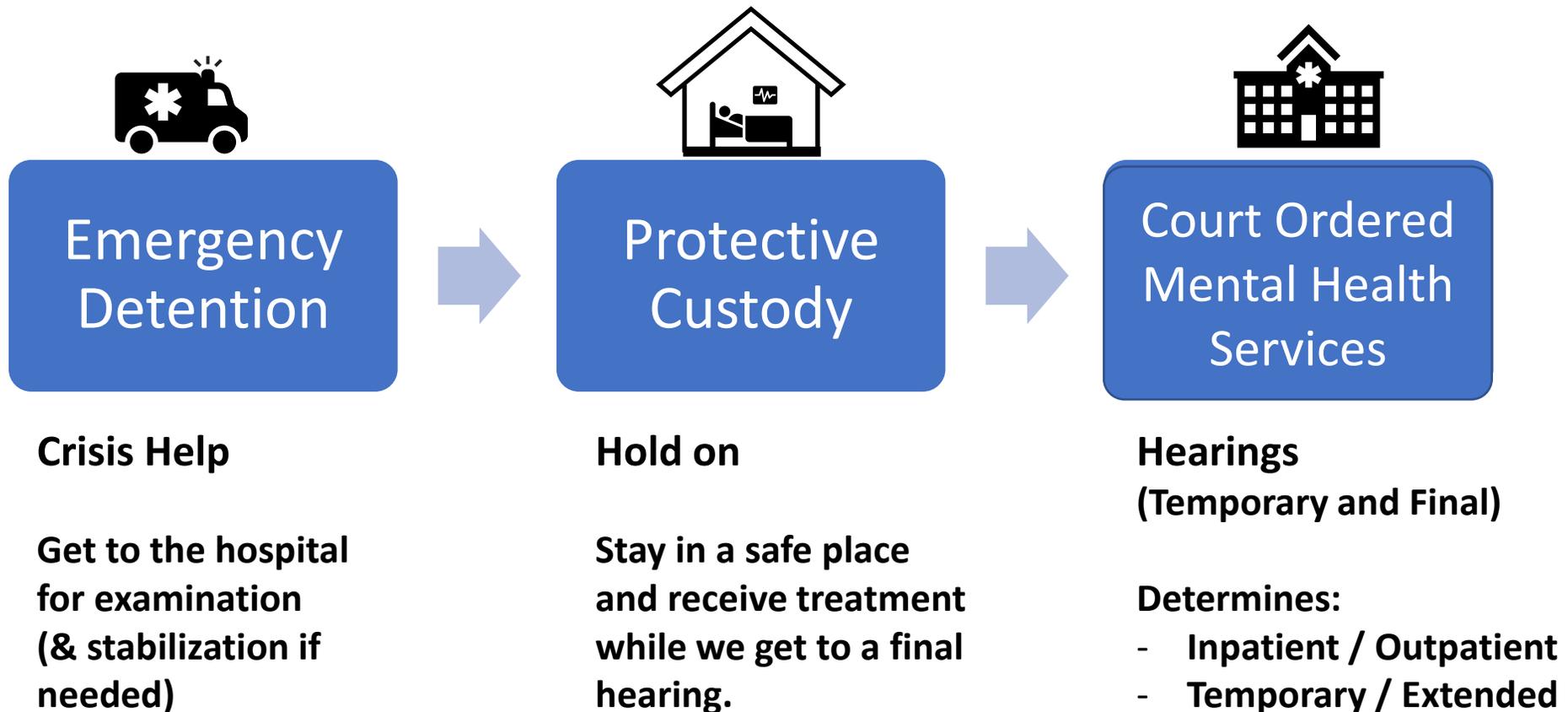


How familiar are you with Emergency Detentions?

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Big Picture

3 Steps of Involuntary Commitment



What is Emergency Detention?

What → Legal procedure to *detain*

Who → a person *experiencing a severe mental health crisis*

Why → for a *preliminary examination and crisis stabilization*

Purpose of an Emergency Detention?

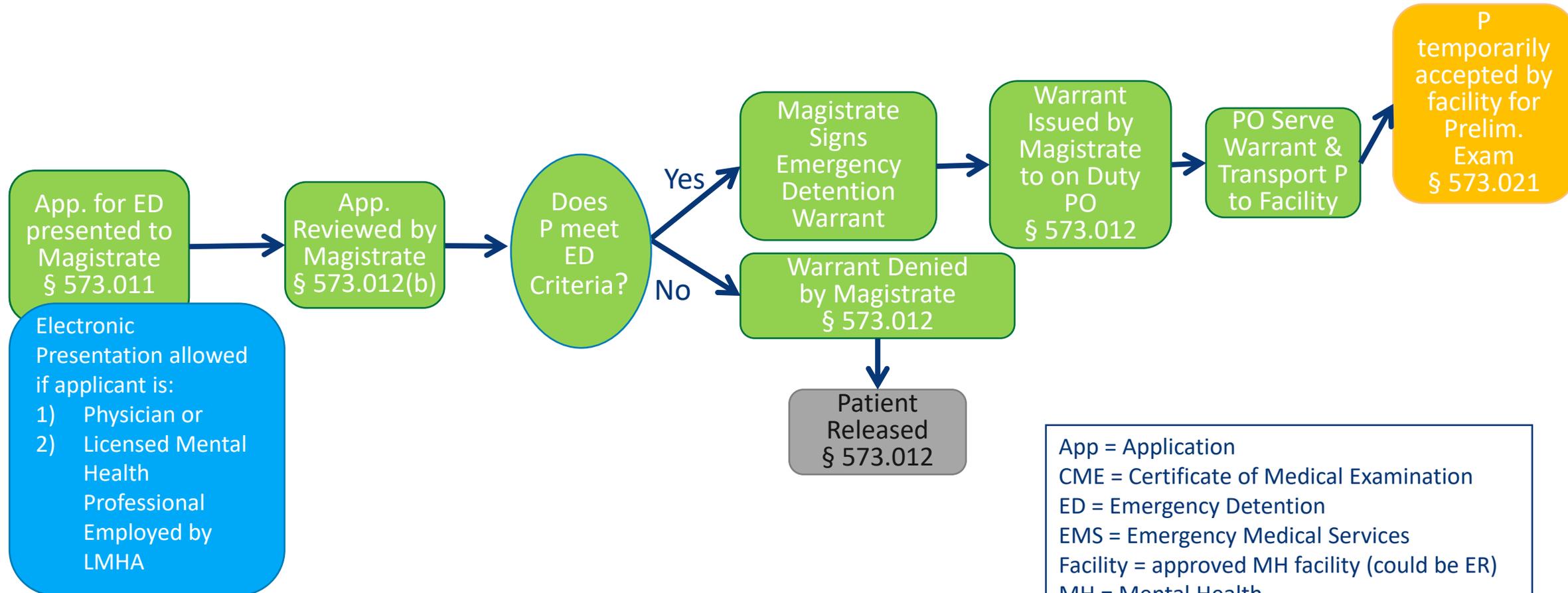
- Keep a person from harming themselves or others.
- Get someone to a facility for any necessary treatment.
- Place the person in the least restrictive, most appropriate setting while safeguarding their legal due process rights.

Types of Emergency Detention

1. With a Warrant
 - Doctor or Licensed Mental Health Professional employed by LMHA
 - Any other adult
2. Without a Warrant - Peace Officer
3. Without a Warrant - Guardian

Emergency Detention With a Warrant

**Adult
(non-PO)
START**



App. for ED presented to Magistrate § 573.011

App. Reviewed by Magistrate § 573.012(b)

Does P meet ED Criteria?

Yes
No

Magistrate Signs Emergency Detention Warrant

Warrant Issued by Magistrate to on Duty PO § 573.012

PO Serve Warrant & Transport P to Facility

P temporarily accepted by facility for Prelim. Exam § 573.021

Warrant Denied by Magistrate § 573.012

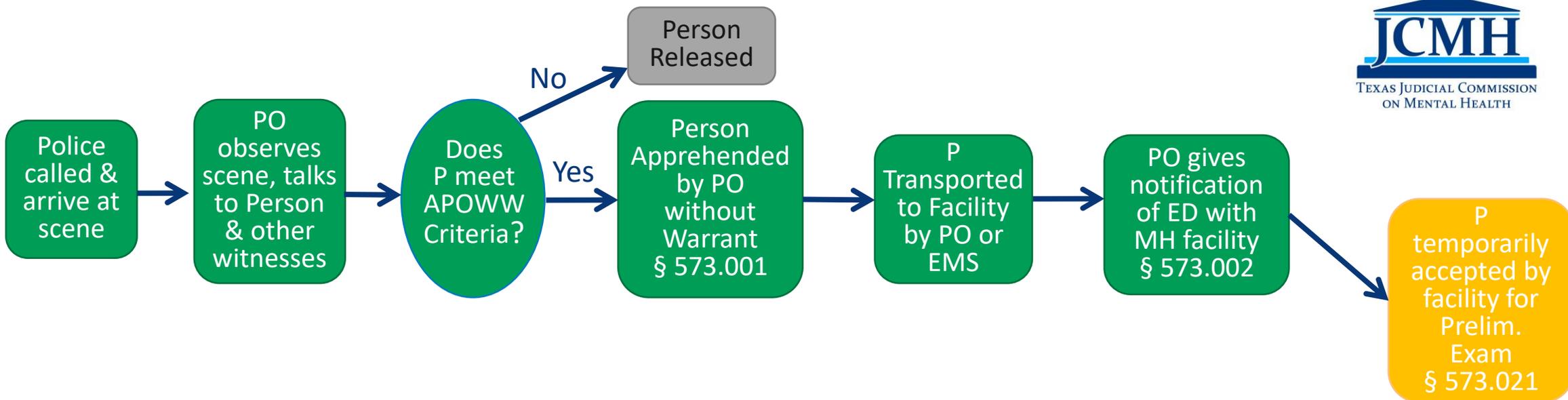
Patient Released § 573.012

App = Application
CME = Certificate of Medical Examination
ED = Emergency Detention
EMS = Emergency Medical Services
Facility = approved MH facility (could be ER)
MH = Mental Health
P = Patient
PO = Peace Officer

Emergency Detention Without a Warrant (APOWW)



Peace
Officer
START

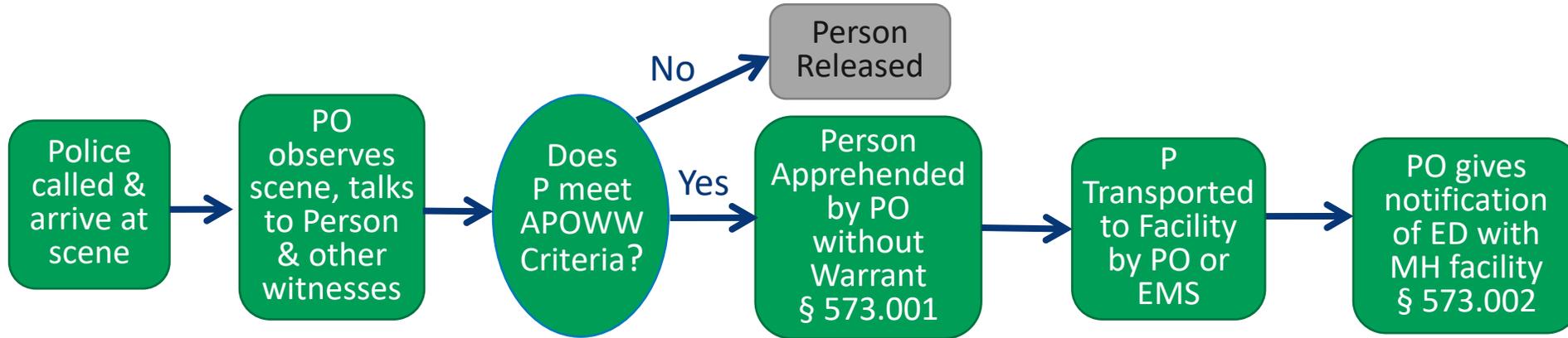


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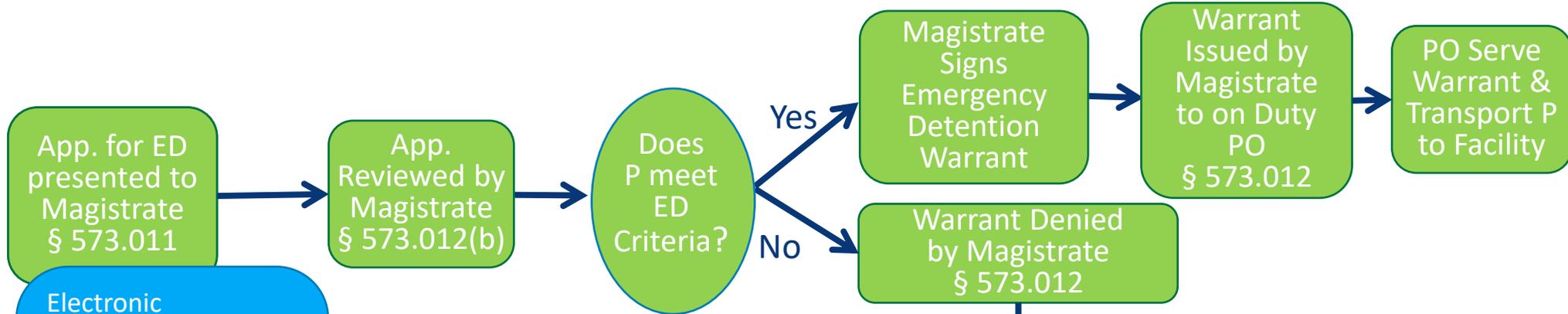
Emergency Detentions –With and Without a Warrant



Peace Officer START



Adult (non-PO) START

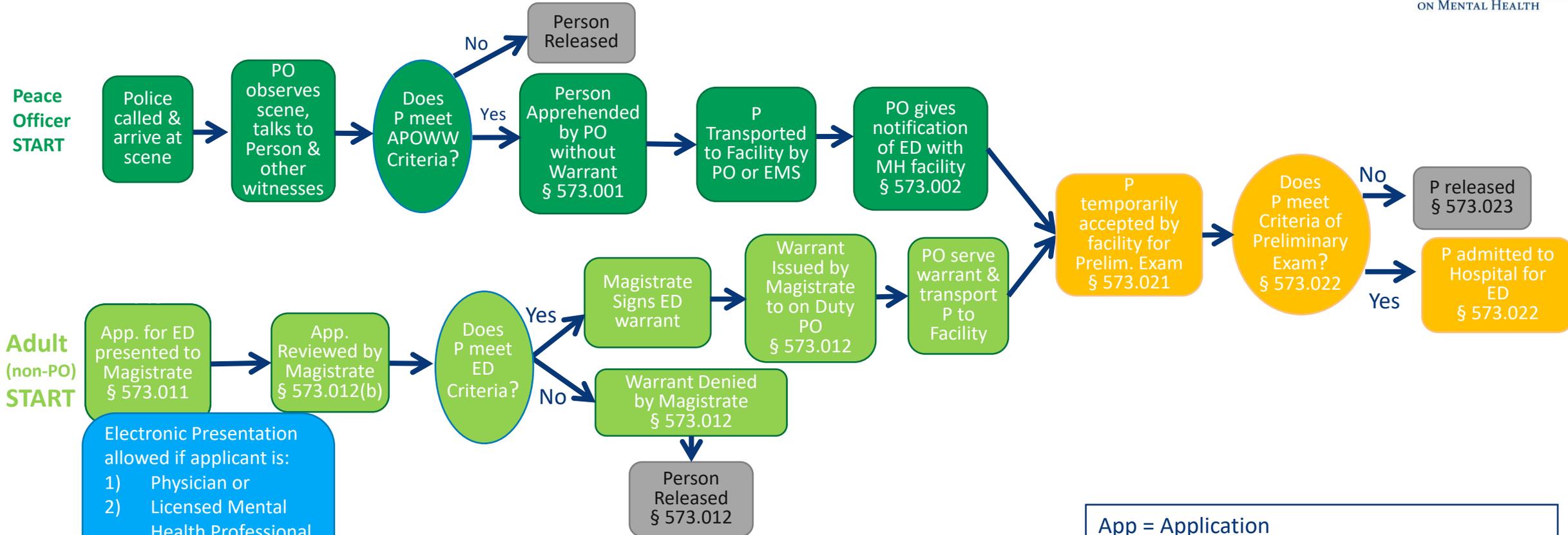


Electronic Presentation allowed if applicant is:

- 1) Physician or
- 2) Licensed Mental Health Professional Employed by LMHA

App = Application
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Emergency Detention Process

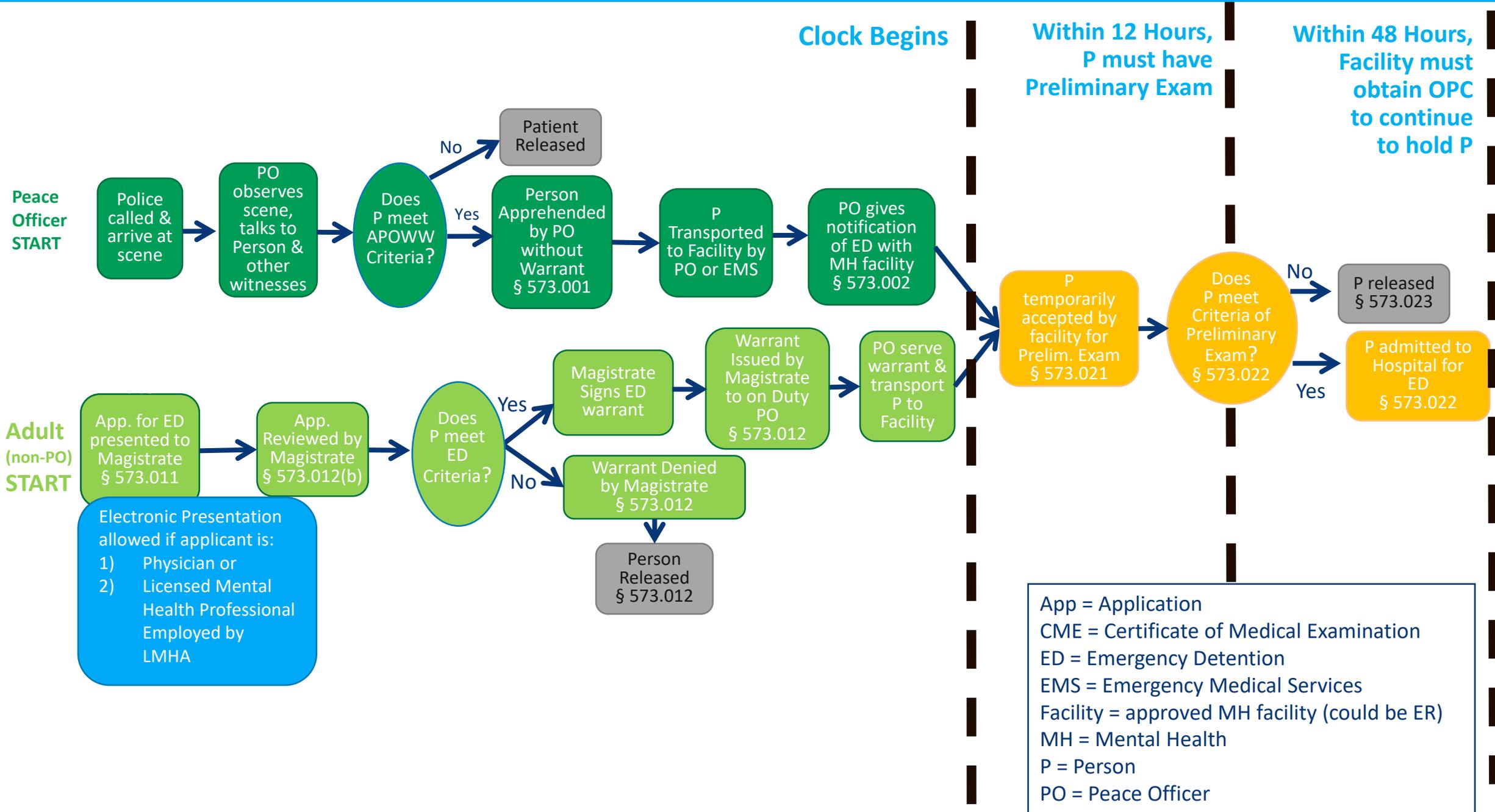


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Emergency Detention & Civil Commitment



Frequent Issues with Emergency Detentions

Judicial

Police

Hospital

Across
the Board

Judicial / Court Issues

	Counties where judges hear emergency detention applications 24/7	Counties where judges hear emergency detention applications from 9 AM - 5 PM	Counties where judges DO NOT hear emergency detention applications
Counties where law enforcement does conduct warrantless Emergency Detention	Full access to ED	Full access to ED	Full access to ED
Counties where law enforcement does not conduct warrantless Emergency Detention	Full access to ED	Limited access to ED	No access to ED

Legend: ■ Full access to ED ■ Limited access to ED ■ No access to ED

OPCs (or PCOs) + Application for Court Ordered MH Services



What is it?

- An application is a request to the court to formally hold a commitment hearing.
- OPC is an order from the court that allows a MH facility to keep a patient in custody before the commitment hearing is held.

OPCs (or PCOs) + Application for Court Ordered MH Services



How does a OPC get granted?

- A OPC gets temporarily approved through a CME and possibly finalized at a probable cause hearing. (PC hearing must be held within 72 hours)
- If probable cause is found, OPC is granted until hearing on commitment is held.

OPCs (or PCOs) + Application for Court Ordered MH Services



What if they don't get an OPC?

- Patient is released
 - Possibly work with LMHA to create community safety plan
- Another Emergency Detention may not issue unless there are new facts

- If PCO granted, Patient will remain detained until Final Hearing
- If PCO NOT granted, Patient must be released.
 - Either way a Final Hearing will be set for the next Court Date. (Mon/Thurs).
 - Psychiatrist must prepare 2nd CME stating that if not committed, patient will be in imminent risk of harm to self or others because of Mental Illness.



Fun fact: There is no definition for “psychiatrist”



FINAL HEARING

ON MENTAL HEALTH

- ✓ **Physician must testify as expert witness**
- ✓ **Must prove by clear and convincing evidence that:**
 - Patient suffering from a Mental Illness
 - Imminent risk of harm to self or others
 - Suffering from a severe and abnormal physical, psychological, and emotional distress and that because of that distress PT unable to function independently.
- ✓ **Must be held within 30 days**
- ✓ **Patient must be committed before the court can order psych meds**
- ✓ **Once committed, facility will look into outpatient**

AFTER FINAL HEARING



PSYCH
MEDS

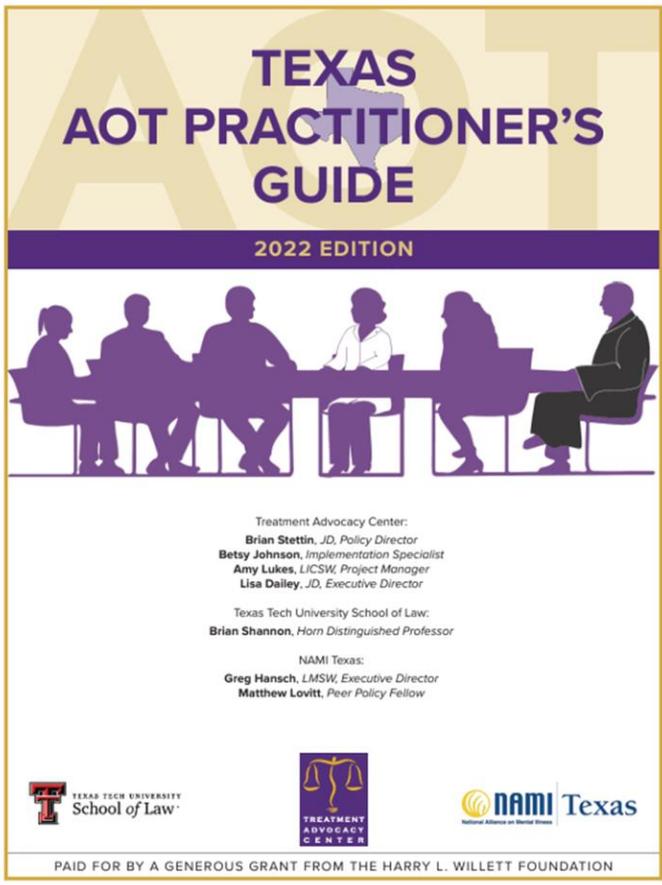


MODIFICATIONS
AOT



DISCHARGE

AOT Courts



**TEXAS
AOT PRACTITIONER'S
GUIDE**

2022 EDITION



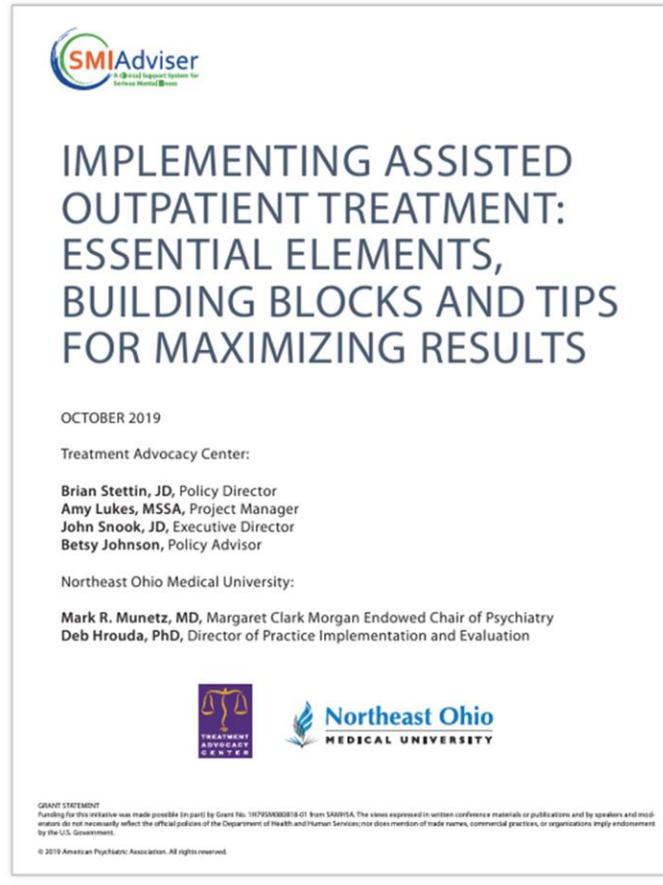
Treatment Advocacy Center:
Brian Stettin, JD, Policy Director
Betsy Johnson, Implementation Specialist
Amy Lukes, LICSW, Project Manager
Lisa Dailey, JD, Executive Director

Texas Tech University School of Law:
Brian Shannon, Horn Distinguished Professor

NAMI Texas:
Greg Hansch, LMSW, Executive Director
Matthew Lovitt, Peer Policy Fellow



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 **SMI Adviser**
A Clinical Support System for
Serious Mental Illness

IMPLEMENTING ASSISTED OUTPATIENT TREATMENT: ESSENTIAL ELEMENTS, BUILDING BLOCKS AND TIPS FOR MAXIMIZING RESULTS

OCTOBER 2019

Treatment Advocacy Center:

Brian Stettin, JD, Policy Director
Amy Lukes, MSSA, Project Manager
John Snook, JD, Executive Director
Betsy Johnson, Policy Advisor

Northeast Ohio Medical University:

Mark R. Munetz, MD, Margaret Clark Morgan Endowed Chair of Psychiatry
Deb Hrouda, PhD, Director of Practice Implementation and Evaluation



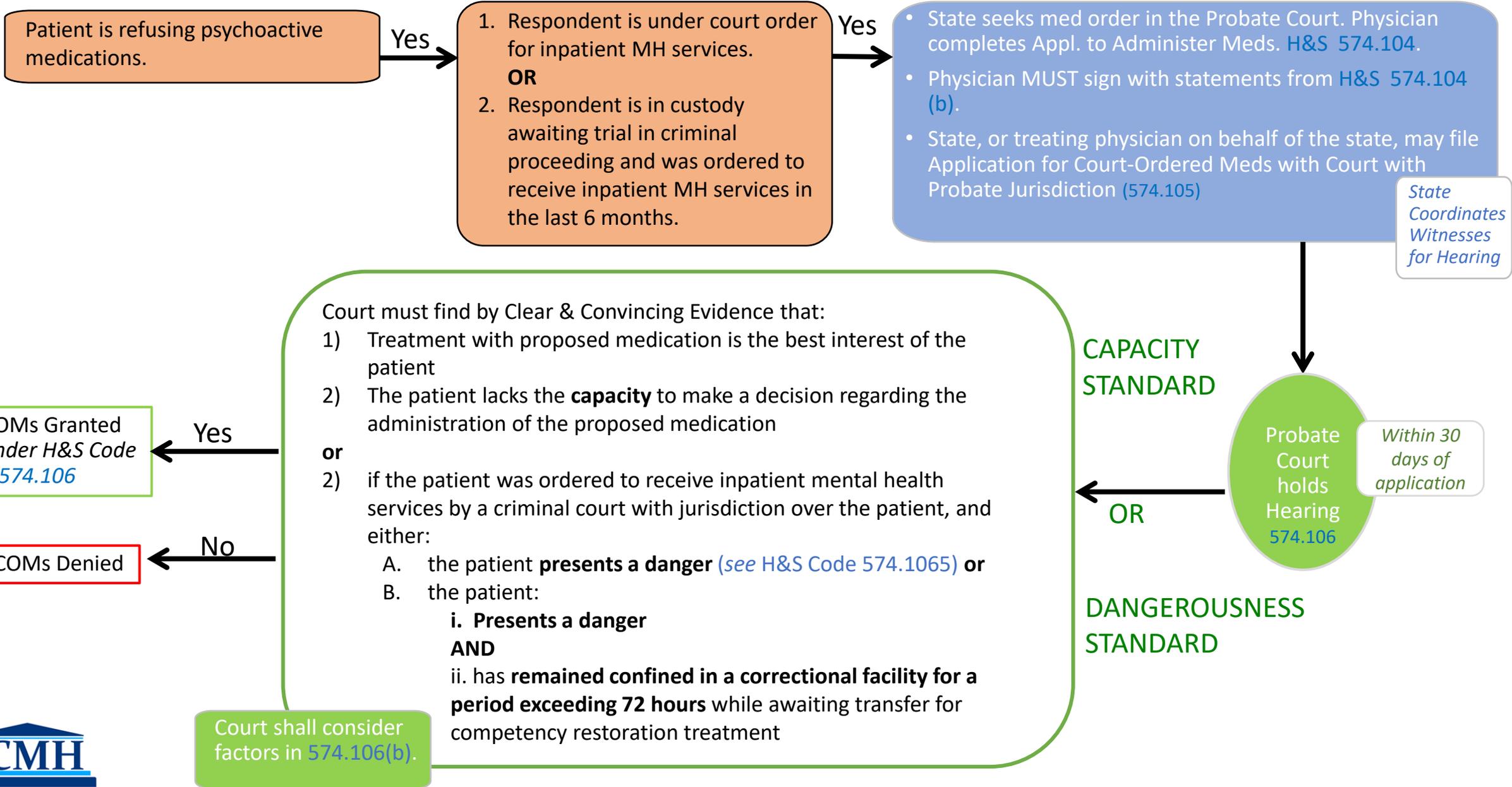
GRANT STATEMENT
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Court Ordered Medications (COMs)

- ▶ Civil
- ▶ Criminal (under 46B—competency)

Civil Court-ordered Medication (COM) Process



Contact Information

Kristi Taylor, *Executive Director, JCMH*

Kristi.taylor@txcourts.gov

Kama Harris, *Staff Attorney, JCMH*

Kama.Harris@txcourts.gov

Michael Gomez, *Trial Team Chief, El Paso County Attorney's Office*

mgomez@epcounty.com

Daniela Chisolm, *Sr. Trial Attorney, El Paso County Attorney's Office*

d.chisolm@epcounty.com





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