The Language of Mental Health
July 18, 2019
Language of Mental Health from a *Local Mental Health Authority’s (LMHA)* Perspective

- Handouts
- Definitions (What is an LMHA?)
- Role of the LMHA in a Crisis and in the Jail Setting
- Process/procedures for Commitments, Including Timelines
- Practical Aspects of Commitments
- Questions & (hopefully) Answers
Local Mental Health Authorities (LMHA)

- 39 LMHAs covering 254 Texas Counties
- Created by HSC 534.001 to be “vital component” of MH/IDD services through contract with State HHS
- Hill Country MHDD Centers covers 19 rural/frontier counties
Civil Commitments Process

- Emergency Detention (ED) with or without warrant
  Voluntary admission can convert to involuntary with ED
- Application and Order for Protective Custody (OPC)
- Probable Cause (PC) Hearing
- Temporary Inpatient (IP) or Outpatient (OP) Commitment (Order for Compelled Meds)
- Extended IP or OP Commitment
- Modification (IP to OP or OP to IP)
CASE STUDY

“Jake” is a 49 y.o. male who was dropped off 3 days ago in Tag Urit County by Greyhound County looking to “move the problem along.” A concerned citizen calls the Tag Urit County Sheriff’s Department when she sees Jake standing naked in the middle of the highway at a dangerous curve in the road, flailing his arms with a knife in his hand and screaming and cursing at “unseen others.” Jake is not known to county residents, hospitals, law enforcement, or to the local LMHA. The SO’s office responds to the scene. When they arrive, Jake recoils from the approaching officers but says, “I don’t want to, but my fingernails keep telling me to kill him.”
Now What?

1. Is Jake in psychiatric crisis?
   A. Is Jake evidencing mental illness or substance use?

2. Is Jake at “substantial risk of serious harm to self or others unless ... immediately restrained” as evidenced by:
   A. **Suicidal ideation** (thoughts or actions indicating desire to suicide)
   B. **Homicidal ideation** (thoughts or actions indicating desire to kill other(s))
   C. Severe emotional distress & **deterioration** of his mental condition such that cannot care for self

2. What are the officers’ options?
   A. Arrest vs Detain for safety and hold off arresting until screening
   B. Hospital for medical screening – is this physical (substance use? or mental?)
   C. Call crisis hotline/LMHA crisis worker to assess Jake
   D. Peace Officer’s Emergency Detention (warrantless)
   E. Other?
Options Considered

**Arrest**

Jails are already *de facto* MH facilities
Goal is diversion from jail
What will you do with Jake when you get to jail – call LMHA?
With charges pending, can’t get a civil commitment
  • Need to dismiss charges or PR Bond them
Some counties are taking to the SO for safety until screener can arrive – can always charge them later

**Hospital for Medical Screening as indicated**

Handout – Psychiatric Flow Chart
Facility cannot REQUIRE LEO to take to ER for medical screening, but...
  • Officer is permitted to if there’s a medical concern
  • Remember – private psych hospitals CAN require medical clearance before accepting
Psychiatric Emergency Flow Chart

The Peace Officer may use the following indicators to determine if a medical emergency exists:

- Overdose
- Acute intoxication with alcohol or drugs
- Chest pain
- Fluctuating consciousness
- Stab wound, bleeding, or serious injury
- Seizure activity
- Complications from Diabetes
- Injured in assault or flight
- Victim of a sexual assault
- Person is a resident of a nursing home or assisted living facility.

Note: With the elderly, sometimes medical problems can cause symptoms that look like mental illness, but are not. It’s important to rule out medical problems as the cause.

**An inpatient facility or a mental health facility is not statutorily authorized to require a peace officer to transport a person in custody under Chapter 573, Health and Safety Code, to a medical facility for a medical evaluation prior to taking that person to the mental health facility.

The opinion of law enforcement as to whether a medical emergency exists is final in the screening conducted with the Local Mental Health Authority.

See Attorney General Opinion No. GA-0753, dated December 28, 2009, regarding whether a peace officer who has taken a person into custody under Chapter 573 of the Health and Safety Code may be required to transport that individual to a medical facility for evaluation prior to taking that person to a mental health facility.
• **Peace Officer’s Emergency Detention (POED)**
  • Transport to “nearest *appropriate* inpatient mental health facility” OR “mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.”
    • Facility is not “appropriate” if no beds available
  • Advantage: Gets LEOs back on the street faster, BUT...
  • Disadvantages: Are we doing what’s best for the individual?
    • Putting someone in the commitment process that may not need it
    • LMHA screen out 70% of individuals with safety plan and go home, so LEO may not have to transport at all!!!
    • Creating huge hospital bills for individuals who can’t pay
    • Possible loss of jobs for being absent
    • Stress on family and individual
Options, cont’d.

- Call Crisis Hotline for LMHA screener
  - Face-to-face screen (in person or tele video)
    - Tele video (as long as LEO has remote capability or will take to non-jail area at SO or PD)
      - Speeds up contact and disposition
      - Safety of staff out on remote roads in late hours

- What’s proper way to activate the LMHA screener??
Activating the LMHA

24-hour crisis hotline number (e.g. AVAIL)

LEO calls hotline FIRST:

Specially trained crisis screeners (telephonically)

AVAIL activates LMHA crisis worker and determines if crisis is:

- Urgent (must respond within 8 hours)
- Emergent (must respond within 1 hour)

LMHA crisis worker does face-to-face assessment (in person or by tele video)

Electronic transmission of Application for ED and supporting documents to and from judge (Uvalde first county; 6 frontier counties next)

REMEMBER: Utilizing your LMHA:

* could save you a trip to hospital well over half the time
* is better for the individuals we all serve
* allows LMHA to have continuity of care when individual released
So..... Emergency Detention (ED) is Required

Whether warrantless or magistrate’s order, duration of ED is 48 hours after presented to the facility.

MH Facility temporarily “ACCEPTS” individual for preliminary examination (PE) to be completed within 12 hours of apprehension by peace officer (not arrival at facility).

If meet criteria for hospitalization, physician completes CME and facility “ADMITS” person; otherwise, discharge the patient from the ED.
Order for Protective Custody (OPC)

Before 48 hours expires on the ED, Facility must OBTAIN (= signed and received) Order for Protective Custody (OPC);

Certificate of Medical Exam (CME) required – does not need to be psychiatrist
If miss deadline, must release individual (conventional thought is cannot “stack” EDs)
48 hours is not a suggestion!!

OPC may only be filed in the court in which an Application for Court-Ordered Mental Health Services is pending

Thus, both filed at same time typically

Handout – Judge Kelly’s timeline for filings
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<th>Time</th>
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Probable Cause Hearing (PC)

- Within 72 hours of obtaining OPC, MUST have a PC hearing
  - Requires Certificate of Medical Examination (CME) by one physician
  - Testimony that individual remains imminent risk of substantial harm to self or others such that they cannot remain at liberty until commitment hearing

- PC Hearing is NOT to determine jurisdiction
Application for Temporary Court-Ordered MH Services

Typically filed at same time as Motion for OPC

Requires 2 Certificates of Medical Examination (CME)

One must be psychiatrist
Examined within preceding 30 days

Within 24 hours of filing, court appoints an atty for the individual

Within 14 days of application filed, hearing set

Continuances possible but must occur no later than 30 days

Temporary commitment is now 45 days instead of 90, but with possibility of an additional 45 days

May seek order for forced meds at same hearing
CIVIL INPATIENT COMMITMENT PROCESS UNDER
CHAPTERS 573 & 574 OF THE TEXAS HEALTH & SAFETY CODE

**Start**

Application for Emergency detention (Filed by any adult with Magistrate) §573.011

- Apprehension by Peace Officer (without warrant) §573.001
- Warrant Issued by Magistrate (person transported to nearest MH facility for exam) §573.012

Emergency Detention Process

- Police Officer files application for E.D. with MH facility §573.002
- Accepted by MH facility for preliminary exam (Detained no longer than 48 hours; add time if period ends on a weekend) §573.021
- Application Denied by Magistrate (person immediately released) §573.012

Application/Commitment denied by court if criteria not met (Proposed patient released) §574.033

- Application for Court-Ordered MH Services filed by attorney for state or other adult §574.001
- Motion for Order of Protective Custody §574.021 filed with Magistrate (Often filed at same time as application for court-ordered MH services)

Order Protective Custody (Proposed patient detained for up to 72 hours until Probable Cause Hearing)

Hearing on application for Court-ordered MH Services. Must be supported by two Certificates of Medical Examination. (Full evidentiary hearing; held within 14 days of application being filed, can be continued up to 30 days from date of application being filed) §574.005

- Motion denied (Proposed patient not detained; rarely is full commitment hearing held if released here)
- Order for Continued Detention §574.026
- Release from Detention (rarely is full commitment hearing held if released here) §574.028

Facility may discharge patient before expiration of order if patient no longer meets criteria §574.086

- If commitment criteria met court enters Order for Temporary MH Services (45 days or up to 90 days) §574.034
- If commitment criteria met, and patient has already been inpatient for 60 consecutive days in the past 12 months, court enters Order for Extended MH Services (No longer than 12 months) §574.035

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Application for Extended Mental Health Services (IP or OP)

Only after patient has received at least 60 days in prior 12 months of inpatient MH treatment OR Court-ordered OP treatment in the last 60 days

Authorized for not more than 12 months

Only if condition will last longer than 90 days
Texas Code of Criminal Procedure Article 16.22

Jail provides written notice of credible information (e.g., Inmate Mental Condition Report to Magistrate; TCJS jail screening form) to magistrate within 12 hours of receiving information.

Magistrate must determine whether there is reasonable cause to believe that inmate has mental illness or IDD.

Magistrate orders a “qualified professional” to collect information on whether the person has MI or IDD.

Must submit written assessment to magistrate within 96 hours if in jail or within 30 days if released.

No assessment required if within preceding year, person has been assessed within past year and determined to have MI or IDD.

If individual refuses, magistrate can order them to submit.
LMHAs Responses to the Jail

- Activated by Crisis Hotline to a remote scene
- Activated by Crisis Hotline to the jail for any inmate
- Article 16.22 assessment from Magistrate’s order
- Can provide telepsychiatry services to the jail through nurse practitioners
- Cannot provide MH services to the jail without an independent contract with the County because that violates our Contract with the State (37 TAC 273.1 jail facility must provide medical, mental, and dental services)
Courts may require the name of a specific facility in the EDO or OPC but nothing in the statute requires that
  • “nearest appropriate inpatient mental health facility” is sufficient and is statutory language
  • But there must be a bed available

When patients under an ED are transferred, receiving facility does not need a second ED naming them; a hospital transfer is all that’s required with a copy of the original ED

Cannot transfer patient out of county if not sufficient time to file appropriate paperwork with receiving court before ED or OPC expires
  • Obtain OPC and then transfer right away
Important Points, cont’d.

• If “nearest appropriate inpatient MH facility” not available, LMHA is the authority and responsible entity to designate a facility as a “suitable” MH facility (Chapter 571.003(12)
  • “identifiable part of a facility in which diagnosis, treatment, and care for persons with mental illness is provided.”

• Hospitals receiving MH patients are governed by EMTALA and CANNOT discharge without violating EMTALA until patient is stabilized OR transferred to a more appropriate facility with higher level of care
  • Even if hospital is not a MH facility; same as a non-trauma hospital stabilizes head trauma and then transfers
Helpful Resources

• Judicial Commission on Mental Health, January 25, 2019, Meeting Notebook

• 22nd Edition Texas Laws Relating to Mental Health

• Texas Mental Health and Intellectual and Developmental Disabilities Law Bench Book, November 2018

• Texas Health and Safety Code, Chapters 571, 573, and 574

• Texas Association of Counties’ Bench book on Mental Health and Mental Retardation (http://www.easylawlookup.com/downloads/benchbook/pdf/d_mhmr.pdf)

• Mental Health Law, The Honorable Guy Herman

• Responding to the Mentally Ill: A Guide for Texas Peace Officers
The Language of Mental Health

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