

Head Cases

The Hon. Linda Bayless
Judge | Burnet County Court at Law

Dealing with Texas
mental health law
without losing your
marbles.

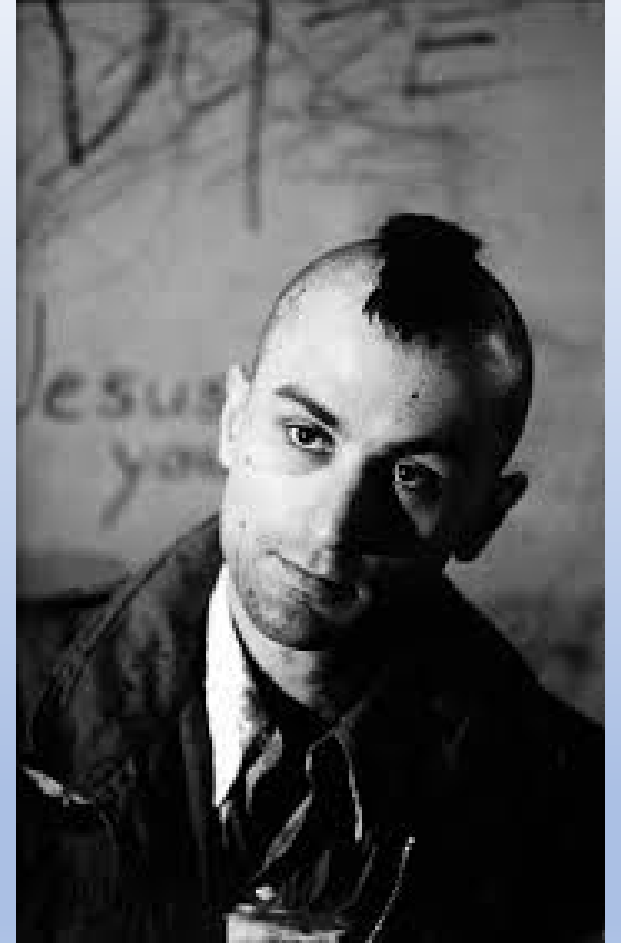


AKA
EMERGENCY DETENTION ORDERS

The clues

What does 'mental illness' look like? What are the clues?

How do we know
that someone is
mentally ill?



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Trivia Question

- 1. Actor?**
- 2. Film?**
- 3. Character's name?**
- 4. Director?**

Trivia Question

- 1. Robert DeNiro**
- 2. Taxi Driver**
- 3. Travis Bickle**
- 4. Martin Scorsese**

Does Travis Bickle
“look” mentally ill?
Does the guy in the
next slide look
mentally ill?



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How about this
next guy? Does he
look mentally ill?



Trivia Question

- **From what movie was the previous photo taken?**
- **The film is based on a book. Who wrote the book?**
- **Who directed the film?**
- **What was the main character's last name?**
- **Who starred as Jack Nicholson's wife?**

Trivia Question

- **The Shining**
- **Stephen King**
- **Stanley Kubrick**
- **Torrance**
- **Shelley Duvall**
- **Lloyd***



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**Does this
image
portray
mental
illness or
economic
distress?**



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Aviator sunglasses and leather vest suggest this person is not economically disadvantaged. The rest of the image sends a slightly different message.

What about mental health issues involving veterans, especially regarding PTSD?



Mental illness statistics

- **As of 2017 out of a total adult population of 20.9 million in Texas**
- **230,000 with schizophrenia**
- **461,000 with severe bipolar disorder**
- **Public psychiatric beds in Texas in 2016 – 2,236**
- **Texas ranks 48th in the country for providing mental health care**

The problem is worse than ever. Why?

- **Community and family ties are weaker these days.**
- **People are focused on goals, i.e., money, fame, image**
- **We have higher expectations of ourselves and others – “you can be anything you want to be”**
- **We have better ways of identifying mental illnesses**
- **Less stigma associated with mental illness**

Words NOT to USE WHEN PRESIDING IN A CASE

- Crazy
- Loony
- Lunatic
- Abnormal
- Scary
- Mad
- Insane
- Deranged
- Unhinged
- Disturbed
- Unbalanced
- Stark raving mad
- Loco
- Dippy
- Screwy
- Batty
- Bonkers
- Cuckoo
- Touched
- Meshuga
- Wacko
- Demented
- Out of his everlovin' mind

WHERE DO WE PUT OUR PATIENTS?

- **Largest mental hospital in Texas: “If you want mental health treatment get locked up in the Harris County Jail”**
- **First mental hospital in Austin 1861 – State Lunatic Asylum**

Texas mental health facilities

- **North Texas State Hospital – 3 campuses –2 Vernon, Wichita Falls**
- **Terrell State Hospital**
- **Rusk State Hospital**
- **Waco Center for Youth**
- **Austin State Hospital**
- **San Antonio State Hospital**
- **Rio Grande State Hospital – Harlingen**
- **Kerrville State Hospital**
- **Big Spring State Hospital**
- **El Paso Psychiatric Center**

Total number of beds for all 10: 600



Let's look at how the law is applied to mental health situations.

The law and where to find it.

Texas Health and Safety Code, Title 7. Mental Health and Intellectual Disability, Subtitle C.

- **Chapters 571–576 (commitment procedures)**
- **Chapter 591. Section 591.003 (persons with
 - **Intellectual disability)****
- **Chapter 614. Section 614.0032(b) (TDC office on offenders with medical or mental impairments)**

Code of Criminal Procedure

- **Article 16.22 (when crime committed)**
- **Chapter 46B (incompetency to stand trial)**
- **Article 17.032 (PR bond)**



Other relevant statutes:

- **Government Code**
 - **Subtitle K, Title 2, Subchapter B, Chapter 22 (training)**
 - **Section 501.057(b) (parole)**
- **Family Code**
 - **Sections 55.13(d), 55.38(b), 55.57(b) (juveniles)**
- **Human Resources Code**
 - **Sections 152.00163(b), 152.00164(b), Section 244.012(b) – (child with mental illness)**
- **Civil Practices and Remedies Code**
 - **137.008(a) – (physician or health care provider)**

PURPOSE OF TEXAS MENTAL HEALTH CODE

- **Provide each mentally ill person access to humane care and treatment.**
- **Facilitate treatment in an appropriate setting.**
- **Enable the evaluation, care, treatment and rehab with the least trouble, expense and embarrassment.**
- **Protect the patient's right to a judicial determination of need for involuntary treatment.**
- **Find the LEAST restrictive setting that provides the best chance for improvement or cure.**

Weighing conflicting interests

- **Involuntary commitment represents an enormous deprivation of personal liberty.**
- **The Court must delicately balance a mentally ill patient's right to be ill against the government's interest in safety.**
- **The Court must be mindful of the potential for abuse of the process and remain focused on protecting the rights of the patient.**

Rights of the mentally ill

- **Told the location of detention**
- **Told reason for detention**
- **Told that detention could result in involuntary commitment**
- **Given reasonable opportunity to call lawyer**
- **Given reasonable opportunity to call relatives or person with an interest**
- **Transported home if found not to be mentally ill**
- **Informed using simple, nontechnical terms**
- **Must be done within 24 hours and in writing**

Mental illness definitions

An illness, disease, or condition that substantially impairs:

- a person's thought process
- perception of reality
- emotional process
- judgment
- And it grossly impairs a person's ability to function as demonstrated by recent disturbed behavior

Mental illness characteristics

- **A disease or sickness**
- **Can be permanent or temporary**
- **Can last years, a few months, or cycle**
- **No correlation between mental illness and intelligence**
- **Unpredictable behavior**
- **Can be treated by therapy and medication**

Some types of mental illnesses

- **Schizophrenia**
- **Bipolar Disorder**
- **Major Depressive Illness**
- **Schizoaffective Disorder**
- **Other psychological disorders**
- **Anxiety Disorders**



Types of mental illness:

- **Autism Spectrum Disorders**
- **Attention-Deficit/Hyperactivity Disorder**
- **Borderline Personality Disorder**
- **Depression**
- **Dissociative Disorders**
- **Dual Diagnosis: Substance Abuse and Mental Illness**



Types of mental illness:

- **Eating Disorders**
- **Obsessive-Compulsive Disorder (OCD)**
- **Panic Disorder**
- **Posttraumatic Stress Disorder**
- **Seasonal Affective Disorder**

How and when do you get involved?

Three ways a person can end up in a mental hospital:

- 1. Voluntary admission – can check self in and check self out**
- 2. Involuntary admission through civil system**
- 3. Involuntary admission through criminal system**

The judge may be asked to order

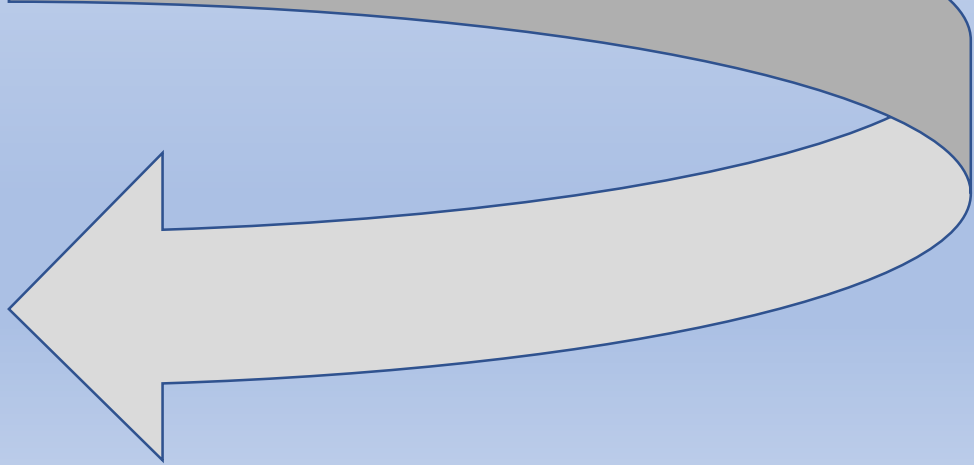
- **Emergency detention**
- **Protective custody**
- **Court-ordered mental health services**

Who pays for these services?

- **The county.**
- **County may recoup from the patient**
- **County may recoup from the patient's estate responsible for the patient's support**

Involuntary

commitment



Emergency

Detention



without warrant

Warrantless detention

Without a warrant – Generally preferred method due to nature of the situation requiring intervention.

- **A law enforcement officer can take someone into custody (not an arrest) if he has reason to believe the person is mentally ill; and**
- **the mental illness may cause substantial risk of serious harm to the person or to others; and**
- **The officer believes there isn't time to obtain a warrant**

Police observations

- **The person's behavior; or evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.**
- **The officer may form his belief for what a credible person has told him, or on the conduct observed and the circumstances surrounding the conduct.**

After taking a person into custody

- **The officer must immediately** take the person to the nearest mental health facility;
- No jail or prison except in an **extreme emergency**. This should never happen.
- If the person must be held in a jail, he **MUST** be kept separate from anyone charged with or convicted of a crime.

Procedures

- A **“Notification of Detention”** must be filed with the facility to which the officer takes the person, stating that the officer believes the person has a mental illness; there is a substantial risk of serious harm to self or others; must give specific description of risk; the officer must state he believes the risk is imminent; he must describe specific recent behavior, overt acts, attempts, or threats.
- This form goes with the person to the facility.



Procedures:

- **The officer must also give the name and relationship of person who reported or observed the behavior.**
- **If person is a ward within a guardianship the officer shall notify the probate court of jurisdiction no later than the first working day after detention.**
- **Immediately seize all firearms**

Detention by guardian w/o warrant

A guardian may take a ward to a mental health facility and apply for a “preliminary exam” and emergency detention without a warrant.

The guardian cannot “commit” the ward, he can only “check the ward in” for emergency detention.

What happens next?

- **After the person has been delivered to the mental health facility along with the Notification of Emergency Detention, the next step for the officer is to obtain a Mental Health Warrant or Emergency Detention Order signed by a judge. This is the legal document that causes the person to be admitted and held temporarily.**

Application for **Emergency Detention** aka **Mental Health Warrant**

- **Any adult may file a written “Application for a Warrant for Emergency Detention” also called mental health warrant**
- **The application for a “mental health warrant” is presented to the judge, who has to find reasonable cause to believe that the facts in the application are true and that the restraint necessary cannot be accomplished without emergency detention.**
- **The warrant is issued in order to apprehend and transport the person to the nearest appropriate inpatient mental health facility for a preliminary exam, and the warrant serves as an application for detention in that facility.**

Application form/style

- **Proceedings and applications on behalf of the State shall be styled “The State of Texas for the Best Interest and Protection of (NAME-initials only)” the patient or proposed patient.**

Reasons for filing the warrant

- **The applicant believes the person evidences mental illness.**
- **The person evidences a substantial risk of serious harm to self or others.**
- **A specific description of the risk of harm.**
- **The risk of harm is imminent.**

Who may obtain a mental health warrant?

A warrant for emergency detention may be obtained by the following:

- **Police**
- **Any adult witness to behavior**
- **Emergency medical services provider**
- **Doctor, hospital staff**
- **Court appointed guardian**

Mental health facility obligations

- **The facility shall temporarily accept the person**
- **must examine by a doctor within 12 hours of apprehension or transport to facility.**
- **detain person for no more than 48 hours unless written order of protective custody is obtained.**

Obligations

- **Exceptions: If time ends on weekend or holiday, the person can be kept until 4 p.m. of the next business day.**
- **In the event of bad weather or natural disaster, the judge may extend the detention for 24 hours**

Emergency Admission and Detention

- **A person may be admitted for emergency detention only if the doctor who conducted the exam makes a written statement that in his opinion the person:**
 - **Has a mental illness;**
 - **The person evidences a substantial risk of serious harm to himself or others;**
 - **The risk of harm is imminent unless restrained; and**
 - **Emergency detention is the least restrictive means; and**

Emergency admission and detention:

- He must include a description of the nature of the mental illness;**
- A specific description of the risk of harm the person evidences as shown by behavior or evidence of severe emotional distress and deterioration in mental condition to the extent he cannot remain at liberty**
- If the doctor determines the person is not mentally ill, he must be released immediately**

Application for commitment and prehearing procedures/Court-ordered mental health services form

Chapter 574 Mental Health Code

- **Must state whether it is for temporary or extended mental health services.**
- **If requesting extended inpatient services, must state that the person has received services at least 60 consecutive days during the preceding 12 months.**

Who may file for court-ordered mental health services?

- **county attorney**
- **district attorney**
- **any adult, including doctor but only if accompanied by a certificate of medical examination.**
- ***Application* must be filed with county clerk's office where the person resides, is found or is receiving mental health services.**

Appointment of attorney

- The judge shall appoint an attorney within 24 hours after application for court-ordered mental health services is filed
- The judge must inform the attorney **in writing** of his duties under Sec. 574.004 (form letter)
- The judge must allow attorney to have copies of all records and papers and access to hospital and physicians' records.
- The judge shall also appoint a language or sign interpreter if needed.
- .

Duties of Attorney

- 1. Interview patient before hearing**
- 2. Discuss law, facts, options, grounds for detention**
- 3. Advise patient he can hire an attorney**
- 4. Discuss that patient can agree with or resist services, but regardless of attorney's personal opinion, he must apply all efforts to advocate for the patient's wishes.**



Duties of attorney:

- 5. Advise patient he may but is not required to attend hearing.**
- 6. Explain procedures for appeal, release, and discharge and all other rights of the patient.**
- 7. Before hearing, the attorney shall review the application, certificates of medical examination and relevant medical records.**

Hearing set for application for court ordered services

- Judge sets date for hearing within 14 days from date of application
- Cannot be within the first 3 days if patient objects
- May grant one or more continuances but cannot be more than 30 days after app was filed
- Must send in person or by certified mail notice of the time and place to patient and his attorney, and a parent, if patient is a minor; a guardian, if person is a ward; each managing and possessory conservator.

PROTECTIVE CUSTODY

Protective Custody - MOTION

- **The motion is a document created and filed by the county or district attorney OR on the court's own motion.**
- **The motion can only be filed in court where application for court-ordered mental health services is pending.**
- **It must state that:**
- **The judge or county or district attorney has reason to believe that the proposed patient meets the criteria authorizing an order protective custody; and the belief is derived from a credible person; the proposed patient's conduct; or the circumstances under which the patient is found.**

Protective custody motion

- **The motion must have attached to it, a certificate of medical examination for mental illness prepared by a doctor who examined the patient not earlier than 3 days before the date the motion is filed.**

Protective custody - Order

To issue an order of protective custody, the judge must determine:

- that a doctor has stated his opinion and reasons the patient has a mental illness; and**
- The patient presents a substantial risk of serious harm to himself or others;**
- The patient has exhibited behavior that demonstrates emotional distress and deterioration of his to condition to the extent he cannot remain at liberty;**

Protective custody - order

- **The judge may make a determination based on the application and certificate of examination alone, or**
- **The judge may take additional evidence if needed to make a determination.**

Protective Custody - ORDER

If the judge signs the **Order of Protective Custody**, he must order an authorized person to transport the patient to a mental health facility where he will be detained until a hearing is held to determine probable cause.

Appoint an attorney for the proposed patient. The attorney should be knowledgeable in mental health proceedings, if possible.

PROBABLE CAUSE HEARING

- Held to determine if there is probable cause to believe that a patient *under a protective custody order* presents a substantial risk of serious harm to himself or others to the extent that he cannot be at liberty pending the hearing on the court-ordered mental health services; and
- A doctor has stated in his opinion the patient is a person with a mental illness.
- The Probable Cause Hearing (PCH) must be held within 72 hours from the time the person was detained under a protective custody order.
- The patient and his attorney must be given the opportunity to present evidence to challenge the allegation.
- The hearing must be open to public unless the patient requests it be closed, and the judge determines cause exists to do so.

Probable cause hearing

- **Texas Rules of Evidence apply.**
- **The State may prove its case on the physician's certificate of exam.**
- **The judge may consider evidence, including letters, affidavits, and other material that may not be admissible or sufficient in a subsequent commitment hearing.**



Probable cause hearing

At the PC hearing, the proposed patient appears (or waives his appearance) with his attorney, and the judge hears testimony to make a determination.

Probable cause hearing – findings to detain

The judge must make the following determination to hold a patient in protective custody:

- **that an adequate factual basis exists for probable cause to believe the patient is a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty.**

Probable cause hearing

- The judge makes arrangements to send the patient back to the mental health facility along with copies of the certificate of medical exam, any affidavits or other evidence submitted, and the *“Notification of Probable Cause Hearing”* (form in Sec. 574.026) This form tells the facility that the probable cause hearing was held and the judge’s findings.

Probable cause hearing - detention

- **If probable cause is found, the patient must be detained under the protective order in a mental health facility until a final order for court-ordered services is entered.**

Probable cause hearing – no finding

- **The judge shall order the release of the person if he finds there is no probable cause. The person shall be transported to his or her residence or location of apprehension or another suitable location.**
- **As a practical matter, release from detention following a probable cause hearing concludes the proceeding, and it is unlikely that further action on the pending application for court-ordered mental health services will occur.**

FINAL HEARING

- **Judge can hold hearing anywhere in county, but patient may ask for it to be at the county courthouse.**
- **The patient is entitled to attend the hearing, but he or his attorney may waive the right.**
- **Hearing must be open to public unless patient shows good cause to have closed hearing.**
- **Texas Rules of Evidence apply.**

Final hearing

- **The judge can consider testimony of a mental health professional who is a doctor.**
- **The hearing must be on the record.**
- **The state must prove each element of the applicable criteria by clear and convincing evidence.**



Final hearing – burden of proof

- **The evidence presented during a trial must be highly and substantially more probable to be true than not and the judge or jury must have a firm belief or conviction as to the truth.**
- **To be clear and convincing, the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm the likelihood of serious harm to self or others; or the patient’s distress and deterioration making him unable live safely in his community; and his inability to participate in outpatient treatment effectively.**

Final hearing - burden of proof

- **Addington v. Texas 441 U.S. 418 (1979)**
- Landmark case changing standard from “preponderance of the evidence” to “clear and convincing” in mental health cases. This was a Texas case. The Court found that the burden of proof does not need to be as high as “beyond a reasonable doubt” as in criminal cases, but should be a “clear and convincing” standard of proof as required under the Fourteenth Amendment.
- Requires proof that a particular fact is substantially more likely than not to be true. A high probability that a particular fact is true.

Final hearing

- **Judges and prosecuting attorneys can assess a fee of not more than \$50 as a cost of court, and if a judge holds hearings at locations other than the courthouse, she may receive a reasonable salary supplement set by the commissioners court.**
- ***Temporary* orders must be heard before the court unless patient requests jury trial.**
- ***Extended orders* must be before a jury unless patients waives jury.**
- **Waiver must be in writing, under oath, and signed and sworn by the patient and his attorney, unless they orally waive right in court.**



Final hearing

- **The judge does not have to require a jury fee.**
- **Jury shall determine if patient is mentally ill and meets the criteria for court-ordered mental health services.**
- **Jury cannot decide the type of services.**



Final hearing

- **If judge or jury does not find the person meets the criteria, the judge shall enter an order denying the application and immediately release the patient.**

Temporary Services Order

- Judge may order temporary **INPATIENT** services, if she finds from clear and convincing evidence, that...
- the patient has a mental illness; *and*
- the patient is likely to cause serious harm to self or others;
or
- is suffering severe and abnormal mental, emotional, or physical distress...



Temporary inpatient services

- is experiencing substantial mental or physical deterioration of his ability to function independently, as exhibited by inability to provide basic needs, including food, clothing, health or safety; *and*
- is unable to make a rational and informed decision as to whether or not to submit to treatment.



- Temporary **OUTPATIENT** services
- Judge may order temporary **OUTPATIENT** services only if:
 - She finds appropriate services are available; and
 - She finds from clear and convincing evidence that the patient has a mental illness;
 - The mental illness is severe a persistent;



Temporary outpatient services

- **As a result of the illness, the patient will continue to suffer severe an abnormal mental, emotional, or physical distress; and**
- **Experience deterioration of his ability to function independently; and**
- **The patient is unable to decide whether to submit to treatment**

Judge's order - temporary services

- Authorize treatment for no longer than **45 days**, except the judge may order a longer period not to exceed **90 days** if necessary.
- Judge cannot order services (in or out) if charged with crime involving serious bodily injury to another person.

Extended inpatient services

Judge can only order extended inpatient services if the jury or the judge find from clear and convincing evidence that the person:

- **has a mental illness;**
- **is likely to cause serious harm to self or others; or**
- **is suffering **severe and abnormal** mental, emotional or physical distress; experiencing **substantial** mental or physical deterioration of ability to function independently.**



- unable to make rational decision regarding treatment;
- condition expected to last more than **90 days**; and
- the patient has received court-ordered inpatient services for at least **60 days** during the preceding **12 months**.

Order of Care or Commitment

- **The judge shall dismiss the jury if any after a finding of mental illness.**
- **The judge may hear testimony related to alternative care.**
- **The judge shall consider the most appropriate treatment alternative.**
- **The judge shall order least restrictive setting available.**
- **Depending upon the jury's or the judge's decision regarding level of illness, the judge shall enter an order committing the patient to inpatient or outpatient care.**

Court-ordered out-patient services

- **The judge picks the person responsible for outpatient care.**
- **That person must submit a general program of the treatment to be provided, and the program must be incorporated into the court order, and the program of treatment must have been filed before the final hearing.**
- **The program must include:**
 - 1. Services to provide care coordination; and**
 - 2. Any other treatment or services that are necessary to assist the patient.**
 - 3. The program must be submitted to the court before the hearing or before modification of an order.**

Order of care/commitment - County Clerk's responsibility

- **The court clerk shall prepare a certified transcript of the proceedings.**
- **The clerk shall send the transcript and all information gathered to the mental health facility.**

After Commitment

The doctor shall inform the court if:

- **The patient fails to comply with the order; and**
- **Any substantial change in the general program of treatment.**

After commitment - Judges...

- **The judge may set a status conference with the doctor, the patient and the patient's attorney.**
- **The judge may not compel performance.**
- **If the patient is not cooperating, the judge may set a modification hearing; and issue an order for temporary detention.**
- **Judge cannot hold patient in contempt for failure to comply.**

Criminal Law and the Mentally Ill

- **Article 16.22 – Code of Criminal Procedure – Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability.**
- **Guide for law enforcement and judges when a person is arrested and believed to be mentally ill or intellectually disabled.**

Your county may have...

Some counties, typically the larger ones, have one or all of the following:

- **Mental Health Deputy Program**
- **Mental Health Crisis Response Teams**
- **Crisis Intervention Training**
- **Mental Health Officer(s)**

For more information or help...

- **National Alliance on Mental Illness (NAMI)**
- **Texas Department of Health and Human Services**
- **Texas Department of Mental Health and Mental Retardation (MHMR)**
- **Treatment Advocacy Center – Texas**
- **2-1-1 Texas – find mental health services, crisis help lines, counseling, support groups and more**
- **Substance Abuse and Mental Health Service Administration (SAMHSA) – US Department of Health and Human Services**

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