

Texas Hospitals' Process to Protect and Treat Individuals Experiencing Psychiatric Crisis



Each year in Texas, about **1 million adults** experience a serious mental illness and

half a million children experience a serious emotional disturbance.

When an individual experiences a psychiatric crisis, temporary hospitalization at an inpatient mental health facility may be necessary. Individuals have the opportunity to voluntarily admit themselves for treatment. In some cases, however, law enforcement and the judicial system intervene to pursue a mental health hold so a physician can determine whether the

individual requires hospitalization. Because Texas has too few psychiatric beds to meet the state's current need, individuals in crisis often are directed to hospital emergency departments for emergency evaluation, stabilization and treatment before a bed at an inpatient mental health facility becomes available.

This document outlines the multi-step process to secure a mental health hold—emergency detention and order of protective custody—for an individual experiencing a psychiatric crisis.

Emergency Detention

A warrant, if issued by a judge, or a warrantless ED, if executed by law enforcement, to obtain a medical assessment to determine whether an individual, who evidences an imminent, substantial risk of serious harm to self or others, needs court-ordered or involuntary hospitalization.

Order of Protective Custody

A court ordered mental health commitment issued by a judge for an individual who refuses hospitalization and is found to be mentally ill to the degree that there is a substantial risk of serious harm to self or others unless the person is immediately restrained.



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Custody

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Law enforcement takes an individual into custody without a warrant, if the person is believed to be mentally ill and poses a substantial risk of serious harm to self or others and there is not enough time to get a warrant. Law enforcement can form the belief based on a credible person's presentation, conduct of an individual or circumstances under which the person is found.



Transport

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Law enforcement immediately transports the individual to the nearest appropriate inpatient mental health facility. If a bed at an inpatient mental health facility isn't available, law enforcement may take the individual to a mental health facility deemed appropriate by a local mental health authority, which often is a hospital emergency department.

Although state law doesn't provide explicit authority for law enforcement to transport an individual to a general hospital, the authority is suggested by the definition of "mental health facility" found in chapter 571 of the Mental Health Code. The definition of a "mental health facility" includes "that identifiable part of a general hospital in which diagnosis, treatment and care for persons with mental illness is provided."

Notification of Detention

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"Notification of Detention" is filed. Immediately after transporting the individual to the facility, the law enforcement agent or EMS personnel who transported the individual must file a "Notification of Detention." EMS personnel may transport an individual to the facility if law enforcement requests it and there is a memorandum of understanding.

The "Notification of Detention" form describes to the facility why law enforcement believes that the risk of harm is imminent to the individual or others and provides other information related to the individual and the incident.

Emergency Detention

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Emergency detention. An individual may be detained for up to 48 hours without an order of protective custody. If the 48-hour period ends on Saturday, Sunday, legal holiday or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day.



Physician Exam

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A physician examines the individual, as soon as possible, within 12 hours after he or she is apprehended by law enforcement and transported to the facility. To be admitted for an ED, a physician must state in writing:

- That the individual has a mental illness.
- That the individual evidences a substantial risk of serious harm to self or others.
- The described risk of harm is imminent unless the individual is immediately restrained.
- ED is the least restrictive means of restraint.
- Details of the individual's mental illness, the specific risk of harm and specific detailed information from which the physician formed the opinion.

The individual is released, if he or she no longer meets criteria for an ED.

or

Release or Filing of OPC

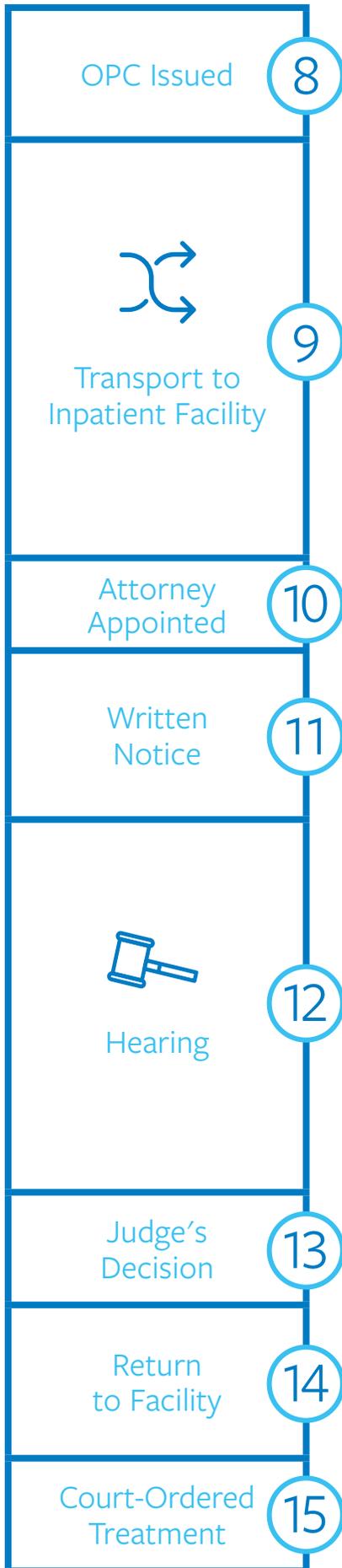
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Seeking an order of protective custody. If, after the examination, the physician believes that the individual being held continues to exhibit signs of mental illness and evidences a substantial risk of serious harm to self or others, a county or district attorney or another adult, such as the physician, may file with the court an application for an order of protective custody.

OPC Application

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The OPC application. The application must state that the person filing the application believes and has reason to believe that the individual meets the criteria authorizing the court to issue the OPC. It also must include a certificate of medical examination for mental illness prepared by a physician who has examined the individual not earlier than three days before the motion is filed.



Judge issues OPC, if, based on the application and certificate of medical examination, he or she determines that a physician has stated detailed reasons for his or her opinion that the individual has a mental illness and poses a substantial risk of serious harm to self or others. If a fair determination cannot be made from the application and certificate alone, the judge may require additional evidence.

Transport individual to an inpatient mental health facility. Once the OPC is issued, the following designees, in the order of priority, immediately must transport the individual to an inpatient mental health facility deemed suitable by the LMHA for the area.

- A special officer for mental health assignment.
- The facility administrator of the designated mental health facility, unless the administrator notifies the court that the facility personnel are not available to transport the individual.
- A representative of the LMHA, who shall be reimbursed by the county, unless the representative notifies the court that the LMHA personnel are not qualified to ensure the safety of the individual during transport.
- A qualified transportation service provider.
- The sheriff or constable.
- A relative or other responsible person who has a proper interest in the individual's welfare.

If a bed is not available at an inpatient mental health facility, the individual remains at the original facility to which law enforcement or EMS transported the individual.

Once the OPC is signed, the **judge appoints an attorney** to represent the individual, if he or she does not have one.

Written notice. Within a reasonable time before the hearing is held, the court that issued the OPC must provide to the individual and the individual's attorney a written notice that states:

- That the individual has been placed under the OPC.
- The grounds for the order.
- The time and place of the hearing to determine probable cause.

No later than 72 hours after the time that the individual was detained under the OPC, **a hearing is held** to determine if:

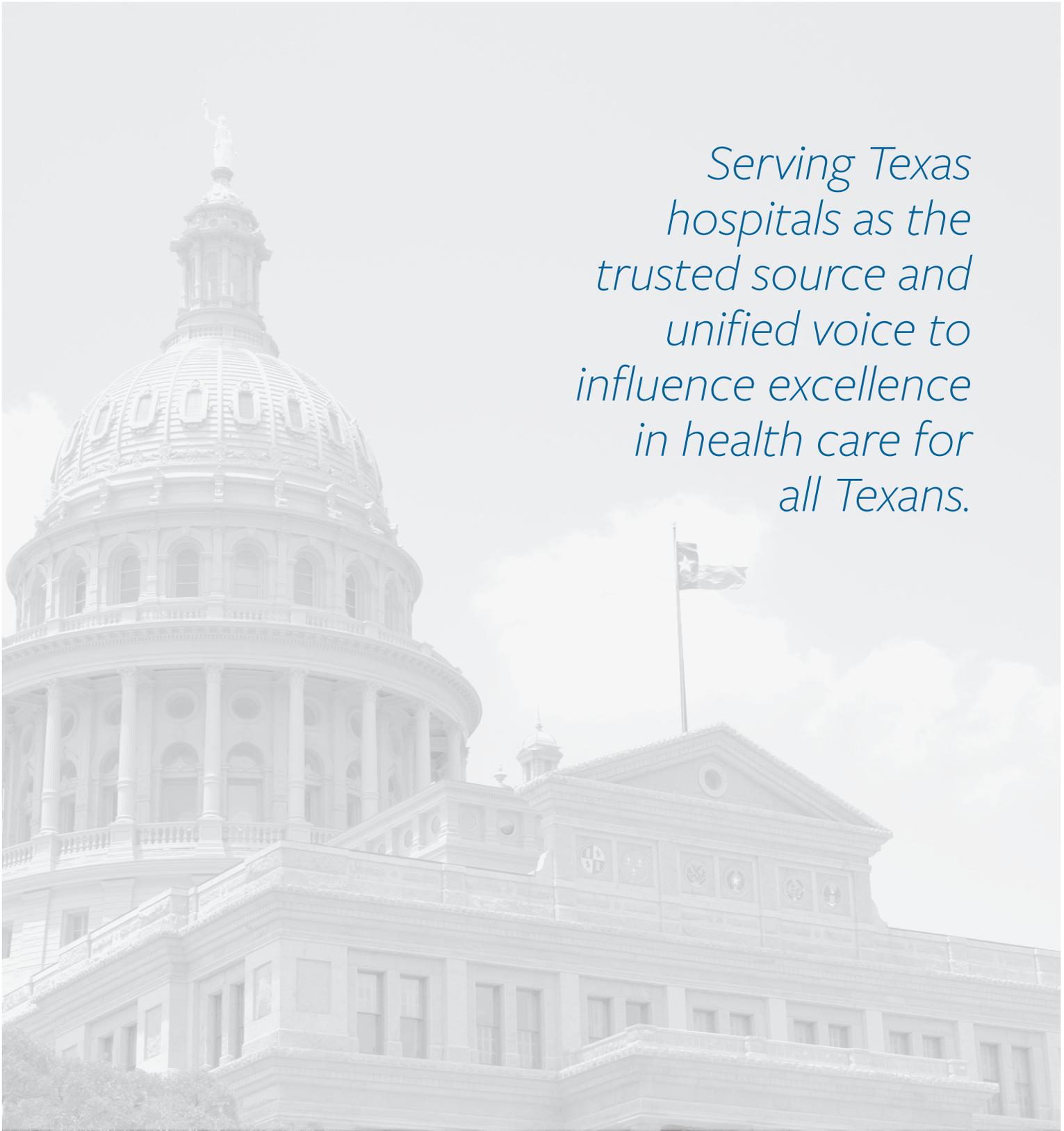
- There is probable cause to believe that the individual under the OPC presents substantial risk of serious harm to self or others to the extent that the he or she cannot be at liberty pending the hearing.
- A physician has stated detailed reasons for his or her opinion that the individual has a mental illness.

If the period for the hearing ends on a Saturday, Sunday or legal holiday, the hearing is held on the next business day that is not a legal holiday. At the hearing, the individual and the individual's attorney have an opportunity to present evidence to challenge the allegation that the individual presents a substantial risk of serious harm to self or others. The state may prove its case based on the physician's certificate of medical examination filed in support of the initial motion.

Judge orders the individual to remain in protective custody, if, after the hearing, he or she determines that the individual presents a substantial risk of serious harm to self or others to the extent that he or she cannot remain at liberty.

Individual returns to mental health facility. The judge arranges for the individual to return to the inpatient mental health facility, or other suitable facility, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing and the statutory notification of probable cause hearing for the hospital. A copy of the statutory notification and supporting evidence must be filed with the court that entered the original OPC.

Court-ordered treatment. While being held under the OPC, the individual receives inpatient mental health treatment, pending the judge's final order for court-ordered mental health services, or until the person is released or discharged.

A grayscale photograph of the Texas State Capitol building in Austin, Texas. The image shows the iconic dome with the Statue of Liberty on top, and the main building with its classical architecture and a Texas flag flying on a tall pole to the right. The sky is overcast with soft clouds.

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