

**From:** Guy Herman <[Guy.Herman@traviscountytx.gov](mailto:Guy.Herman@traviscountytx.gov)>  
**Date:** March 17, 2020 at 2:33:47 PM CDT  
**Subject:** A Note Regarding Warrantless Detentions

Judges and Clerks:

As you aware we are in a crisis situation and need to marshal our human assets and use them in an efficient manner. As most of you know I have advocated the use of the emergency detention without a warrant in mental health cases instead of intervening with a mental health warrant which requires an in-person appearance in front of a magistrate. This appearance creates unnecessary risk for your staff or other county employees if the warrants are issued by a Justice of the Peace or other Magistrate. In the last few days, several high volume mental health courts have issued orders suspending the emergency detention with a warrant process. They now recognize the waste of resources especially when there is a less time consuming method of achieving the same result. This COVID19 crisis has placed us in a unique position to develop approaches to continue doing what we do in the most efficient manner possible.

I have long believed it is most efficient to intervene in a situation involving a person with mental illness needing emergency intervention is through the warrantless detention process. This method of intervention involves two people, the person needing help and the law enforcement officer. The warrant method of intervention most often involves numerous people, the applicant, the clerk of the court, the court staff and the law enforcement officer. It is not uncommon for the applicant to bring along family and friends. It is clearly safer to involve less people. The warrantless system also place the person with mental illness sooner than the warrant system as there are fewer and more direct steps taken to place the detainee where they can be properly evaluated. Either way law enforcement is involved.

A recent survey of Texas counties reflects that 68% of our state's counties utilize the warrantless detention process, 17 counties of which use warrantless detentions throughout their county in all situations. Most counties surrounding the Austin State Hospital, like Travis County, use warrantless detention to place persons in public and private facilities. Now is the time for all counties to implement a warrantless emergency detention system. Dallas County just did so by the Probate Court Judge issuing an order eliminating the use of detentions with a warrant. Attached is copy of the Judge's order.

Although I strongly suggest suspending using warrants in mental health cases, you should at least take control of the issuance of mental health warrants. The County Judge, as probate judge of the county, has the right to control the process and to issue administrative orders regarding the same under Health and Safety Code Sec. 573.012. You can order all emergency warrants to be filed with the County Clerk to be signed by you and any Magistrate you designate to review and sign orders and issue warrants that meet the statutory requirements for issuance. Taking control of the initial stage of your county's mental health system makes it more efficient in general and much safer under the current circumstances. It also puts the Warrant system under the confidentiality rules set forth in Sec. 571.015. Warrants issued by

Magistrates other than those designated by you, the Judge, are not confidential under our state's laws.

Even if you issue administrative orders pursuant to the statute, you should ponder why you use warrants in the first place.

Keep up your efforts,

Guy Herman

Presiding Statutory Probate Judge