



Texas House of Representatives

Juan J. Hinojosa

- Chairman of Committee on Criminal Jurisprudence
- Member of Committee on Judicial Affairs

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District 40: (part) McAllen, Elsa, Edcouch, Edinburg & San Carlos

February 1, 2001

RQ-0345-JC

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Honorable John Cornyn  
 Texas Attorney General  
 P.O. Box 12548  
 Austin, TX 78711-2548

FILE # 41870  
 I.D. # 1L-41870

OFFICE OF THE ATTORNEY GENERAL  
 EXECUTIVE ADMINISTRATION  
 1844

Re: Hidalgo County Sheriff's Dept. Request for Opinion

Dear Attorney General Cornyn:

There has been some confusion as to which peace officers are required to transport suspected mentally ill persons on a magistrates' warrants issued in accordance with Section 573.012 of the Texas Health and Safety Code. Specifically, Section 573.012 provides relevant part;

“(d) The magistrate shall issue to an on-duty peace officer a warrant for the person’s immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.”

The statute does not specify any particular municipal or county on-duty peace officers who is responsible for the apprehension of the person. Rather the statute states “an on-duty peace officer.” Section 573.024 states that the county in which the person was apprehended is responsible for paying the costs of transporting the person upon release. There does not exist a similar provision providing that the county is responsible for the costs of transportation of a person who is apprehended by a municipal peace officer. Consequently, since the statute specifies who is responsible for transportation upon release, but not upon apprehension, the only way to harmonize these two provisions so as to give them legitimacy is that any on-duty peace officer may be called upon by the magistrate in Section 573.012.

Confusion with regard to Section 573.012 may arise from the recent statutory amendment to Section 573.025, effective September 1999. Section 573.025 is entitled “Rights of Persons Apprehended or Detained” and state in relevant part:

“(a) A person apprehended or detained under this chapter has the right:

(6) to be transported in accordance with Section 573.026 and 574.045,

- District Office: 612 Nolana, Suite 410B, McAllen, TX 78504-3089 (956) 972-1841 Fax: (956) 686-8462
- Austin Office: P.O. Box 2910, Austin, TX 78768-2910 (512) 463-0636 Fax: (512) 463-0229
- E-mail: JUAN.HINOJOSA@HOUSE.STATE.TX.US

if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023.”

Various officials in Hidalgo County have interpreted this amendment to require that all warrants issued by a magistrate pursuant to Section 573.012 must be served by a County Sheriff and/or constable and no other peace officer (e.g. a municipal peace officer). These officials view Section 574.045 entitled “Transportation of Patient” as controlling and overruling any other provision because it provides:

- “(a) The court may authorize the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:
- (1) a relative or other responsible person who has a proper interest in the patient’s welfare and who receives no remuneration, except for actual and necessary expenses;
  - (2) the facility administrator of the designated mental health facility, if the administrator notifies the court that facility personnel are available to transport the patient;
  - (3) a special officer for mental health assignment certified under Section 415.037, Government Code;
  - (4) a representative of the local mental health authority, who shall be reimbursed by the county; or
  - (5) the sheriff or constable, if no person is available under Subdivision (1), (2), (3), or (4).”

These officials interpret the amendment to Section 573.025 as giving the apprehended person the right to have no other peace officer but the sheriff or constable transport the person for either commitment or release after a preliminary examination, and failure to protect a suspect’s rights can be a source of unnecessary problems, including litigation. Consequently, these officials have now required that all mental health commitment warrants issued by the county courts at law and all justices of the peace be executed by the Hidalgo County Sheriff’s Department, rather than the local police department where the subject is thought to be located.

The Hidalgo County Sheriff’s Department believes this interpretation is inaccurate since Section 574.045 deals with the transportation of a committed or detained patient. The Sheriff’s

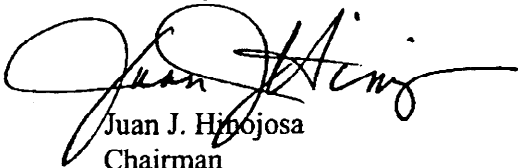
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Department asserts that a person's rights regarding transportation as discussed in Section 574.045 are not triggered until, as stated in Section 573.012, the person is either committed or detained at an appropriate inpatient mental health facility, or a facility deemed suitable by the county's mental health authority, if an appropriate inpatient mental health facility is not available.

I request the opinion of your office as to the correct interpretation of Section 573.021 and the amendment to Section 573.025. Your attention to this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan J. Hinojosa". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Juan J. Hinojosa

Chairman

Committee on Criminal Jurisprudence

cc: Ramiro Castellano

Hidalgo County Chief Deputy Sheriff