

RQ-0204-KP

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OPINION COMMITTEE

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December 27, 2017

Honorable Ken Paxton
Attorney General of Texas
Attn: Opinion Committee
209 West 14th Street, 7th Floor
Austin, Texas 78711-2548

Re: Request for Opinion

Dear Attorney General Paxton:

The Brenham Chief of Police and Washington County Sheriff have requested that our office seek an Attorney General opinion addressing the following questions:

- 1) Does a magistrate, specifically a Justice of the Peace, have the authority to require a specific peace officer or law enforcement agency to execute a warrant pursuant to §573.012(d)?
- 2) If a magistrate, specifically a Justice of the Peace, does have that authority is the peace officer or law enforcement agency required to respond and transport the person pursuant to §573.012(e)?
- 3) Are there any jurisdictional elements associated with a warrant issued pursuant to §573.012(d)? I.e. if the person subject to the warrant is encountered in, or lives in, the City of Brenham then Brenham PD is responsible for transport and if the subject is encountered outside of the city limits, or lives outside of the city limits, but within Washington County, the Sheriff's Office is responsible for transport.
- 4) May the Brenham PD or Sheriff's Department refuse to transport persons subject to warrants under §573.012?

- 5) If a designated law enforcement officer, or the head of a particular law enforcement agency, refuses to execute a warrant pursuant to §573.012(d) may the issuing magistrate hold that person in contempt?

Based upon this letter and the accompanying Brief, the Washington County Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to these questions.

Thank you for your attention to this matter. If your office should require any additional information please contact our office.

Sincerely,



Reece A. Mueller

County Attorney

Washington County, Texas

BRIEF IN SUPPORT OF REQUEST FOR ATTORNEY GENERAL OPINION

The following Brief contains substantive information and background facts intended to supplement the questions contained in the accompanying Request for Attorney General Opinion.

QUESTIONS

- 1) Does a magistrate, specifically a Justice of the Peace, have the authority to require a specific peace officer or law enforcement agency to execute a warrant pursuant to §573.012(d)?
- 2) If a magistrate, specifically a Justice of the Peace, does have that authority is the peace officer or law enforcement agency required to respond and transport the person pursuant to §573.012(e)?
- 3) Are there any jurisdictional elements associated with a warrant issued pursuant to §573.012(d)? I.e. if the person subject to the warrant is encountered in, or lives in, the City of Brenham then Brenham PD is responsible for transport and if the subject is encountered outside of the city limits, or lives outside of the city limits, but within Washington County, the Sheriff's Office is responsible for transport.
- 4) May the Brenham PD or Sheriff's Department refuse to transport persons subject to warrants under §573.012?
- 5) If a designated law enforcement officer, or the head of a particular law enforcement agency, refuses to execute a warrant pursuant to §573.012(d) may the issuing magistrate hold that person in contempt?

BACKGROUND AND FACTS

The City of Brenham Police Department ("Brenham PD") and Washington County Sheriff's Department ("Sheriff's Department") disagree about who must provide transport when a warrant is issued pursuant to §573.012 of the Texas Health and Safety Code. We are seeking clarification on the issue of who is responsible for mental health transportation for those patients where an Emergency Detention Order ("EDO") is issued by a magistrate, specifically a Justice of the Peace, pursuant to §573.012 of the Texas Health and Safety Code.

Both Departments agree that when an officer or deputy encounters a person that suggests mental illness, the encountering officer or deputy is responsible to transport the subject to a facility pursuant to §573.001-002 of the Texas Health and Safety Code. However, the two Departments differ in their interpretation of who is responsible for transporting mental health patients when a magistrate issues an EDO for county and/or city residents pursuant to §573.012 of the Texas Health and Safety Code.

The Sheriff's Department feels it is Brenham PD's responsibility to transport individuals to a mental health facility for a preliminary examination when a magistrate issues an EDO pursuant to §573.012 if the individuals experienced a psychiatric episode and were encountered by the MHMR Center of Washington County ("MHMR") or hospital personnel at Baylor Scott & White Medical Center because those facilities are located within Brenham city limits. The Brenham PD does not believe it should have to transport all individuals encountered by MHMR or hospital personnel simply because they are located in the city limits of the City of Brenham.

LEGAL AUTHORITIES

Texas Health & Safety Code §573.001 states in part:

- (a) A peace officer, without a warrant, may take a person into custody if the officer:
 - (1) has reason to believe and does believe that:
 - (A) the person is a person with mental illness; and
 - (B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
 - (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.
- (d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:
 - (1) the nearest appropriate inpatient mental health facility; or
 - (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

Texas Health & Safety Code §573.012 states in part:

- (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:
 - (1) presented personally to the court; or
 - (2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.
- (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.
- (e) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 573.021 to:
 - (1) the nearest appropriate inpatient mental health facility; or
 - (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.
- (f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

DISCUSSION

The primary point of contention between Brenham PD and the Sheriff's Department is whether a magistrate has authority to require a specific law enforcement agency to execute a warrant pursuant to Texas Health & Safety Code §573.012(d), regardless of where the subject to be transported is encountered or located. The dispute revolves around geographical principles and jurisdiction.

Looking to Opinion No. GA-0877, in which the Mental Health Code did not explicitly address the situation in question, it would appear Chapter 573 is also silent regarding jurisdictional guidelines or requirements for mental transports pursuant to §573.012. Our office can only speculate that the plain language of §573.012(d) authorizes a magistrate to issue a warrant to any on-duty peace officer in the County regardless of where the subject to be transported is encountered or located.

REQUEST FOR LEGAL OPINION

Based upon the aforementioned information, the Washington County Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to the questions presented.