



March 27, 2001

The Honorable J. E. "Buster" Brown  
Chair, Natural Resources Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Opinion No. JC-0358

Re: Definition of "presiding magistrate" for  
probable cause hearing pursuant to section  
574.025, Texas Health and Safety Code  
(RQ-0296-JC)

Dear Senator Brown:

You have asked this office to interpret section 574.025 of the Health and Safety Code. Specifically, you have inquired as to the meaning of the phrase, "the presiding judge" in section 574.025(c). Reading that section *in pari materia* with the rest of subchapter B of chapter 574, we conclude that the "presiding judge" who may, pursuant to section 574.025(c), appoint a master before whom a probable cause hearing is to be heard is "[t]he judge of the court in which the application [for court-ordered mental health services] is pending." TEX. HEALTH & SAFETY CODE ANN. § 574.021(e) (Vernon 1992). Thus, depending on the court in which such an action is pending in Harris County, Texas, either the judge of Probate Court No. 3 or the judge of Probate Court No. 4 may be the "presiding judge" for the purpose of section 574.025(c).

Chapter 574 of the Health and Safety Code is concerned with the provision of court-ordered mental health services. Subchapter B is concerned with the procedures governing a motion that the proposed patient be held in protective custody. One of the subchapter's requirements is that a probable cause hearing be held "not later than 72 hours after the time that the proposed patient was detained under a protective custody order." *Id.* § 574.025(b) (Vernon Supp. 2001). This hearing must be held to determine if:

(1) there is probable cause to believe that a proposed 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 court-ordered mental health services; and

(2) a physician has stated his opinion and the detailed reasons for his opinion that the proposed patient is mentally ill.

*Id.* § 574.025(a).

Section 574.025(c), about which you inquire, reads in relevant part "The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge." *Id.* § 574.025(c). It is the meaning of the phrase "presiding judge" in this subsection with which you are concerned.

We agree with the Harris County Attorney that the "presiding judge" for this purpose means the judge in whose court the application for court-ordered mental health services is pending.<sup>1</sup> Section 574.021(a) requires, "A motion for an order of protective custody may be filed *only* in the court in which an application for court-ordered mental health services is pending." *Id.* § 574.021(a) (Vernon 1992) (emphasis added). Section 574.021(e) provides that "The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence." *Id.* § 574.021(e). We are instructed by section 311.021(2) of the Government Code to construe a statute so that it is effective in its entirety. Accordingly, reading these provisions and section 574.025(c) *in pari materia*, we conclude that "the presiding judge" is "the judge of the court in which the application [for court-ordered mental health services] is pending."

As you note, "In Harris County, two statutory probate courts have responsibility for mental illness proceedings, Probate Court No. 3 and Probate Court No. 4." Request Letter, *supra* note 1, at 1. Accordingly, the determination of who is the "presiding judge" for the purpose of any particular probable cause hearing will depend on the court in which the application for court-ordered mental health services is pending. If the application is pending is Probate Court No.3, then the judge of that court is the presiding judge. If the application is pending is Probate Court No. 4, the judge of that court is the presiding judge for the purpose of section 574.025(c).

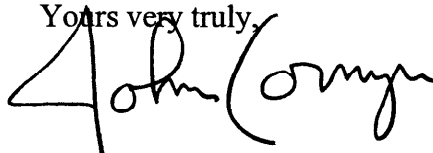
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<sup>1</sup>Letter from Honorable J.E. "Buster" Brown, State Senator, to Honorable John Cornyn, Attorney General (Sept. 29, 2000) (on file with Opinion Committee) [hereinafter Request Letter] (*see* correspondence attached).

**S U M M A R Y**

The "presiding judge" who may appoint a master in a probable cause hearing under section 574.025(c) of the Texas Health and Safety Code is the judge of the court in which an application for court-ordered mental health services is pending.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn". The signature is written in a cursive style with a large initial "J" and "C".

JOHN CORNYN  
Attorney General of Texas

ANDY TAYLOR  
First Assistant Attorney General

CLARK KENT ERVIN  
Deputy Attorney General - General Counsel

SUSAN D. GUSKY  
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