

STATE OF MICHIGAN

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MENTAL HEALTH: Responsibility for transporting and for
costs of transporting certain mental health
COUNTIES: patients to and from court hearings

PEACE OFFICERS: Signing of applications for hospitalization
of certain persons with mental illness

Counties are responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Mental Health Code to be present at their civil commitment hearings.

A law enforcement officer who personally observes conduct that causes the officer to reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, is the only person authorized to execute the application for hospitalization under section 427 of the Mental Health Code and may not delegate that responsibility to a mental health services worker.

Opinion No. 7127

April 7, 2003

Honorable Stephen F. Adamini
State Representative
The Capitol
Lansing, MI

You have asked two questions concerning the Mental Health Code. You first ask who is responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Code to be present at their civil commitment hearings.

Your office has advised that your request arises from a situation in the Upper Peninsula. Luce County residents who are ordered by the Luce County Probate Court to be hospitalized for mental health services are sent to the Psychiatric Unit at Marquette General Hospital located in Marquette County. The Luce County Sheriff's Department transports these individuals to and from probate court hearings required by the Mental Health Code concerning the patients' continued involuntary hospitalization. The Luce County Sheriff's Department has sought reimbursement from the community mental health services program for the costs it incurs transporting the hospitalized persons between the hospital and the court based on its belief that these are program costs and not the county's responsibility. The community mental health services program denies that the transportation costs qualify for reimbursement.

The Mental Health Code (Code), 1974 PA 258, as amended, MCL 330.1101 *et seq.*, is a comprehensive codification of the laws relating to mental health in Michigan. Chapter 4 of the Code contains the sections relating to civil admission and discharge procedures for mentally ill individuals. You refer to three sections of chapter 4 that deal with involuntary commitment. Section 426, MCL 330.1426, provides that when a peace officer is given "an application [for hospitalization] and physician's or licensed psychologist's clinical certificate, the peace officer shall take the individual . . . into protective custody and transport the individual" to a hospital or preadmission screening unit.

Section 436 of the Code, MCL 330.1436, addresses the situation where, prior to hospitalization, an individual has failed to comply with a court order requiring the individual to be examined by a physician or licensed psychologist. In that instance, "*the court* may order a peace officer to take the individual into protective custody and transport him or her to a preadmission screening unit or hospital designated by the community mental health services program or to another suitable place" for the examination.¹ (Emphasis added.)

Similarly, section 438 of the Code, MCL 330.1438, provides for immediate involuntary mental health care in order to prevent physical harm to the individual or others. In that instance, "*the court* may order the individual hospitalized and may order a peace officer to take the individual into protective custody and transport the individual to a preadmission screening unit" and ultimately to a hospital for treatment if necessary. (Emphasis added.)

Sections 426, 436, and 438 of the Code directly address who bears responsibility for transporting individuals to hospitals and preadmission screening units.² The plain language of these sections places this responsibility on peace officers. These sections do

¹ A "community mental health services program" means one of three things under the Code, each of which is defined separately: 1) a program operated under chapter 2 as a county community mental health agency; 2) a community mental health authority; or 3) a community mental health organization. MCL 330.1100a(15).

² Although not mentioned in your request, sections 427, 428, 455(8), and 475(2)(b) of the Code, MCL 330.1427, 330.1428, 330.1455(8), and 330.1475(2)(b), also authorize peace officers under certain circumstances to take individuals into protective custody and transport them to a hospital or preadmission screening unit.

not address, however, who bears responsibility for transporting individuals from their hospital placements to and from court for civil commitment hearings.

Civil commitment hearings are governed by sections 452 to 465 of the Code. MCL 330.1451. Section 452 provides that court hearings shall be convened upon the filing of certain petitions. MCL 330.1452. Under section 453 of the Code, MCL 330.1453, the court is required to give notice of the petition and the time and place of the hearing to the individual subject to the petition and other related information and, under section 454 of the Code, MCL 330.1454, must appoint counsel to represent the individual unless other arrangements have been made. Section 455(1) of the Code, MCL 330.1455(1), mandates that, absent certain circumstances not relevant here, "[t]he subject of a petition has the right to be present at all hearings" and further provides that the right may be deemed waived by the subject's failure to attend. Section 457 of the Code mandates that the prosecuting attorney of the county where a court has its principal office shall participate in the hearings convened under chapter 4 of the Code, unless the petitioner has retained private counsel. MCL 330.1457.

These sections of the Code do not specifically address who is responsible for transporting hospitalized individuals to court for hearings convened under chapter 4 of the Code. A review of other authorities, however, leads to the conclusion that this responsibility is an important part of meeting due process requirements and, accordingly, falls on the counties.

Federal case law establishes that the courts are responsible for securing the person's right to be present at civil commitment hearings. See *Bell v Wayne County General Hospital at Eloise*, 384 F Supp 1085, 1102 (ED Mich, 1974) (3-judge court). The court in *Bell* ruled that failure to provide all possible means to ensure the presence of individuals subject to a commitment hearing is a violation of their constitutional right to due process. *Id.*, at 1099. Moreover, as explained in OAG, 1975-1976, No 4875, p 89, 90 (May 30, 1975), responsibility for conducting civil commitment proceedings and for the costs associated with those proceedings resides in the various counties:

The civil commitment of the mentally ill is justified by the police and *parens patriae* powers of the state. *Donaldson v O'Connor*, 493 F2d 507 (5th Cir, 1974). The State of Michigan has traditionally delegated the power of civil commitment to the various counties. That the commitment process (as opposed to the treatment process) has continued to be fully delegated to the counties by 1974 PA 258 is clear from a reading of that Act. For example, commitment proceedings are instituted in the probate court of the county where the subject of the petition either resides or was found, MCLA 330.1400; MSA 14.800(400); MCLA 330.1434; MSA 14.800(434). The county prosecutor has the duty to participate in commitment proceedings except in cases where the petitioner has retained private counsel, MCLA 330.1457; MSA 14.800(457). If the subject of a commitment petition demands a jury trial, the jury is chosen from residents of the county, MCLA 330.1458; MSA 14.800(458).

It is therefore my opinion that the legislature intended that the counties were to be the responsible governmental bodies for conducting commitment proceedings. Since 1974 PA 258 contains no provision regarding state reimbursement of the counties for the expenses of commitment proceedings *it can readily be inferred that the legislature intended that the counties would absorb those expenses*. [Emphasis added.]

A review of the pertinent sections of the Code in its present form leads to the same conclusion reached in OAG, No 4875. Since the subject of a petition has the right to be present at court hearings under section 455, the costs associated with securing that

right are costs of the commitment proceedings, not costs associated with actual treatment, and, accordingly, are costs the Legislature intended to be borne by the counties.³ The conclusion that the Legislature intended that the counties assume all costs of the commitment proceedings is supported by the fact that the Legislature did not appropriate to the Michigan Department of Community Health or to any other state agency funds for the payment of transportation to and from court hearings in civil commitment hearings.

Const. 1963, art 9, § 17 provides:

No money shall be paid out of the state treasury except in pursuance to appropriations made by law.

The failure to make such appropriations is further evidence of a legislative intent that the cost of transportation be paid for by counties.

A question related to yours was addressed in OAG, 1979-1980, No 5811, p 1065 (November 5, 1980). At issue there was whether the county was eligible for state reimbursement of the costs of transporting mental health patients to and from state psychiatric hospitals. The opinion explained that the Code has set forth the mechanisms for allocating the costs of the public mental health system between the state and the various counties and that, subject to sufficient appropriations, the state pays 90% of the annual "net cost" of the county's community mental health services program. The opinion then examined the definitions of "net cost" and related terms and determined that transportation expenses were not reimbursable to the counties because they fell outside

³ Since this responsibility was established before adoption of Const 1963, art 9, §§ 25-31, your question does not give rise to any "Headlee Amendment" implications.

the scope of "mental health services" as described in then section 208 of the Code. OAG, No 5811, at pp 1066-1067. Thus, transportation expenses to and from civil commitment hearings were the responsibility of the county and not properly charged to the community mental health program or payable by the state through its allocated share of the net cost.

The provisions of the Code analyzed in OAG, No 5811 have not changed materially since that opinion issued, and accordingly, the conclusion reached in the opinion remains true today.⁴ Although 1995 PA 290 amended the Code and changed "county community mental health program" to "community mental health services program," this change has no impact here. Section 206 of the Code, MCL 330.1206, now sets forth the array of mental health services to be provided by a community mental health services program, and the Legislature has not added transportation to the list of services delineated there.

Nor have there been any subsequent regulatory or contractual changes that warrant a different conclusion. The Michigan Department of Community Health has not promulgated any rule requiring transportation to and from probate courts as a mental health service to be provided by a community mental health services program. Additionally, under section 232 of the Code, MCL 330.1232, the Michigan Department of Community Health enters into contracts with the community mental health services

⁴ One exception not applicable here but nevertheless worth noting is section 426, quoted above. When this section was amended by 1995 PA 290, it added the sentence providing that "[t]ransportation to another hospital due to a transfer is the responsibility of the community mental health services program."

program providers for the provision of mental health services. This contract also does not direct or provide for payment to transport a patient to and from court hearings.⁵

It is my opinion, therefore, in answer to your first question, that counties are responsible for transporting, and for the costs incurred by county peace officers associated with transporting, persons hospitalized under chapter 4 of the Mental Health Code to and from court to secure their right under section 455 of the Mental Health Code to be present at their civil commitment hearings.

Your second question asks whether a law enforcement officer who personally observes conduct that causes the officer to reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, may delegate to a mental health services worker responsibility to execute the application for hospitalization under section 427 of the Mental Health Code.

Section 424 of the Code, MCL 330.1424, generally describes what an application for hospitalization must contain. An application must contain an assertion that the

⁵ Your letter indicates that you are concerned that many rural counties have only one designated psychiatric unit at a hospital that may be as many as two hours or more away from the county where the hearings will be held and the costs associated with this lengthy travel are substantial. The regulations governing psychiatric hospitals or units provide a means for minimizing the inconvenience and expense associated with the transportation of patients to and from their hearings under the Code. The rules for the licensure of psychiatric hospitals or units require that a licensed facility shall provide appropriate on-site space for probate court hearings on involuntary admission if a court deems convening there practicable. 1979 AC, R 330.1228. Additionally, section 456 of the Code provides that the court may, whenever practicable, hold the hearings at the hospitals or other convenient location within or without the county. MCL 330.1456. This is supported by the authority conferred on the probate court or family court respectively, by MCL 600.816 and 600.1517, to move the location of the hearing. Section 457 of the Code also provides that the prosecuting attorney responsible for the hearing may permit the prosecuting attorney or assistant prosecuting attorney from another county to participate in the hearing, thus facilitating a hearing in another county. MCL 330.1457.

individual is a person requiring treatment, along with the alleged facts that are the basis for the assertion and any known names and addresses of witnesses to those facts. MCL 330.1424(1). The application may only be made by persons 18 years of age or older and "shall be made under penalty of perjury." MCL 330.1424. Among the circumstances that may lead to the conclusion that a person is one "requiring treatment" are that the person has mental illness and may physically injure himself or another or is unable to attend to his or her basic physical needs. MCL 330.1401(1).⁶

Section 427(1) of the Code, MCL 330.1427(1), specifically prescribes the duties and responsibilities of a law enforcement officer who witnesses the conduct of an individual who might require treatment. It provides in pertinent part:

If a peace officer observes an individual conducting himself or herself in a manner that causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in section 401, the peace officer may take the individual into protective custody and transport the individual to a preadmission screening unit designated by a community mental health services program for examination under section 429 or for mental health intervention services. The preadmission screening unit shall provide those mental health intervention services that it considers appropriate or shall provide an examination under section 429. The preadmission screening services may be provided at the site of the preadmission screening unit or at a site designated by the preadmission screening unit. Upon arrival at the preadmission screening unit or site designated by the preadmission screening unit, *the peace officer shall execute an application for hospitalization of the individual.* (Emphasis added.)

The word "execute" is not defined in the Code. Where a statute does not define one of its terms, it is customary to look to a dictionary for a definition, *Marcelle v*

⁶ The State Court Administrative Office's (SCAO) Form PCM 201 is a "Petition/Application for Hospitalization" and is available on the SCAO's website.

Taubman, 224 Mich App 215, 219; 568 NW2d 393 (1997). The plain and ordinary meaning of "execute" when used in connection with writings or documents, such as an application, is "to complete or make valid . . . as by signing." *Webster's New World Dictionary, Third College Ed.* (1988), p 475. In statutory interpretation, the word "shall" when used to direct a public official is mandatory, and "may" is discretionary. *Southfield Twp v Drainage Bd for Twelve Towns Relief Drains*, 357 Mich 59; 97 NW2d 821 (1959); *Fink v Detroit*, 124 Mich App 44, 49; 333 NW2d 376 (1983). Moreover, when the language of a statute is clear, it must be applied as written. *Lorenz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

Applying these rules of construction, section 427 gives a peace officer discretion to take an individual into protective custody if he or she reasonably believes that individual requires treatment. Once the officer has exercised that discretion, however, the only person authorized to execute the application for hospitalization described under section 427 of the Code is the peace officer.⁷ It is the peace officer who has personally observed the facts forming the basis for the conclusion that the person requires treatment. That the Legislature viewed this as a solemn responsibility is evidenced by the requirement that statements made in the application are subject to the penalty of perjury.

It is my opinion, therefore, in answer to your second question, that a law enforcement officer who personally observes conduct that causes the officer to

⁷ This is in contrast to section 425 of the Code, in which the Legislature has provided that the clinical certificate required for hospitalization of an individual under section 423 of the Code "may be executed by any physician or licensed psychologist, including a staff member or employee of the hospital with which the application and clinical certificate are filed." MCL 330.1425.

reasonably believe an individual requires mental health treatment and, based on those observations, takes the individual into protective custody, is the only person authorized to execute the application for hospitalization under section 427 of the Mental Health Code and that responsibility may not be delegated to a mental health care worker.

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