

OP. NO. 04-045

MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.

Meaning of 'primary law-enforcement agency' and 'jurisdiction' as those terms relate to execution of emergency custody and temporary detention orders and transportation of patients pursuant to such orders.

The Honorable Dale Muterspaugh
Sheriff for Alleghany County
July 15, 2004

Issue Presented

You seek clarification of amendments made by the 2004 Session of the General Assembly to §§ 37.1-67.01 and 37.1-67.1¹ ("2004 enactment"). Specifically, you inquire as to a definition of the terms "primary law-enforcement agency" and "jurisdiction" in §§ 37.1-67.01(B) and 37.1-67.1(C).

Response

In cities and counties of the Commonwealth where police departments serve as the primary law-enforcement providers and sheriffs serve as officers of the courts and local jailers, the local police department is the "primary law-enforcement agency" for purposes of §§ 37.1-67.01(B). In counties without county police departments that rely on sheriffs' offices to perform law-enforcement functions and serve as officers of the courts and local jailers, the local sheriff's office is the "primary law-enforcement agency." Consequently, the General Assembly intends the city and county police departments, and the sheriffs' offices in counties without police departments, that perform the primary law-enforcement functions to execute emergency custody orders and provide transportation for emergency medical evaluation or treatment.

A magistrate may order either a police department or a sheriff's office, without regard to designation as the primary law-enforcement agency of a jurisdiction, to execute temporary detention orders and provide transportation for emergency medical evaluation or treatment prior to placement.

The term "jurisdiction" in §§ 37.1-67.01(B) and 37.1-67.1(C) clearly refers to the locality or political subdivision served by the law-enforcement agency.

Background

You advise that the adjective "primary" preceding the term "law-enforcement agency" in § 37.1-67.01(B) clearly describes the law-enforcement agency a magistrate shall order to execute an emergency custody order and transport a patient² to a medical facility for evaluation or treatment. You note, however, that confusion arises because § 37.1-67.1(C) does not include the adjective "primary" to describe the law-enforcement agency that will be responsible for executing a temporary detention order and transporting a patient to a medical facility for emergency medical evaluation or treatment prior to placement. You state that the term "jurisdiction," as used in these two statutes, needs clarification.

Applicable Authorities and Discussion

Section 37.1-67.01(B) provides:

The magistrate issuing an emergency custody order shall specify the *primary law-enforcement agency and jurisdiction* to execute the emergency custody order and provide transportation. The magistrate shall order the *primary law-enforcement agency from the jurisdiction* served by the community services board that designated the person to perform the evaluation required in subsection A to execute the order and provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the *primary law-enforcement agency from the particular jurisdiction* within the community services board's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the *primary law-enforcement agency from the jurisdiction* where the person is presently located to execute the order and provide transportation. Transportation under this section shall include transportation to such medical facility as may be necessary to obtain emergency medical evaluation or treatment. Such evaluation or treatment shall be conducted immediately in

accordance with state and federal law. [Emphasis added.]

Section 37.1-67.1(C) provides:

The magistrate issuing the temporary detention order shall specify the *law-enforcement agency and jurisdiction* that shall execute the temporary detention order and provide transportation. The magistrate shall specify in the temporary detention order the *law-enforcement agency of the jurisdiction* in which the person resides to execute the order and provide transportation; however, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation. Such order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law. [Emphasis added.]

A 1996 opinion of the Attorney General provides a detailed explanation of the legislative history of the responsibility of both sheriffs' offices and police departments for transporting patients subject to emergency custody and involuntary temporary detention orders under §§ 15.2-1724,³ 15.2-1704,⁴ 37.1-67.01, and 37.1-67.1.⁵ The opinion notes that, although the General Assembly does not define the term "law-enforcement officer" in §§ 37.1-67.01 and 37.1-67.1, §§ 15.2-1724 and 15.2-1704 specify that police officers may be involved in the transportation process.⁶ Furthermore, police officers are included as "law-enforcement officers" referred to in §§ 37.1-67.01 and 37.1-67.1.⁷ The 1996 opinion concludes that the General Assembly has not placed the primary responsibility for transporting persons under emergency custody or temporary detention orders on either sheriffs' offices or police departments, but that, as a practical matter, *sheriffs may be involved most often with transportation pursuant to a temporary detention order*.⁸ The opinion further concludes that, under §§ 37.1-67.01 and 37.1-67.1,

any law-enforcement officer requested by a court to execute an emergency custody or a temporary detention order should do so, without delay.⁹

The 1996 opinion also notes that neither § 37.1-67.01 nor § 37.1-67.1 prevents a magistrate from designating the law-enforcement office to provide transportation for a patient under an emergency custody or a temporary detention order.¹⁰ The 1996 opinion, therefore, concludes that sheriffs' deputies may remain the primary providers of transportation for temporary detention orders.¹¹

Furthermore, a 1981 opinion of the Attorney General notes that sheriffs' departments in counties where such departments comprise the primary local law-enforcement agency receive state funding; however, in cities and counties where police departments perform the primary law-enforcement functions, sheriffs serve primarily as officers of the courts and local jailers.¹²

"The legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view."¹³ The 2004 enactment of §§ 37.1-67.01(B) and 37.1-67.1(C) does not alter the conclusion of the 1981 or 1996 opinion. It is clear that the 2004 enactment is consistent with the conclusions in those opinions.

I agree with these prior opinions. It is my opinion that the General Assembly intends the term "primary law-enforcement agency" in § 37.1-67.01(B) to mean "police department" in cities and counties where such departments perform law-enforcement functions and sheriffs serve primarily as officers of the court and local jailers. I must also conclude that the sheriff's office in any county that has no police department, and which performs law-enforcement functions and serves as officer of the court and local jailer, is the county's "primary law-enforcement agency" within the meaning of § 37.1-67.01(B). As a result of 2004 enactment, the General Assembly permits magistrates to continue to use sheriffs' deputies as the primary providers of transportation for temporary detention orders, as noted in the 1996 opinion, or police officers.

In the execution of emergency custody orders and transportation of patients to medical facilities to obtain emergency medical evaluation or treatment, however, the General Assembly evidences the intent that magistrates use police departments in cities and counties with such departments that perform law-enforcement functions and where sheriffs serve as officers of the court and local

jailers. In counties without police departments, the General Assembly intends for magistrates to use sheriffs' offices to execute emergency custody orders and transport patients to medical facilities.

You also seek a definition of the term "jurisdiction" as used in §§ 37.1-67.01(B) and 37.1-67.1(C). Ordinarily, when a particular word in a statute is not defined therein, the word should be accorded its ordinary meaning.¹⁴ In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.¹⁵ The 2004 enactment does not define the term "jurisdiction," nor is the term defined in Title 37.1.¹⁶ Generally, the term "jurisdiction" means "[a] geographic area within which political or judicial authority may be exercised."¹⁷ Consequently, the term "jurisdiction" clearly refers to the locality or political subdivision that the law-enforcement agency serves.

Conclusion

Accordingly, in cities and counties of the Commonwealth where police departments serve as the primary law-enforcement providers and sheriffs serve as officers of the courts and local jailers, the local police department is the "primary law-enforcement agency" for purposes of §§ 37.1-67.01(B). In counties without county police departments that rely on sheriffs' offices to perform law-enforcement functions and serve as officers of the courts and local jailers, the local sheriff's office is the "primary law-enforcement agency." Consequently, the General Assembly intends the city and county police departments, and sheriffs' offices in counties without police departments, that perform the primary law-enforcement functions to execute emergency custody orders and provide transportation for emergency medical evaluation or treatment.

A magistrate may order either a police department or a sheriff's office, without regard to designation as the primary law-enforcement agency of a jurisdiction, to execute temporary detention orders and provide transportation for emergency medical evaluation or treatment prior to placement.

The term "jurisdiction" in §§ 37.1-67.01(B) and 37.1-67.1(C) clearly refers to the locality or political subdivision served by the law-enforcement agency.

¹ See 2004 Va. Acts ch. 737 (effective July 1, 2004).

²As used in this opinion, the term "patient" refers to a person who "is mentally ill and in need of hospitalization." Va. Code Ann. § 37.1-67.01(A) (LexisNexis Supp. 2004).

³Section 15.2-1724 authorizes law-enforcement officers to go beyond their territorial limits to execute temporary detention or emergency custody orders for mental health evaluations.

⁴Section 15.2-1704 authorizes police officers "to execute and serve temporary detention and emergency custody orders."

⁵1996 Op. Va. Att'y Gen. 161, 162-63 (interpreting §§ 15.1-131, 15.1-138, predecessors to §§ 15.2-1724, 15.2-1704).

⁶*Id.* at 162.

⁷*Id.*

⁸*Id.* at 163 (citing 1 H & S. Docs., Report of the Joint Legislative Audit and Review Commission on Review of the Involuntary Commitment Process, H. Doc. No. 8, at 12 (1995)).

⁹*Id.*

¹⁰*Id.* at 164.

¹¹*Id.*

¹²1980-1981 Op Va. Att'y Gen. 70, 72.

¹³Richard L. Deal & Assocs. v. Commonwealth, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

¹⁴See McKeon v. Commonwealth, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

¹⁵See Sansom v. Bd. of Supvrs., 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); Commonwealth v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); 1999 Op. Va. Att'y Gen. 10, 11.

¹⁶Title 37.1 relates generally to mental health.

¹⁷Black's Law Dictionary 855 (7th ed. 1999).

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