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Opinion No. 00-172

Transportation of Persons with Mental Illness in Shelby County

QUESTIONS

1. Under present law and Public Chapter No. 947, Public Acts of 2000, who is responsible for transporting persons in Memphis/Shelby County with mental illness who meet the criteria of Tenn. Code Ann. § 33-6-103?
2. Does the responsible entity have to provide the transportation service twenty-four (24) hours per day?
3. Who is responsible for enforcing the transportation guidelines outlined in Title 33?
4. What would be the effective date of any change to the present law by Public Chapter No. 947, Public Acts of 2000 regarding these questions?

OPINIONS

1. Under both current law and the new legislation, there are three separate phases of transportation: transporting persons to obtain an examination of their mental status, transporting persons certified in need of inpatient care to a hospital or treatment resource, and any transportation thereafter. The person(s) responsible for transportation depends on the phase of transportation.
2. Yes. The entity responsible for transportation at each phase of transportation must provide transportation services twenty-four (24) hours per day.
3. Under both current law and Public Chapter No. 947, Public Acts of 2000, the general sessions court is responsible for enforcing the transportation guidelines outlined in Title 33.
4. Public Chapter No. 947, Public Acts of 2000 becomes effective on March 1, 2001.

ANALYSIS

I.

The question seeks to identify who is responsible for transporting persons pursuant to Tenn. Code Ann. § 33-6-103 and Public Chapter No. 947, Public Acts of 2000. Under both current law and the new legislation, there are three separate phases of transportation: transporting persons to obtain an examination of their mental status, transporting persons certified in need of inpatient care to a hospital or treatment resource, and any transportation thereafter. The person(s) responsible for transportation varies depending on the phase of transportation.

Responsibility for the first phase of transportation, transporting persons to obtain an examination of their mental status, is identical under current law and the new legislation. Tenn. Code Ann. § 33-6-103 and Public Chapter No. 947, Public Acts of 2000, Part 4, § 33-6-401 both provide for the detention for examination and treatment of persons who pose an immediate substantial likelihood of serious harm due to mental illness. A person subject to such detention may be taken into custody without a civil order or warrant by a law enforcement officer authorized to make arrests in Tennessee,¹ by a physician, by a doctoral level psychologist, or by certain other medical professionals designated by the commissioner. Tenn. Code Ann. §§ 33-6-103(b), (f)(1), and (f)(2)(A); 2000 Tenn. Pub. Acts 947, Section 1, Part 4, § 33-6-402. A law enforcement officer may transport persons in custody pursuant to these provisions to a physician, doctoral level psychologist, or certain other medical professionals designated by the commissioner, for immediate examination and certification for care and treatment. Tenn. Code Ann. §§ 33-6-103(b), (d), (f)(1), and (f)(2)(A); 2000 Tenn. Pub. Acts 947, Section 1, Part 4, § 33-6-404.

The second phase of transportation occurs when a person has been certified in need of inpatient care and treatment and must be transported to a hospital or treatment resource for admission. It is in this phase that the current statute and the new legislation differ somewhat. However, it is our opinion that, under both current law and the new legislation, the sheriff is primarily responsible for transportation.

Under current law, Shelby County has the authority to contract with community mental health centers or contract with or designate ambulance services to assist the sheriff's office in the detention and transportation of mentally ill persons. Tenn. Code Ann. § 33-6-111. The court is responsible for arranging for transportation to the public hospital whenever an individual is about to be hospitalized there under the provisions of § 33-6-103. Tenn. Code Ann. § 33-6-106.

¹A law enforcement officer may make an arrest with or without a warrant. Tenn. Code Ann. § 40-7-101. The sheriff, any officer acting as the sheriff, the sheriff's deputies, the marshal, or a city or town police officer may execute an arrest warrant. Tenn. Code Ann. § 40-6-210. Peace officers may also make an arrest for certain infractions committed in their presence. Tenn. Code Ann. §§ 40-7-103, 38-3-102, and 38-3-108. "The sheriff is the principal conservator of the peace in the sheriff's county. . . ." Tenn. Code Ann. §§ 38-3-102 and 8-8-213.

Under Public Chapter No. 947, Public Acts of 2000, if, after evaluation, a person is determined to be in need of admission to a hospital, “the physician, psychologist, or designated professional shall assess the person’s clinical needs and need for physical restraint or vehicle security and determine the mode of transportation to the hospital in consultation with the mandatory pre-screening agent, other mental health professional familiar with the person, or a knowledgeable family member.” 2000 Tenn. Pub. Acts 947, Section 1, Part 4, § 33-6-404(3)(B)(iii). The sheriff must transport all persons to be transported for involuntary admission to inpatient care in Shelby County except for those transported by a secondary transportation agent, a municipal law enforcement agency designated by the sheriff, or anyone else authorized to transport such persons under this legislation. 2000 Tenn. Pub. Acts 947, Section 1, Part 9, § 33-6-901(a). “The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security.” 2000 Tenn. Pub. Acts 947, Section 1, Part 9, § 33-6-901(a). *See also* 2000 Tenn. Pub. Acts 947, Section 1, Part 4, § 33-6-406. In addition, whenever an individual is about to be involuntarily admitted for inpatient care in a hospital or treatment resource, the court is responsible for arranging for the transportation of the person to the hospital. 2000 Tenn. Pub. Acts 947, Section 1, Part 9, § 33-6-902.

The third and final phase of transportation occurs after the person has been transported to the hospital or treatment resource where the person is proposed to be admitted. In Shelby County, the sheriff is relieved of further transportation duties at this point, and transportation of the person becomes the responsibility of the personnel of the hospital or treatment resource. Tenn. Code Ann. §§ 33-6-103(e)(1)(A), (e)(2), and (g); 2000 Tenn. Pub. Acts 947, Section 1, Part 4, §§ 33-6-406(b)(4) and 33-6-407(d).

II.

Neither the current law nor the new legislation limit the provision of transportation services to less than twenty-four (24) hours per day. Peace officers, including the sheriff, the sheriff’s deputies, and the city police are on duty twenty-four (24) hours a day in Shelby County and subject to being called to handle situations involving potential harm to persons at any time. Under current law, twenty-four (24) hour coverage could also be provided through contracts between the county and community mental health centers or through contract with or designation of ambulance services to assist the sheriff’s office in the detention and transportation of these persons. Tenn. Code Ann. § 33-6-111. Under Public Chapter No. 947, Public Acts of 2000, the secondary transportation agent must be available twenty-four (24) hours per day. 2000 Tenn. Pub. Acts 947, Section 1, Part 9, § 33-6-901(a)(3). Therefore, it is our opinion that transportation services must be provided twenty-four (24) hours a day.

III.

Under both current law and Public Chapter No. 947, Public Acts of 2000, the general sessions court has jurisdiction over services provided to mentally ill persons on an involuntary basis, beginning with their transportation and involuntary admission for diagnosis, evaluation, and treatment of mental illness, and continuing through their discharge. Tenn. Code Ann. §§ 33-6-103(l) through (w) and 33-6-106; 2000 Tenn. Pub. Acts 947, Section 1, Part 4, §§ 33-6-413 through 33-6-424, and Part 9, § 33-6-902. It is our opinion that the general sessions court's jurisdiction includes the responsibility for enforcing the transportation guidelines outlined in Title 33.

IV.

Except for purposes of rulemaking, 2000 Tenn. Pub. Acts Ch. 947 (H.B. 3004), Section 12 provides that the provisions of this legislation pertinent to this opinion become effective on March 1, 2001.

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