STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 02-015

Obligation of County Jail to Accept Prisoners

QUESTIONS

1. Must a county jail accept all arrested in the county by officers (sheriff's deputies and municipal police) without warrants?

2. Must a county jail accept all prisoners arrested by officers pursuant to legal process, that is, warrants, capias or attachments?

3. Under what circumstances may a county jail refuse to take custody of an arrestee?

4. May the jail refuse acceptance of an arrestee if the arrestee complains about a medical problem or has an obvious injury needing medical attention?

5. May the jail refuse acceptance of an arrestee if the jail is over its approved capacity?

6. Does it matter if the capacity limits have been set by a federal court order or are limited by a state certification process?

OPINION

1. Yes. A county jail must accept all arrested persons.

2. Yes. A county jail must accept all arrested persons.

3. A county jail may not refuse to take custody of an arrestee.

4. No. A county jail must accept all arrested persons. However, the jail may make arrangements for medical treatment or transfer the prisoner to the nearest jail sufficient to care for the prisoner's medical needs.

5. No. A county jail must accept all arrested persons. However, if the jail is insufficient to house the prisoner, the sheriff may have the prisoner transferred to the nearest sufficient jail.

6. No. A county jail must accept all arrested persons. If the jail is insufficient to house the prisoner, the sheriff may have the prisoner transferred to the nearest sufficient jail.

ANALYSIS

A county sheriff has the duty to "[t]ake charge and custody of the jail of the sheriff's county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, until discharged by law." Tenn. Code Ann. § 8-8-201(3). The county jail is to be used as a prison for the safekeeping or confinement of several classes of persons, including all those "committed thereto by authority of law." Tenn. Code Ann. § 41-4-103(a)(7).

When a person is arrested with or without a warrant, that person must be taken "without unnecessary delay before the nearest appropriate magistrate." Tenn. R. Crim. P. 5(a). If the evidence indicates that an offense has been committed and that there is probable cause to believe that the person in question committed it, the magistrate should bind the person over to the grand jury and either release the person pursuant to applicable law or commit the person to jail by a written order. Tenn. R. Crim. P. 5.1(a); *see also* Tenn. Code Ann. §§ 40-5-105, -106. As this Office set forth in Tennessee Attorney General Opinion Number 89-65 (April 28, 1989), this written order is called a mittimus, and it generally directs an officer to convey the person to the jail and directs the jailer to receive and keep the person. The willful failure to obey a court order is punishable as contempt. Tenn. Code Ann. § 29-9-102(3). Thus, this Office opined that a county jail does not have the authority to refuse to accept an individual accompanied by a valid mittimus, even in the event of jail overcrowding. *See* Tenn. Atty. Gen. Op. No. 89-65 (April 28, 1989).

Furthermore, the Tennessee Supreme Court has previously held that the criminal statutes and rules permit "a temporary holding without a mittimus." *See State v. Mitchell*, 593 S.W.2d 280, 282 (Tenn. 1980); *Wynn v. State*, 181 Tenn. 325, 331, 181 S.W.2d 332, 334 (1944). In Tennessee Attorney General Opinion Number 94-41 (March 31, 1994), this Office relied upon those prior decisions of our Supreme Court to conclude that "commitment," as used in Tennessee Code Annotated § 41-4-103(7), which provides that the jail shall be used as a prison for the safekeeping or confinement of all persons "committed thereto by authority of law," is not limited in its meaning to a formal commitment pursuant to a mittimus; instead, that provision includes those committed for a "temporary holding without a mittimus" because they are committed by authority of law. *See* Tenn. Atty. Gen. Op. No. 94-41 (March 31, 1994). Accordingly, this Office opined that it "is not within a sheriff's authority to refuse to accept a person to be held prior to the issuance of a mittimus." *Id.*

This same rationale would apply to any person arrested pursuant to law, whether with a warrant, without a warrant, or with a capias, because that person is committed to the jail by the authority of law. Therefore, a county jail must accept all persons arrested pursuant to law.

Nevertheless, there is a remedy for a county jail if the jail is insufficient to care for all of the prisoners committed thereto. If a county jail is insufficient for the safekeeping of a prisoner, the sheriff has the authority to convey the prisoner to the nearest sufficient jail in the state. Tenn. Code Ann. § 41-4-121. The Tennessee Court of Criminal Appeals has indicated that "the inability of the county to supply immediate medical needs might fall into this category." *State v. Chapman*, 977 S.W.2d 122, 127 (Tenn. Crim. App. 1997). Pursuant to statute, a county has the duty to provide medical attendance upon all prisoners confined in the county jail. Tenn. Code Ann. § 41-4-115(a). It follows that if a county jail is insufficient to care for the medical needs of a prisoner, that prisoner could be transferred to the nearest sufficient jail in the state. *See* Tenn. Code Ann. § 41-4-121; *Chapman*, 977 S.W.2d at 127. If, however, a prisoner needs emergency medical treatment, the jail should ensure that a prisoner receives it. *See Chapman*, 977 S.W.2d at 127; Tenn. Code Ann. § 41-4-115.

Additionally, the Tennessee Supreme Court has concluded that "an 'insufficient' jail includes one that is so overcrowded that it violates the prisoner's rights under the Eighth amendment to the United States Constitution." *State v. Walker*, 905 S.W.2d 554, 557 (Tenn. 1995). This Office has maintained "that insufficiency under the statute is not the same thing as unconstitutionality. The jail is not necessarily unconstitutionally overcrowded simply because it houses more inmates than its Tennessee Corrections Institute (TCI) capacity." Tenn. Atty. Gen. Op. No. 89-65 (April 28, 1989). It may, however, be insufficient under the statute if it is over its recommended capacity. *See id.* Thus, if a jail is insufficient for the safekeeping of a prisoner due to overcrowding, the prisoner may be transferred to the nearest sufficient jail in the state. *See* Tenn. Code Ann. § 41-4-121.

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