

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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December 30, 2010

Opinion No. 10-123

Use of Restraint During Evaluation of Mentally Ill Patient

QUESTIONS

1. After transporting a mentally ill patient to a hospital for evaluation regarding admission to involuntary inpatient treatment under Tenn. Code Ann. § 33-6-407, is a sheriff department employee required, upon request by hospital staff, to use the sheriff's police powers to restrain the person or otherwise use force to assist hospital staff to complete the required evaluation?

2. Would it violate the civil rights of a person being evaluated for admission to involuntary inpatient treatment under Tenn. Code Ann. § 33-6-407 for the sheriff department employee who transported the person to the hospital to use his or her police powers to assist hospital personnel to be able to complete certain parts of the evaluation if the mentally ill patient is threatening violence, is a danger to himself or others, and if the hospital requested law enforcement assistance in order to complete the evaluation?

OPINIONS

1. No, after transporting a mentally ill patient to a hospital for evaluation, a sheriff department employee is not required under Title 33, Chapter 6, Part 4 to use his or her police powers to restrain a mentally ill patient or otherwise use force to assist hospital staff to complete the evaluation required by Tenn. Code Ann. § 33-6-407 to determine whether the mentally ill patient is subject to involuntary admission.

2. No, as long as the restraint or use of force is reasonable, in good faith, and justified by the circumstances of the particular case, it would not be a violation of civil rights for the sheriff department employee to use his or her police powers to assist hospital personnel to be able to complete such evaluation.

ANALYSIS

If a person believed to have a mental illness is certified as being in need of emergency diagnosis, evaluation and treatment at a hospital or treatment resource and is not already at the facility, the sheriff or an appropriately designated transportation agent has the responsibility to transport the person to a hospital or treatment resource with available suitable accommodation for examination. Tenn. Code Ann. § 33-6-406. Once at the hospital or treatment resource, a

licensed physician shall examine the person to determine whether such person meets all the requirements in § 33-6-403 so as to be subject to involuntary inpatient treatment. Tenn. Code Ann. § 33-6-407. Except in counties having a population of six hundred thousand (600,000) or more according to the 1970 federal census or any subsequent federal census, the sheriff or transportation agent must notify the hospital or treatment resource as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource. Tenn. Code Ann. § 33-6-406(b). If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, the sheriff or transportation agent is required to remain at the hospital or treatment resource long enough for the person to be evaluated for admission but need not remain longer than one hour and forty-five minutes. *Id.* If the person is found not to meet the requirements for admission and the sheriff or transportation agent is under a duty to remain at the hospital or treatment resource under § 33-6-406, the sheriff or transportation agent has the responsibility to return the person to the county. Tenn. Code Ann. § 33-6-407(c). But, if the sheriff or transportation agent is not under a duty to remain at the hospital or treatment resource under § 33-6-406, the hospital or treatment resource has the responsibility to return the person to the county. Tenn. Code Ann. § 33-6-407(d).

You have asked whether the sheriff department employee who transported the person to the hospital or treatment resource is required to assist the hospital, upon request, to restrain the person or otherwise use force to allow completion of the invasive portions of the evaluation required by Tenn. Code Ann. § 33-6-407 to determine whether the mentally ill patient is subject to involuntary admission. This question requires construction of the statutes to determine if the legislature intended to require the sheriff department employee to use his or her police powers to restrain a mentally ill patient or otherwise use force to assist hospital staff to complete this evaluation.

In construing statutes, courts must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter should be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). In addition, a statute should be construed so that “no part will be inoperative, superfluous, void or insignificant.” *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978). At the same time, a statute should not be construed to produce an absurd or incongruous result. *Barnett v. Barnett*, 27 S.W.3d 904, 908 (Tenn. 2000).

It appears that the legislature did not intend to require a sheriff department employee who has transported a person for evaluation under § 33-6-407 to use his or her police powers to assist the hospital, upon request, in completing the evaluation. Under the provisions of § 33-6-406, the sheriff or designated transportation agent has a duty, under certain circumstances, to remain at the hospital or treatment resource for one hour and forty-five minutes while the evaluation is

being completed. In reading this statute together with § 33-6-407, the legislative intent for this requirement appears to be to assure that the sheriff or designated transportation agent remains available to transport the person back to the county if the evaluation does not find the person to meet the criteria for involuntary admission. There is no specific statutory provision requiring a sheriff department employee to assist with the evaluation through the use of his or her police powers. Thus, construing Title 33, Chapter 6, Part 4 as a whole, it is the opinion of this Office that a sheriff department employee is not required to use his or her police powers to restrain a mentally ill patient or otherwise use force to assist hospital staff to complete the evaluation required by § 33-6-407.¹

You have also asked whether it would violate the civil rights of a person being evaluated under § 33-6-407 for the sheriff department employee to use his or her police powers to assist the hospital in completing certain parts of the evaluation if the mentally ill patient is threatening violence, is a danger to himself or others, and if the hospital requested law enforcement assistance in order to complete the evaluation. While the statutes do not specifically require a sheriff department employee to use his or her police powers to assist the hospital in completing an evaluation under § 33-6-407, it has long been recognized that a sheriff department employee has authority under common law to use force or restraint as reasonably necessary to take a mentally ill person into custody. *See* Op. Tenn. Att’y Gen. 82-266 (May 24, 1982). The Sixth Circuit Court of Appeals has held that the Fourth Amendment applies in the civil setting to seizures of individuals for psychiatric evaluations or involuntary confinement. *Monday v. Oulette*, 118 F.3d 1099, 1102 (6th Cir. 1997). The Fourth Amendment prohibits the use of excessive force during the seizure of a free citizen. *Graham v. Connor*, 490 U.S. 386, 394 (1989). Accordingly, seizing and detaining a person for a psychiatric evaluation requires probable cause to believe that the person is dangerous to himself or others and the officer must employ a reasonable amount of force when effecting the seizure. *Monday*, 118 F.3d at 1102.

Assuming that the use of restraints is reasonably necessary based on the specific circumstances presented and the use of force is not excessive, it is our opinion that it would not violate the civil rights of the person being evaluated under § 33-6-407 regarding admission to involuntary inpatient treatment for the sheriff department employee who transported the person to the hospital to use his or her police powers to assist hospital personnel to be able to complete the evaluation.

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¹ This Office has previously opined that hospital personnel may use reasonable force if necessary to complete this evaluation. Op. Tenn. Att’y Gen. 07-92 (June 11, 2007).

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