



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 167

Dennis W. Moore  
District Attorney  
Johnson County Courthouse  
P. O. Box 728, 6th Floor Tower  
Olathe, Kansas 66061

Re: Public Health -- Interstate Compact on Mental Health -- Procedure for Return of Escaped Mental Patient from Another State

Probate Code -- Care and Treatment of Mentally Ill Persons -- Procedure for Return of Escaped Mental Patient from Another State

Synopsis: Kansas is a member state in the Interstate Compact on Mental Health by the terms of K.S.A. 65-3101, which incorporate the compact into Kansas statutes. Part of the compact concerns the escape of dangerous or potentially dangerous patients from institutions in any state party to the compact. Upon the capture and identification of such patients, they are to be detained until they can be returned to the state in which they were committed. In this specific circumstance, the provisions of K.S.A. 59-2901 et seq., relating to orders for protective custody and commitment, do not apply, and the patient may be held without such proceedings prior to return to the state from which he escaped. Cited herein: K.S.A. 1982 Supp. 59-2902, K.S.A. 59-2904, K.S.A. 1982 Supp. 59-2905, 59-2908, 59-2909, 59-2912, K.S.A. 59-2917, 65-3101.

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Dear Mr. Moore:

As District Attorney for the Tenth Judicial District, which is contiguous with Johnson County, you request our opinion on a question concerning the disposition of persons who are apprehended in Johnson County following their escape from a mental institution in another state. Specifically, you indicate that such a situation recently arose, with the individual in question having been acquitted by reason of insanity in a murder trial in a neighboring state. State mental health officials declined to hold the man without an order either for commitment or for protective custody pursuant to K.S.A. 59-2901 et seq. While this was done and the man eventually turned over to officials from the first state, you inquire whether such procedures are necessary in view of the Interstate Compact on Mental Health, to which Kansas subscribes.

The compact, which was first adopted in Massachusetts in 1956, was made a part of Kansas law in 1967 (L. 1967, ch. 479), and now appears at K.S.A. 65-3101. Forty-four states, plus the District of Columbia, now are members. While the compact contains 13 articles, those of relevance to this inquiry are as follows:

Article V.

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI.

"The duly accredited officers of any party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article IX.

"(a) No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency." (Emphasis added.)

If the provisions of the compact had been invoked, it is arguable that the patient would have been held in a state facility (not a jail or prison) until representatives of the state where he had been held arrived to transport him back. Indeed, given the clear wording of the articles quoted above, the only rationale for not doing so lies in the last phrase of Article V, which provides that the escaped patient shall be detained "pending disposition in accordance with law." The question for determination, then, is whether the "law" referred to here includes provisions of other Kansas statutes, such as K.S.A. 59-2901 et seq.

These statutes, known as the Act for Obtaining Treatment of a Mentally Ill Person, were first enacted in 1965, and have been subsequently amended on numerous occasions. Persons may be admitted to treatment facilities either on their own initiative (K.S.A. 59-2904, K.S.A. 1982 Supp. 59-2905), upon an emergency basis (K.S.A. 1982 Supp. 59-2908, 59-2909) or as the result of court action under K.S.A. 1982 Supp. 59-2912 (protective custody order) or K.S.A. 59-2917 (finding of mental illness). Before determining that someone is a mentally ill person, the court must find that the individual is "mentally impaired to the extent that such person is in need of treatment and who is dangerous to self or others," and who either cannot or will not seek treatment. [K.S.A. 1982 Supp. 59-2902(a)]. As we understand it, the state mental health officials invoked the above statutes in declining to hold the patient until formal steps were taken.

In our opinion, the situation here should have been handled under scope of the Interstate Compact on Mental Health, and not the provisions of the Act for Obtaining Treatment of a Mentally Ill Person. We base this conclusion on several grounds. First, the compact is a specific piece of legislation which concerns the duties of individual states with other states as to the care and custody of the mentally ill. As such, it should take precedence over the more generally applicable provisions of K.S.A. 59-2901 et seq. See, Chelsea Plaza Homes, Inc. v. Moore, 226 Kan. 430 (1979). Second, the terms of the compact (specifically at Articles V and VI) provide that an escaped mental patient be detained by the state until he or she can be taken back by authorities of the committing state. A refusal by Kansas to honor this portion of the compact, which is in effect a contractual agreement, could subject the state to legal action by other states. The Law and Use of Interstate Compacts, Zimmermann and Wendell, p. 12-15 (1976).

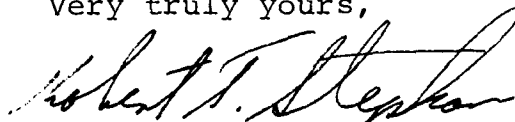
Thirdly, and perhaps most importantly, we believe that the substitution of proceedings under K.S.A. 59-2901 et seq. for those of the compact would negate the public policy expressed by the compact in Articles V and VI, i.e., that each state in the compact can expect the cooperation of other members in dealing with criminally insane persons. For example, if a person held in an Illinois institution for the criminally insane should escape to Kansas, proceedings under K.S.A. 59-2901 et seq. could conceivably result in a judicial determination that the patient was not dangerous to himself or others, and so could not be held. This would undermine findings which had previously been made in a co-equal jurisdiction (Illinois) and would frustrate that state's efforts to treat the patient's illness. In view of the specific language of the compact that such a result not occur, we cannot conclude that such cases should be treated in the same way as other commitment proceedings.

In conclusion, Kansas is a member state in the Interstate Compact on Mental Health by the terms of K.S.A. 65-3101, which incorporate the compact into Kansas statutes. Part of the compact concerns the escape of dangerous or potentially dangerous patients from institutions in any state party to the compact. Upon the capture and identification of such patients, they are to be detained until they can be returned to the state in which they were committed. In this specific

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circumstance, the provisions of K.S.A. 59-2901 et seq., relating to orders for protective custody and commitment, do not apply, and the patient may be held without such proceedings prior to return to state from which he escaped.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle