



STATE OF KANSAS

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Curt T. Schneider  
Attorney General

July 12, 1977

ATTORNEY GENERAL OPINION NO. 77-223

The Honorable Phil Martin  
State Representative  
Post Office Box 275  
Larned, Kansas 67550

Re: Probate Code--Care and Treatment for Mentally Ill Persons--Authority of Peace Officers

Synopsis: Law enforcement officers have the authority to take into custody voluntary patients to a mental hospital who have walked away or eloped from the hospital without following the proper procedures pursuant to K.S.A. 59-2908.

\* \* \*

Dear Representative Martin:

You inquire concerning the return of voluntary patients to a mental hospital who have walked away or eloped from the hospital.

The relevant statutory provisions are as follows: K.S.A. 59-2902(2) defines "patient" as:

". . . a person who is an informal patient, a voluntary patient, a proposed patient, or an involuntary patient."

K.S.A. 59-2902(4) defines "voluntary patient" as:

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". . . a patient, other than an informal patient, who is receiving treatment at a treatment facility other than by order of any court."

K.S.A. 59-2903 states:

"A treatment facility may detain any patient subject to the conditions and limitations of this act."

K.S.A. 59-2907 states:

"Except as hereinafter provided, the head of the treatment facility shall discharge any voluntary patient who has requested discharge, in writing, by another person, within a reasonable time but not to exceed three (3) days, excluding Sundays and legal holidays after the receipt of such request. If, however, such request is made by another person, such discharge shall be conditioned upon the written consent of the voluntary patient, except that if the voluntary patient be under eighteen (18) years of age, such discharge shall be conditioned upon the consent of such patient's parent, guardian or person in loco parentis. If, however, such voluntary patient has a guardian, such discharge shall be conditioned only upon the consent of the guardian.

No application to determine whether a person is a mentally ill person shall be filed with respect to a voluntary patient unless such patient has requested or consented to his or her discharge or, if the voluntary patient is under eighteen (18) years of age, the discharge has been requested by the patient, guardian or person in loco parentis to such patient."

K.S.A. 59-2908 which states:

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"Any peace officer who has reasonable belief upon observation, that any person is a mentally ill person and because of such person's illness is likely to do physical injury to himself or herself or others if allowed to remain at liberty make take such person into custody without a warrant."

Senate Bill 88, found at ch. 195, L. 1977, states in pertinent part thus:

"(a) Nothing in the provisions of K.S.A. 59-2927 to 59-2930, inclusive, and acts amendatory thereof shall be construed to limit the authority of the head of a treatment facility to take such action as may be necessary to assure that a patient not discharged from the treatment facility or otherwise authorized to leave the treatment facility remains at the treatment facility.

(b) The provisions of this section shall be supplemental to and a part of the act for obtaining treatment for a mentally ill person."

The sponsor of the bill believed that the authority of the superintendent of state hospitals to prevent "walk aways" from such hospitals needed to be clarified in light of the limitation on use of restraints, etc., which are found in K.S.A. 59-2927 through 59-2930 (Supplemental Information on Senate Bill 88 as reported by Senate Committee on Public Health and Welfare). Note should be made that Senate Bill 88 pertains only to treatment facilities under the jurisdiction of the Secretary of Social and Rehabilitation and became effective July 1, 1977.

The purpose of the act, officially known as "The Act for Obtaining Treatment for a Mentally Ill Person" is threefold and involves the individual's right to liberty; the state's duty and right or provide treatment for those who are found, by virtue of mental illness, to be in need of treatment; and the right of society to be protected from persons found to be dangerous to others by reason of mental illness.

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Basically, admittance of a voluntary patient is conditioned upon the availability of accommodations at the treatment facility, and a determination by the head of the treatment facility that the person needs treatment. This determination is also a prerequisite to a person remaining a patient. When the head of the treatment facility determines the patient is no longer in need of treatment, the patient must be discharged by written notice. The voluntary patient may initiate the discharge procedure by written request. In such a case, the head of the treatment facility must discharge the patient "within a reasonable time but not exceed (3) days, excluding Sundays and legal holidays after the receipt of the request."

Prior to the 1976 amendment to K.S.A. 59-2907 the law expressly allowed, during the period between request and discharge, the filing of an application for involuntary commitment of the voluntary patient requesting discharge. While the new act does not expressly allow filing of such an application in the interim period, it does not prohibit it. The prior law required the court receiving the application for involuntary commitment to issue an order of protective custody against the voluntary patient. The new act deletes that requirement.

The new act prohibits filing of an application for involuntary commitment against a voluntary patient who has not requested or consented to his or her discharge. 16 W.L.J. 149 (1976); 45 J.B.A.K. 37 (1976).

Construing the above statutory provisions and the purpose of the act together it is my opinion first, that if a voluntary patient has followed the procedure outlined in K.S.A. 59-2907, the head of the treatment facility must release the patient within three days. If the patient has consented or requested his discharge an application for involuntary commitment against the voluntary patient may be filed pursuant to K.S.A. 59-2913.

Secondly, if the voluntary patient has not followed the procedure in K.S.A. 59-2907 and instead "walks away" from the treatment facility K.S.A. 59-2907 is not applicable. The authorities at the treatment facility then have the right to detain that patient pursuant to K.S.A. 59-2903 and Senate Bill 88 and to notify law enforcement officers of the elopement of a voluntary patient. The law enforcement officials are authorized to take the eloped person into custody pursuant to K.S.A. 59-2908 only if the officer has reasonable belief upon observation that the person is a mentally ill person and because of such person's illness is likely

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to do physical harm to himself or others if allowed to remain  
at liberty. Commencement of involuntary commitment proceedings  
would also be an alternative.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS:DLW:kj