

COUNTIES - State assumption of public assistance and protective service functions;

COUNTIES - State reimbursement to counties for transportation cost of mentally ill patients;

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MENTALLY ILL PERSONS - State reimbursement to counties for transportation costs of mentally ill patients;

PUBLIC ASSISTANCE - State assumption of public assistance and protective service functions;

MONTANA CODE ANNOTATED - Title 53, chapter 2, part 8; Title 53, chapter 21, part 1.

HELD: After State assumption pursuant to section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for the expenses associated with transfer of seriously mentally ill patients involuntarily committed to the Montana State Hospital.

1 October 1984

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion concerning the following question:

Following the transfer of Lewis and Clark County's public assistance and protective service functions to the Department of Social and Rehabilitation Services under section 53-2-811, MCA, does Lewis and Clark County remain responsible for the payment of transportation costs incurred when persons are involuntarily committed to the Montana State Hospital at Warm Springs?

Resolution of your question turns on the nature of commitment proceedings under sections 53-21-101 to 190, MCA, and the scope of "state assumption" under sections 53-2-801 to 822, MCA.

The Montana statute dealing with the treatment of the "seriously mentally ill" reflects most basically "the concern of the Legislature that procedural safeguards be placed around the power of the State to commit a person for serious mental illness." In re Shennum, 41 St. Rptr. 1148, 1151, ___ P.2d ___ (1984). Extensive procedures thus precede involuntary commitment. See §§ 53-21-114 to 126, MCA. Seriously mentally ill patients are, moreover, accorded various substantive rights once admitted either voluntarily or

involuntarily. See § 53-21-141, MCA (general specification of patient rights); § 53-21-143, MCA (right not to be fingerprinted unless otherwise required by law); § 53-21-144, MCA (restrictions on the taking and use of patient photographs); § 53-21-145, MCA (restrictions on medication use); § 53-21-146, MCA (restriction on physical restraints or isolation of patients); §§ 53-21-147, 53-21-148, MCA (prohibition against nonconsensual experimental research or hazardous treatment). The statute further imposes an affirmative duty upon the Department of Institutions to provide transitional treatment following release from involuntary hospitalization. § 53-21-185, MCA. Indigent patients when either conditionally released or finally discharged from a mental health facility must be treated like any other patient under laws relating to public assistance. §§ 53-21-186, 53-21-188, MCA.

Sections 53-21-101 to 190, MCA, comprehensively regulate State interaction with the seriously mentally ill. A reflection of the breadth of such regulation is the involvement at various points of the Department of Institutions, the Mental Disabilities Board of Visitors, county attorneys and district courts. See, e.g., § 53-21-104, MCA (responsibilities of the Mental Disabilities Board); § 53-21-106, MCA (requiring Department of Institutions to certify "professional persons" in connection with treatment of the seriously mentally ill); § 53-21-114(1), MCA (requiring county attorney to inform involuntarily detained or examined persons of constitutional rights within three days of detention or examination); § 53-21-121, MCA (county attorney's duties in connection with filing petition for commitment); § 53-21-129, MCA (county attorney's duties in connection with emergency detention); § 53-21-116, MCA (district court's obligation to appoint counsel if person alleged to be seriously mentally ill unrepresented); § 53-21-122, MCA (district court's obligation to determine probable cause when petition for commitment filed); and § 53-21-127, MCA (district court's dispositional obligations). The statute also requires public provision of various costs and expenses associated with the involuntary commitment of voluntarily admitted patients (§ 53-21-113(1), MCA); costs related to the transportation of voluntarily admitted persons (§ 53-21-113(2), MCA); expenses arising from legal representation, "professional person" examinations and witness fees during involuntary

commitment proceedings and subsequent hearings (§§ 53-21-118, 53-21-128, MCA); and other costs associated with involuntary commitment, including transportation (§ 53-21-132, MCA). Patient reimbursement for these expenses is not required except (1) when a county welfare department has expended transportation costs in connection with transfer of a voluntarily admitted person to a mental health facility where protective proceedings under Title 72, chapter 5 have been or will be commenced, and (2) with respect to any medical, psychological, or other mental health treatment, a contractual obligation on the part of a third party exists to pay for such treatment. With the exception of the costs required to be paid by the county welfare department under section 53-21-113(2), MCA, all other costs must be borne by the county of residence. The only apparent reason for this distinction is that, while the transportation costs payable under section 53-21-113(2), MCA, relate only to voluntarily admitted patients, the other expenses derive from involuntary commitment or related procedures.

Consequently, as a general matter, the provisions in sections 53-21-101 to 190, MCA, are unrelated to county welfare department functions. They are instead concerned with establishing procedures which will protect persons alleged to be, or adjudicated as, seriously mentally ill from unjustified deprivations of liberty. Indeed, the only substantive statutory involvement of a county welfare department, aside from the transportation expense responsibility under section 53-21-113(2), MCA, arises after conditional release or final discharge, and then only in connection with ordinary public assistance duties. The other county of residence required payments arise from involuntary commitment or associated proceedings. The statute accordingly reflects a legislative determination that the county of residence assume responsibility for the costs attendant to involuntary commitment procedures involving the seriously mentally ill.

The provisions dealing with state assumption of public assistance and protective services responsibilities from counties were enacted during the 1983 legislative session. Section 53-2-811(1), MCA, permits counties to transfer to the Department of Social and Rehabilitation Services "[a]ll authority granted to the board of county commissioners to establish and operate a public

assistance program and provide protective services for children and adults pursuant to Titles 41 and 53." This transfer is termed "state assumption" which is defined in section 53-2-802(7), MCA, as "the transfer to the department [of Social and Rehabilitation Services] for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-307 and public assistance and protective services provided by the county department [of public welfare] pursuant to Titles 41 and 53." Read together, these provisions indicate that the Department of Social and Rehabilitation Services is required, when so requested by a county, to assume only the statutory responsibilities of the county welfare department.

It is thus clear that, by virtue of State assumption under section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for those duties which do not statutorily attach to county welfare departments. A careful review of Title 53, chapter 21 indicates that the Legislature has allocated the costs of involuntary commitment proceedings to the county of residence and that the county welfare departments have no statutorily mandated involvement in those proceedings. Consequently, State assumption has not released counties from their responsibility for transportation expenses under section 53-21-132(1), MCA.

THEREFORE, IT IS MY OPINION:

After State assumption pursuant to section 53-2-811, MCA, the Department of Social and Rehabilitation Services is not responsible for the expenses associated with transfer of seriously mentally ill patients involuntarily committed to the Montana State Hospital.

Very truly yours,

MIKE GREELY
Attorney General