

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 28

ALCOHOLIC BEVERAGES - Treatment and services for intoxicated persons and persons incapacitated by alcohol;

MONTANA CODE ANNOTATED - Sections 53-24-101, 53-24-103(7), 53-24-302 to 53-24-304.

- HELD: 1. An approved public treatment facility must have a licensed physician examine a person who appears to be incapacitated by alcohol when that person has been taken into protective custody and is brought to the approved public treatment facility by the police.
2. An approved public treatment facility is not required to treat a person who is determined to be incapacitated pursuant to section 53-24-303(4), MCA, but may admit and treat the person for up to 48 hours.

21 September 1987

Russell R. Andrews  
Teton County Attorney  
Teton County Courthouse  
Choteau MT 59422

Dear Mr. Andrews:

You requested an opinion concerning whether an approved public treatment facility must accept for examination a person incapacitated by alcohol when the person is brought to the facility involuntarily while in the protective custody of police pursuant to section 53-24-303(2), MCA. You also ask whether, if an approved treatment facility is required to examine such a person, it is also required to treat the incapacitated person under the terms of section 53-24-303(4), MCA.

OPINIONS OF THE ATTORNEY GENERAL

Title 53, chapter 24, MCA, sets forth Montana's statutes on alcoholism and drug dependence. Part 3 of that chapter specifically provides for the treatment of alcoholics and intoxicated persons. The Legislature has established a policy of recognizing alcoholism and chemical dependency as a problem affecting the State of Montana and as a problem which is subject to and worthy of treatment. § 53-24-101, MCA. Public intoxication may not be considered a criminal offense, nor may it constitute an element of an offense giving rise to a criminal or civil penalty or sanction. §§ 53-24-106, 53-24-107, MCA. Funds generated by liquor and beer taxes may be distributed to state-approved private nonprofit or public programs as set forth in section 53-24-108, MCA.

The Department of Institutions administers the provisions of Title 53, chapter 24, MCA. As part of its administrative duties, the department establishes standards for approved treatment facilities which must be met for a treatment facility to be approved as a public or private treatment facility. The Department must periodically inspect approved public and private treatment facilities and may, after hearing, suspend, revoke, limit, or restrict an approval or refuse to grant an approval where the standards are not met. § 53-24-208, MCA. See also §§ 20.3.101, et seq., ARM.

The questions you pose arise out of a situation where on numerous occasions an approved public treatment facility has refused to examine and treat incapacitated persons. The facility has explained its refusal by stating that it is against the facility's policy to treat a person on an involuntary basis without a court order of commitment. In each instance, however, your request has been for treatment and services pursuant to section 53-24-303, MCA, rather than a request for commitment pursuant to section 53-24-302 or section 53-24-304, MCA.

Title 53, chapter 24, MCA, defines four categories of services and treatment for alcoholic and intoxicated persons: (1) voluntary treatment, § 53-24-301, MCA; (2) involuntary commitment, § 53-24-302, MCA; (3) treatment and services for intoxicated persons and persons incapacitated by alcohol, § 53-24-303, MCA; and (4) emergency commitment of intoxicated persons and persons incapacitated by alcohol, § 53-24-304, MCA. Categories (1), (2), and (4) are not at issue here. Your question does not involve treatment where persons voluntarily apply directly to approved facilities for treatment, or involuntary commitments where, following a hearing, persons are committed to the custody of the department by the district court. Section 53-24-304,

OPINIONS OF THE ATTORNEY GENERAL

MCA, provides an emergency commitment procedure for incapacitated persons, but it does not apply here because your questions involve requests for treatment and services, not commitment.

Section 53-24-303, MCA, specifically provides for treatment and services for intoxicated persons and persons incapacitated by alcohol who are not a danger to others. It states:

Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the

OPINIONS OF THE ATTORNEY GENERAL

time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin may be notified if the patient consents to such notification. [Emphasis added.]

Section 53-24-103, MCA, defines incapacitated persons:

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

Section 53-24-303, MCA, requires that a police officer take a person who appears to be incapacitated by alcohol into protective custody and to an approved public treatment facility for emergency treatment. The statute also places a clear duty on the approved public treatment facility to have a licensed physician examine the person as soon as possible. The statute uses mandatory language which requires the officer to take the person to the facility for treatment and requires that the facility have him examined as soon as possible. The police officer's authority to make any decision regarding the person's care and treatment appears to end at that point. The approved public treatment facility may then determine how the person should be cared for.

The language of the remainder of the statute is permissive and allows the facility to exercise any one of several options. The facility may admit the person for treatment, or it may arrange to transfer him to another health facility. If the person is incapacitated, he may be admitted for up to 48 hours,

OPINIONS OF THE ATTORNEY GENERAL

after which time he must be released if not committed pursuant to section 53-24-304, MCA. The person may be taken to his home. If the person has no home, the facility must assist him in obtaining shelter. This opinion does not address any questions regarding liability which may arise if an approved public treatment facility declines to treat an incapacitated person and sends him away. That may, however, be a matter for the approved public treatment facility to consider in making a decision on how the person should be cared for or treated.

THEREFORE, IT IS MY OPINION:

1. An approved public treatment facility must have a licensed physician examine a person who appears to be incapacitated by alcohol when that person has been taken into protective custody and is brought to the approved public treatment facility by the police.
2. An approved public treatment facility is not required to treat a person who is determined to be incapacitated pursuant to section 53-24-303(4), MCA, but may admit and treat the person for up to 48 hours.

Very truly yours,

MIKE GREELY  
Attorney General