

VOLUME NO. 43

OPINION NO. 5

HOSPITALS - Emergency detention of seriously mentally ill;
INSTITUTIONS, DEPARTMENT OF - Emergency detention of seriously
mentally ill;
MENTAL HEALTH - Emergency detention of seriously mentally ill;
MONTANA CODE ANNOTATED - Sections 53-21-102(4), 53-21-102(15), 53-
21-114, 53-21-121, 53-21-123, 53-21-129.

HELD: In an emergency situation, section 53-21-129, MCA, allows for
a person at any time to be detained and treated until the next
regular business day when that person must be released or
proceedings initiated pursuant to section 53-21-121, MCA.

February 23, 1989

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

Dear Mr. Andrews:

You have requested my opinion on a question which I have rephrased as follows:

Are the emergency detention procedures of section 53-21-129, MCA, limited to hours when county offices and courts are not open for regular business?

The relevant portions of the section provide:

(1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section.

§ 53-21-129, MCA.

The term "emergency situation" is defined as "a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill." § 53-21-102(4), MCA. The Montana Supreme Court has recently explained the statute on emergency detention as follows:

Subsection (1) merely permits the officer to take a person into custody for an evaluation; it does not, as M.C. contends, give the officer the authority to decide whether the person should be placed in emergency detention. Under subsection (2), the professional person makes the decision on whether the person

appears to be seriously mentally ill and should be placed in emergency detention.

In re M.C., 43 St. Rptr. 508, 512, 716 P.2d 203, 206-07 (1986). The case law makes it clear that an emergency detention is to be utilized only when absolutely necessary to protect the person or others from imminent threat or danger of serious bodily harm. Compare In re M.C., *supra*, and Reiser v. Prunty, 43 St. Rptr. 1967, 727 P.2d 538 (1986), with Matter of Shennum, 210 Mont. 442, 684 P.2d 1073 (1984).

The duties of a professional person relating to emergency detention were recently characterized as follows:

1. Once a person is brought into custody, that person may not be detained unless a professional person concludes that the person appears to be seriously mentally ill and that an emergency situation exists with respect to that person's condition.
2. If the professional person concludes that these factors are present, then the person may be detained and treated until the next regular business day following this determination.
3. On the next regular business day, the professional person is obliged to either release the detained person or file appropriate findings with the county attorney, who may then seek involuntary commitment of the detainee pursuant to other provisions of the Mental Health Code.
4. Whether the professional person reports his findings to the county attorney or releases the detainee, the professional person is required to file a report with the district court explaining his actions with respect to the detainee.

Reiser v. Prunty, 43 St. Rptr. at 1972, 727 P.2d at 544. These duties differ from the responsibility for an evaluation pursuant to section 53-21-123, MCA, following the filing of a petition for involuntary commitment. The latter section contemplates an extensive examination, culminating in an opinion as to whether the person is indeed "seriously mentally ill" as defined by section 53-21-102(15), MCA. Section 53-21-129, MCA, merely requires a determination as to whether an emergency situation exists and whether the person appears to be seriously mentally ill.

While section 53-21-129, MCA, does provide that the person "may be detained and treated until the next regular business day," by which time the professional person must either release the person detained or contact the county attorney, there is nothing in the statute which indicates the person

may not be detained during business hours. If an emergency situation arises during business hours, a person may be taken into custody and a professional person contacted to determine if emergency detention is warranted. If detained, the person should be informed of his procedural and constitutional rights pursuant to section 53-21-114, MCA. The person's need for care may be met by emergency detention and treatment while the county attorney is contacted for further proceedings pursuant to section 53-21-121, MCA.

THEREFORE, IT IS MY OPINION:

In an emergency situation, section 53-21-129, MCA, allows for a person at any time to be detained and treated until the next regular business day when that person must be released or proceedings initiated pursuant to section 53-21-121, MCA.

Sincerely,

MARC RACICOT
Attorney General