

LETTER OPINION
94-L-78

March 30, 1994

Mr. Tim Sauter, MS/LAC
Acting Regional Director
West Central Human Service Center
600 S 2nd Street
Bismarck, ND 58504

Dear Mr. Sauter:

Thank you for your letter inquiring about the authority to detain and transport a person requiring treatment for mental illness or chemical dependency on an emergency basis under N.D.C.C. ? 25-03.1-25.

N.D.C.C. ? 25-03.1-25(1) provides:

When a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a [court], the peace officer, physician, psychiatrist, psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.

(Emphasis supplied.)

Detention under N.D.C.C. ? 25-03.1-25(3) may be in (1) a treatment facility, (2) a public or private facility in the community, or (3) under certain exigent circumstances in a jail.

N.D.C.C. ? 25-03.1-25(5) provides:

5. Upon arrival at a facility the peace officer, physician, psychiatrist, psychologist, or mental health professional who conveyed the person or who caused the person to

be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, psychologist, or the mental health professional who caused the person to be conveyed. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that person's condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

You specifically ask whether a person authorized to make an emergency commitment under N.D.C.C. ? 25-03.1-25(1) may require law enforcement personnel to take into custody and transport a person committed on an emergency basis.

N.D.C.C. ? 25-03.1-25(1), (5) empowers a peace officer, physician, psychiatrist, psychologist or mental health professional to have a person subject to emergency commitment taken into custody and transported to a treatment facility.

A "peace officer" has the same authority as a physician, psychiatrist, psychologist, or mental health professional to "cause" a person to be taken into custody, and to be conveyed or to directly convey the person to a treatment facility. N.D.C.C. ? 25-03.1-25(1), (5).

As a practical matter, because persons subject to emergency commitment present a serious risk of harm to themselves or others, N.D.C.C. ?? 25-03.1-25(1), 25-03.1-02(11), law enforcement officers, particularly local police or sheriffs or their deputies, have most often been requested by others authorized to make emergency commitments to take a person into custody and convey the person to a treatment facility pursuant to N.D.C.C. ?? 25-03.1-25, 25-03.1-26.

This is consistent with the purpose of the Legislature in enacting chapter 25-03.1 to "[p]rovide evaluation and treatment" through the "full use of all existing agencies [and] professional personnel." N.D.C.C. ? 25-03.1-01.

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"Necessary and appropriate" forms to enable persons to comply with N.D.C.C. ch. 25-03.1 have been prepared by a North Dakota Supreme Court committee pursuant to N.D.C.C. ? 25-03.1-46. Form GN-6 entitled "Request for Transportation for Emergency Detention" is designed to implement N.D.C.C. ? 25-03.1-25. In accordance with the form, a peace officer, physician, psychiatrist, mental health professional or psychologist may request that a "named [law enforcement agency or] peace officer pursuant to Section 25-03.1-25, NDCC, take the respondent into custody and detain the respondent at" a specified treatment facility.

In my opinion, N.D.C.C. ? 25-03.1-25 authorizes a physician, psychiatrist, psychologist, or mental health professional to require a law enforcement officer from the appropriate local jurisdiction to convey a person to a treatment facility when necessary in an emergency situation. If it were otherwise, the language from N.D.C.C. ? 25-03.1-25(1) that such professionals may "cause the person to be taken into custody and detained at a treatment facility" would be rendered meaningless. It could not be reasonably expected that such professionals could cause a violent or potentially dangerous person to be taken into custody and treatment without the assistance of law enforcement officials. In enacting a statute, it is presumed that the entire statute is intended to be effective, that a reasonable result is intended, and that a result feasible of execution is intended. N.D.C.C. ? 1-02-38. See also N.D.C.C. ? 25-03.1-39 (noting the use of police officers to transport respondents when other transportation arrangements are not practicable).

You also ask whether a law enforcement officer may convey a person under N.D.C.C. ? 25-03.1-25(1) to a treatment facility outside of the immediate jurisdiction of the officer. Pursuant to N.D.C.C. ? 25-03.1-25 and form GN-6 a peace officer or law enforcement agency is to convey a person to a treatment facility or other appropriate facility. "Treatment facility" or "facility" referred to in N.D.C.C. ? 25-03.1-25(1), (5) means "any hospital including the state hospital at Jamestown or any evaluation and treatment facility [that can provide]

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emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency." N.D.C.C. ? 25-03.1-02(19). No provision under N.D.C.C. ?? 25-03.1-25 or 25-03.1-26 suggests that conveyance is limited to a treatment facility within the traditional jurisdiction of a law enforcement officer. Thus, a law enforcement officer may convey a person pursuant to an emergency commitment to any treatment facility without regard to the jurisdiction of the officer. N.D.C.C. ?? 25-03.1-25(1), (3), (5), 25-03.1-02(19).

You also ask whether a law enforcement agency that may be required to transport a person to a treatment facility in an emergency "include[s] such agencies as the North Dakota Highway Patrol or the Bureau of Criminal Investigation." In my opinion it does not.

As I noted above, local police and sheriff's departments have been the law enforcement agencies which have been primarily involved in the transportation of persons to treatment facilities in emergency situations. This, of course, would not be unexpected since general jurisdiction local law enforcement personnel are logically and naturally summoned to respond to emergency situations in their jurisdictions involving violence, threats of violence, suicidal or self-destructive behavior, or damage to property, any of which may be involved in the underlying circumstances which may trigger emergency commitment procedures. See N.D.C.C. ? 25-03.1-02(11).

On the other hand, the Highway Patrol and Bureau of Criminal Investigation are more specialized law enforcement agencies that typically have not been as closely involved in this aspect of law enforcement. See generally, N.D.C.C. ? 39-03-09 and ch. 12-60. Undoubtedly, the Legislature is aware of the function that the local law enforcement agencies have taken in the transportation of persons to treatment facilities in emergency situations. The Legislature certainly could have altered the role local law enforcement agencies play in the emergency commitment process if it had chosen to do so. The present version of the commitment statutes have been in place since 1977.

There is no publicly funded, alternate source of

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transportation for persons requiring emergency commitment to a treatment facility. As noted above, the legislative intent expressed in N.D.C.C. ? 25-03.1-01 indicates that the statutes are intended to encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services.

Mention is made in North Dakota law of the role that local police and sheriff departments play in the transportation of respondents. For example, N.D.C.C. ? 5-03.1-39 provides "the individual to be hospitalized . . . when practicable, shall not be transported by police officers or in police vehicles."

N.D.C.C. ? 11-15-25 states that a "sheriff or his deputy shall receive for transporting persons committed to the . . . state hospital, the milage prescribed in this chapter." N.D.C.C. ? 11-15-24 states that the "sheriff may conduct patients to the state hospital when directed to do so by the county court." In addition, N.D.C.C. ? 25-03.1-39 clearly places the burden of any costs for transporting indigent respondents on the county of residence rather than on the state. This evinces legislative intent that responsibility for the transportation of respondents is a local concern.

On the other hand, I find no reference in North Dakota statutes which would clearly indicate a legislative intent that either the State Highway Patrol or Bureau of Criminal Investigation be required to become involved in the transportation of individuals to treatment facilities.

You also ask whether detention under N.D.C.C. ? 25-03.1-25 in a jail or other correctional facility is permissible "when there is no facility in the immediate area available and local law enforcement lacks equipment or manpower to immediately transport."

In my opinion only a court may order that a person be detained in a jail or other correctional facility under the exigent circumstances referred to in N.D.C.C. ? 25-03.1-25(3)(b).

There are separate commitment schemes with respect to

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a peace officer, physician, psychiatrist, psychologist, or mental health professional pursuant to N.D.C.C. ? 25-03.1-25(1), and a court pursuant to N.D.C.C. ? 25-03.1-25(2).

"[T]he peace officer, physician, psychiatrist, psychologist, or mental health professional may cause [a] person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26." N.D.C.C. ? 25-03.1-25(1) (emphasis added).

'Treatment facility' or 'facility' means any hospital including the state hospital at Jamestown or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care and inpatient care to person suffering from a mental disorder or chemical dependency.

N.D.C.C. ? 25-03.1-02(19).

"Upon arrival at a facility the peace officer, physician, psychiatrist, psychologist or mental health professional who conveyed the person or who caused the person to be conveyed [to a facility] shall complete an application for evaluation and shall deliver a detailed written report. . . ." N.D.C.C. ? 25-03.1-25(5). See Supreme Court Form GN-5, Application for Emergency Admission. N.D.C.C. ? 25-03.1-26(1) provides that "[a] public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25." "'Private treatment facility' means any facility established under [the profit, non profit and foreign corporation acts] and licensed under chapter 23-16 or 23-17.1 [relating to hospitals or addiction hospitals]." N.D.C.C. ? 25-03.1-02(12). "'Public treatment facility' means any treatment facility not falling under the definition of a private treatment facility." N.D.C.C. ? 25-03.1-02(14) (emphasis added).

Thus, the scheme for emergency commitment by a peace officer, physician, psychiatrist, psychologist, or mental health professional specifically requires that

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a person be detained at and conveyed only to a "treatment facility" upon application for evaluation "as provided in subsection 3, and subject to section 25-03.1-26" (referring only to a hospital or treatment facility). N.D.C.C. ?? 25-03.1-25(1), (3), (5), 25-03.1-26(1).

N.D.C.C. ? 25-03.1-25(2) provides that a petitioner may request in a petition for involuntary treatment that the respondent be taken into immediate custody. If the court "finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm . . . the [court] may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3" Id. (emphasis added).

Detention under subsection 3 may be (1) in a "treatment facility"; (2) in "a public or private facility in the community which is suitably equipped and staffed for the purpose"; or (3) in "a jail or other correctional facility" upon order of a court under certain conditions. N.D.C.C. ? 25-03.1-25(3). "Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secured facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision." N.D.C.C. ? 25-03.1-25(3)(b) (emphasis added).

N.D.C.C. ? 25-03.1-25(2), (3) specifically provides that detention in a jail or correctional facility may only be "ordered" in an emergency "as provided in subsection 3." An order is a judgment or decision of a court. See N.D.R. Civ. P. 60.

All the detention options under subsection 3 of N.D.C.C. ? 25-03.1-25 are available to a court. In contrast, a peace officer, physician, psychiatrist, psychologist or mental health professional may cause a person to be detained only in a "treatment facility as provided in subsection 3, and subject to section 25-03.1-26." N.D.C.C. ? 25-03.1-25(1). In my opinion a peace officer, psychiatrist, psychologist or mental professional is relegated to detaining a person upon application for evaluation and treatment only at a

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"treatment facility" (N.D.C.C. ?? 25-03.1-25(1), (3)(a)), a "facility" (N.D.C.C. ? 25-03.1-25(5)), a "public treatment facility" or "a private treatment facility" (N.D.C.C. ? 25-03.1-26(1)). These various facilities are defined as hospitals (N.D.C.C. ? 25-03.1-02(12), (14), (19)) or any evaluation and treatment facility "that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency." N.D.C.C. ? 25-03.1-02(19). The definition of treatment facility or facility in which a peace officer, physician, psychiatrist, or mental health professional may detain a person does not embrace a "jail or other correctional facility." Consequently, in my opinion only a court may order a person detained in a jail or other correctional facility in lieu of a treatment facility under N.D.C.C. ? 25-03.1-25. Furthermore, detention in a jail or other correctional facility may not be ordered by a court simply because there was "no facility in the immediate area . . . and local law enforcement lacks equipment or manpower to immediately transport," as you state in your letter. Whether detention is warranted in a jail or other correctional facility is a fact question but it may only be ordered "in cases of actual emergency when no other secure facility is accessible." N.D.C.C. ? 25-03.1-25(3)(b). If any secure facility is accessible, then detention in a jail or other correctional facility may not be ordered. Furthermore, there must be an "actual emergency." Without both conditions existing detention in a jail or other correctional facility may not be ordered.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

tam/jjf/vkk