

OPINION NO. 79-021**Syllabus:**

- 1) R.C. 5122.26 authorizes a police officer or a county sheriff who has received a verbal or written order from the department of mental health and mental retardation, the head of a receiving hospital, or the court, to take into custody and transport to the receiving hospital a patient who is absent without leave from such hospital.
- 2) In order to undertake an emergency admission

pursuant to R.C. 5122.10, a police officer or sheriff must have reason to believe that there is a substantial risk that the person to be admitted will cause physical harm to himself or others if allowed to remain at liberty. In making this determination, a police officer or sheriff may rely on the statements of another person who has observed the actions of the person to be admitted.

- 3) Any person may seek a temporary order of detention pursuant to R.C. 5122.11 by alleging facts sufficient to indicate probable cause to believe that the person is a mentally ill person subject to hospitalization by court order, within the definition set forth in R.C. 5122.01. A mentally ill person is subject to hospitalization by court order only if he represents a substantial risk of physical harm to himself or others (whether or not such risk is of immediate harm), if he represents a substantial and immediate risk of serious physical impairment to himself because he is unable to provide for his basic physical needs, or if his behavior creates a grave and imminent risk to substantial rights of others or himself.

To: Lynn Alan Grimshaw, Scioto County Pros. Atty., Portsmouth, Ohio
By: William J. Brown, Attorney General, May 24, 1979

I have before me your request for my opinion which raises several questions concerning the duty of a police officer or the county sheriff to provide assistance to a receiving hospital established under R.C. 5123.13 for the care and treatment of the mentally ill. Your specific questions are as follows:

1. If a patient "walks away" or "escapes" from [a receiving hospital] does a Sheriff or Police officer have the authority to arrest and return that patient to [the hospital] without a written order?
2. If the answer to #1 is no; what procedure should be followed? There are generally 3 classifications of patients at the Receiving Hospital.
 - a. Those signing themselves in.
 - b. Those signed in on an emergency order.
 - c. Those committed on a court order.
3. Concerning an emergency admission to [a receiving hospital] signed by a law enforcement officer:
 - a. Can an officer sign a person [into a] Receiving Hospital based on the statement of a third person or persons or must the officer base his signing of the emergency admissions on actions that he himself observes[?] Example: A deputy is called to a house and the wife and/or children say that the husband has gone "crazy" and tore up the house, etc., but when the deputy talks to the man he appears normal. Example: A woman appears in person at the Sheriff's office and states that

her husband has been acting very strangely and needs to go to Receiving Hospital for treatment. When questioned she states that he will talk normally to a police officer but she is around him all the time and he is mentally ill. She will cite examples of his strange behavior around her.

- b. Is it an emergency if the [complainant] appears at the Court House to obtain a court order for commitment and no danger is present at that very time?
- c. Can any suspected mentally ill person be committed on an emergency order, or just suspected mentally ill persons who are in danger of doing harm to themselves or others?

The general provisions regulating the hospitalization of mentally ill persons are set forth in R.C. Chapter 5122. The provisions of this chapter are applicable to situations involving receiving hospitals established under R.C. 5123.13 since the definition of hospital set out in R.C. 5122.01(F) includes a hospital established under R.C. 5123.13.

With respect to your first question, R.C. 5122.26 describes the circumstances under which a patient who is absent without leave from a receiving hospital may be returned to the hospital. That statute states as follows:

A patient absent without leave, on a verbal or written order issued within five days of the time of the unauthorized absence, by the department of mental health and mental retardation, the head of the hospital from which such patient is absent without leave, or the court of either the county from which he was committed or in which the patient is found, may be taken into custody by any health or police officer or sheriff and transported to the hospital in which such patient was hospitalized or to such place as designated in the order. The officer shall immediately report such fact to the agency issuing the order.

. . . .
No patient hospitalized under Chapter 5122. of the Revised Code whose absence without leave was caused or contributed to by his mental illness shall be subject to a charge of escape.

Thus, R.C. 5122.26 authorizes a police officer or a county sheriff who has received a verbal or written order from the department of mental health and mental retardation, the head of a receiving hospital, or the court, to take into custody and transport to the receiving hospital a patient who is absent without leave from such hospital.

You have also inquired about an officer's authority to initiate an emergency admission to a receiving hospital. R.C. 5122.10 provides for emergency admissions and states in pertinent part as follows:

Any psychiatrist, licensed clinical psychologist, licensed physician, health or police officer, or sheriff may take a person into custody and immediately transport him to a hospital . . . if the psychiatrist, licensed clinical psychologist, licensed physician, health or police officer, or sheriff has reason to believe that the person is a mentally ill person subject to hospitalization by court order under division (B) of

section 5122.01 of the Revised Code, and represents a substantial risk or physical harm to himself or others if allowed to remain at liberty pending examination.

The statute specifies two requirements that must be met in order for an officer to initiate an emergency admission. First, the officer must have "reason to believe" that the person is a mentally ill person subject to hospitalization under R.C. 5122.01(B). Second, the officer must have "reason to believe" that the person represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination.

Your third question seeks clarification of the type of evidence an officer may rely upon to decide there is "reason to believe" the person should be hospitalized. Your specific question is whether the officer may base his decision upon the statements of another person who has observed the actions of the person to be admitted. While no Ohio court has opined on this issue, courts have held in various contexts that a person may have "reason to believe" something exists even though the person has no actual knowledge of its existence. See, e.g., Iron Silver Mining Co. v. Reynolds, 124 U.S. 374 (1888) (jury instruction which substituted "intention . . . formed . . . upon investigation . . . and . . . belief" for statutory "known to exist" was held clearly erroneous); Boone v. Merchants' & Farmers' Bank, 285 F. 183 (D.N.C. 1922) (evidence was held insufficient to show that creditor who received information from third parties concerning debtor's financial transactions had reasonable cause to believe debtor was insolvent); Ohio Valley Coffin Co. v. Goble, 28 Ind. App. 362, 62 N.E. 1025 (1902) (allegations of plaintiff's belief of safety held insufficient to aver a want of knowledge of danger). Such decisions are premised upon a recognition of the distinction between knowledge and a belief in common usage. "Knowledge" is commonly used to refer to an assurance of a fact or a proposition founded on perception by the senses or intuition, while "belief" refers to a conviction of mind, arising not from actual perception, but by way of inference or from evidence received from others. Boone v. Merchants' & Farmers' Bank, *supra*. Since the General Assembly has not indicated a contrary intent, I must presume that by enacting the phrase "reason to believe" the General Assembly intended this phrase to be interpreted in accordance with common usage. R.C. 1.42. It is, therefore, my opinion that a sheriff may rely upon the statements of another to determine that there is reason to believe a person should be taken into custody and hospitalized pursuant to R.C. 5122.10.

Your remaining questions concern situations in which there is reason to believe that the person is mentally ill, but no reason to believe that person will cause harm to himself or others if allowed to remain at liberty pending examination. As indicated previously, an officer may not initiate an emergency admission pursuant to R.C. 5122.10 unless he has reason to believe that the person represents a substantial risk of physical harm to himself or others if allowed to remain at liberty. R.C. 5122.11 does, however, provide an alternative procedure for initiating admission to a receiving hospital. R.C. 5122.11 states in pertinent part as follows:

Proceedings for the hospitalization of a person pursuant to sections 5122.11 to 5122.15 of the Revised Code shall be commenced by the filing of an affidavit . . . by any person or persons with the court, either on reliable information or actual knowledge, whichever is determined to be proper by the court.

Upon receipt of the affidavit, a judge of the court or referee who is an attorney at law appointed by the court may, where he has probable cause to believe that the person named in the affidavit is a mentally ill person subject to hospitalization by court order, issue a

temporary order of detention ordering any health or police officer or sheriff to take into custody and transport such person to a hospital or other place designated in section 5122.17 of the Revised Code, or may set the matter for further hearing. (Emphasis added.)

The issuance of a temporary order of detention is dependent upon a finding that the person is "subject to hospitalization by court order" as that phrase is defined in R.C. 5122.01(B):

"Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of his illness:

(1) Represents a substantial risk of physical harm to himself as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;

(2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm;

(3) Represents a substantial and immediate risk of serious physical impairment or injury to himself as manifested by evidence that he is unable to provide for and is not providing for his basic physical needs because of his mental illness and that appropriate provision for such needs cannot be made immediately available in the community; or

(4) Would benefit from treatment in a hospital for his mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.

A person comes within the definition of "mentally ill person subject to hospitalization" only if he represents a substantial risk of physical harm to himself or others (whether or not such risk is of immediate harm), if he represents a substantial and immediate risk of serious physical impairment to himself because he is unable to provide for his basic physical needs, or if his behavior creates a grave and imminent risk to substantial rights of others or himself. Even if it is suspected that a person is mentally ill, such person may be committed by court order only if there is a danger that such person will cause physical injury to himself or others, or that such person will cause injury to substantial rights of himself or others.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that:

- 1) R.C. 5122.26 authorizes a police officer or a county sheriff who has received a verbal or written order from the department of mental health and mental retardation, the head of a receiving hospital, or the court, to take into custody and transport to the receiving hospital a patient who is absent without leave from such hospital.

- 2) In order to undertake an emergency admission pursuant to R.C. 5122.10, a police officer or sheriff must have reason to believe that there is a substantial risk that the person to be admitted will cause physical harm to himself or others if allowed to remain at liberty. In making this determination, a police officer or sheriff may rely on the statements of another person who has observed the actions of the person to be admitted.

- 3) Any person may seek a temporary order of detention pursuant to R.C. 5122.11 by alleging facts sufficient to indicate probable cause to believe that the person is a mentally ill person subject to hospitalization by court order, within the definition set forth in R.C. 5122.01. A mentally ill person is subject to hospitalization by court order only if he represents a substantial risk of physical harm to himself or others (whether or not such risk is of immediate harm), if he represents a substantial and immediate risk of serious physical impairment to himself because he is unable to provide for his basic physical needs, or if his behavior creates a grave and imminent risk to substantial rights of others or himself.