February 11, 2000

OPINION NO. 2000-004

The Honorable Michael G. Spahr
Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

Dear Prosecutor Spahr:

We have received your request for an opinion concerning circumstances in which a law enforcement officer has reason to believe that a person is a mentally ill person subject to hospitalization and transports that person to a public hospital under the emergency procedure prescribed by R.C. 5122.10. Your question is whether, before taking the person to a public hospital, the law enforcement officer may be required or permitted to stop at another location for the purpose of obtaining a medical evaluation of the person.

You have explained that when law enforcement officers in your county are transporting a person under this emergency procedure, the public hospital of destination tells the law enforcement officers to make an intermediate stop at a local hospital to have the person medically assessed before the person is admitted to the public hospital. The reason for the intermediate stop appears to be that the public hospitals do not have medical staffs available to do the medical assessment. You are concerned that requiring an intermediate stop may create liability for the officer and the municipality or county. You note that the seizure of the person by the law enforcement officer is not an arrest in the criminal sense, but it is a deprivation of the person's freedom which, if not done correctly, could give rise to a civil rights action. *See generally In re Miller*, 63 Ohio St. 3d 99, 585 N.E.2d 396 (1992).

In order to answer your question, let us review the statutes governing the emergency hospitalization of mentally ill persons. It is important to note, first, that for purposes of statutes governing the hospitalization of mentally ill persons, the term "hospital" means a hospital or inpatient unit licensed by the Department of Mental Health or any institution, hospital, or other place established, controlled, or supervised by the Department of Mental Health. R.C. 5122.01(F); *see* R.C. 5119.20 ("[t]he department of mental health shall inspect and license all hospitals that receive mentally ill persons,

except those hospitals managed by the department"); 15 Ohio Admin. Code 5122-14-01(C)(23) ("'[h]ospital' means a psychiatric hospital, or psychiatric unit(s) administered by a general hospital, community mental health agency or other facility, that provides inpatient psychiatric hospitalization services"). The term "public hospital" refers to a facility that is tax-supported and under the jurisdiction of the Department of Mental Health. R.C. 5122.01(G).

The term "general hospital" is not defined by statute for purposes of R.C. Chapter 5122, but ordinarily refers to a hospital that provides services to care for a variety of medical conditions. *See, e.g.*, R.C. 3701.07; 6 Ohio Admin. Code 3701-59-01(D) (rule of Department of Health defining "[g]eneral hospital" as "a hospital which primarily functions to furnish the array of diagnostic and therapeutic services needed to provide care for a variety of medical conditions, including diagnostic x-ray, clinical laboratory, and operating room services"). Thus, a general hospital may be licensed by the Department of Mental Health to receive mentally ill patients. *See* R.C. 5119.20; 15 Ohio Admin. Code 5122-14-01(C)(24) ("'[h]ospital facility' means a hospital … that provides inpatient care for patients who could have a variety of medical conditions. As used in these rules it usually means a general hospital, as opposed to a psychiatric unit(s) of a general hospital or a free-standing psychiatric hospital").

On a local level, boards of alcohol, drug addiction, and mental health services (or community mental health boards, *see* R.C. 340.021) assess, plan, and provide for mental health services, programs, and facilities within their respective jurisdictions. *See* R.C. 340.03. Such boards contract with community mental health agencies to provide appropriate services, programs, and facilities. *See* R.C. 340.03(A)(6); R.C. 5122.01(H) (defining "community mental health agency" to mean "any agency, program, or facility with which a board of alcohol, drug addiction, and mental health services contracts to provide the mental health services listed in [R.C. 340.09]"). The services that community mental health agencies provide include inpatient, outpatient, consultation, emergency, and referral services. *See* R.C. 340.09. A board may designate an agency to assess patients in emergency situations. R.C. 5122.05(A).

The authority for a law enforcement officer to take a mentally ill person into custody is derived from R.C. 5122.10. The first paragraph of that provision[1] authorizes a police officer or sheriff to take a

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[1] The first paragraph of R.C. 5122.10 states:

> Any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, *police officer, or sheriff may take a person into custody*, or the chief of the adult parole authority or a parole or probation officer with the approval of the chief of the authority may take a parolee, probationer, offender on post-release control, or offender under transitional control into custody *and may immediately transport* the parolee, probationer, offender on post-release control, or offender under transitional

person into custody if the police officer or sheriff has reason to believe that the person is a mentally ill person subject to hospitalization by court order under R.C. 5122.01(B)[2] and that the person represents

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> control *to a hospital or*, notwithstanding section 5119.20 of the Revised Code, *to a general hospital not licensed by the department of mental health* where the parolee, probationer, offender on post-release control, or offender under transitional control may be held for the period prescribed in this section, *if the* psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, *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 of physical harm to self or others if allowed to remain at liberty pending examination*.

R.C. 5122.10 (emphasis added).

This paragraph, which consists of a single sentence, is somewhat confusing. It is not clear whether the authority to "immediately transport" is granted to all the listed professionals and applies to any person taken into custody under that section or whether it is granted only to the chief of the adult parole authority or a parole or probation officer acting with the approval of the chief of the authority and applies only to a parolee, probationer, offender on post-release control, or offender under transitional control. The history of the statute indicates, however, that the provision for immediately transporting a person to a hospital was included in the statute when the statute listed only psychiatrists, licensed clinical psychologists, licensed physicians, health or police officers, and sheriffs, before the language relating to parole and probation was inserted into the statute. *See* 1975-1976 Ohio Laws, Part II, 2026, 2040 (Sub. H.B. 244, eff. Aug. 26, 1976); *see also* 1981-1982 Ohio Laws, Part I, 1297, 1386 (Sub. H.B. 1, eff. Aug. 5, 1981). Thus, the statute has been read as granting to any of the listed professionals the authority to "immediately transport" a person as provided. It appears that, in making the language gender neutral, the General Assembly inadvertently neglected to include the reference to "person" along with the reference to "parolee, probationer, offender on post-release control, or offender under transitional control." Am. Sub. S.B. 111, 122nd Gen. A. (1997) (eff. March 17, 1998) (amending R.C. 5122.10). Hence, we conclude, in accordance with the evident intent of the General Assembly, that the language "may immediately transport" applies to persons taken into custody by a police officer or sheriff pursuant to R.C. 5122.10, as well as to parolees, probationers, offenders on post-release control, and offenders under transitional control taken into custody pursuant to R.C. 5122.10. *See, e.g., In re Miller*, 63 Ohio St. 3d 99, 102, 585 N.E.2d 396, 400 (1992); *State v. Clay*, 43 Ohio Misc. 2d 5, 8, 539 N.E.2d 1168, 1171 (Hamilton County Mun. Ct. 1988); *see also* R.C. 1.31.

[2] R.C. 5122.01 states, in part:

a substantial risk of physical harm to self or others if allowed to remain at liberty. R.C. 5122.10; *see* 1988 Op. Att'y Gen. No. 88-070, at 2-353 ("[t]he plain language of R.C. 5122.10 authorizes, but does not require, a sheriff to take an allegedly mental ill person into custody").

The statute provides that the police officer or sheriff "may immediately transport" the person to a hospital (defined in R.C. 5122.01(F) as a hospital or inpatient unit licensed by the Department of Mental Health or a place established, controlled, or supervised by the Department of Mental Health) or to a general hospital not licensed by the Department of Mental Health. R.C. 5122.10. If the person is transported to a general hospital, the general hospital may admit the person or provide care and treatment for the person. *Id*.[3] However, within twenty-four hours after arrival at the general hospital, the person must be transferred to a hospital as defined in R.C. 5122.01(F)—that is, to a hospital or

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> (B) "Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of the person's illness:
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> (1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
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> (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
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> (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or
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> (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.

R.C. 5122.01. *See generally In Re Burton*, 11 Ohio St. 3d 147, 464 N.E.2d 530 (1984).

[3] Authority to transport a person to a general hospital not licensed by the Department of Mental Health and authority for the general hospital to admit or care for the person are granted "notwithstanding section 5119.20 of the Revised Code." R.C. 5122.10. R.C. 5119.20 prohibits a hospital from receiving for care or treatment any person who is or appears to be mentally ill unless the hospital is licensed or managed by the Department of Mental Health, and prohibits any public official from hospitalizing a mentally ill person in a hospital that is not licensed.

inpatient unit licensed by the Department of Mental Health or a place established, controlled, or supervised by the Department of Mental Health. *Id*.[4]

When persons taken into custody pursuant to R.C. 5122.10 are transported to a hospital, the chief clinical officer is authorized to receive them for observation, diagnosis, care, and treatment. R.C. 5122.05(A). If the hospital is a public hospital, the chief clinical officer is required to receive the patients. *Id*. In either case, when application for admission is made the chief clinical officer must immediately notify the board of alcohol, drug addiction, and mental health services (or community mental health board) of the patient's county of residence. "To assist the hospital in determining whether the patient is subject to involuntary hospitalization and whether alternative services are available, the board or an agency the board designates promptly shall assess the patient unless the board or agency already has performed such assessment." R.C. 5122.05(A).

Hence, the board of alcohol, drug addiction, and mental health services (or community mental health board) or a community mental health agency designated by the board is responsible for assessing a patient who is taken into custody pursuant to R.C. 5122.10. The statutes require the board or agency to assist after application for admission to a hospital is made, but they also acknowledge that a board or agency may assess a patient before the patient is taken to the hospital. *See* R.C. 5122.05(A).

The statutes appear to recognize that in a psychiatric medical emergency a person may be taken to an appropriate community mental health agency before, or instead of, being taken to a hospital. *Id*. In this regard, the final paragraph of R.C. 5122.10[5] states that "[a] person transported or transferred to

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[4] R.C. 5122.17 permits a person taken into custody or ordered to be hospitalized pursuant to R.C. Chapter 5122 to be detained for not more than forty-eight hours pending removal to a hospital. Such temporary detention may be in a licensed rest or nursing home, a licensed or unlicensed hospital, a community mental health agency, or a county home, but may not be "in a nonmedical facility used for detention of persons charged with or convicted of penal offenses unless the court finds that a less restrictive alternative cannot be made available." R.C. 5122.17.

[5] The final paragraph of R.C. 5122.10 states:

> *A person transported or transferred to a* hospital *or community mental health agency under this section shall be examined by the staff of the* hospital or *agency within twenty-four hours after arrival at the* hospital or *agency*. If to conduct the examination requires that the person remain overnight, the hospital or *agency shall admit the person in an unclassified status* until making a disposition under this section. After the examination, if the *chief clinical officer of the* hospital or *agency* believes that the person is not a mentally ill person subject to hospitalization by

a hospital or community mental health agency" under its provisions must be examined by the staff of the hospital or agency within twenty-four hours after arrival. R.C. 5122.10. If the examination requires an overnight stay, the hospital or agency must admit the person in an unclassified status until a disposition is made. After the examination, if the chief clinical officer of the hospital or agency believes that the person is not a mentally ill person subject to hospitalization by court order, and if there is no temporary order of detention, the person must be released or discharged. The person may be detained as permitted by law. *Id.*

These provisions of law indicate that an individual who is taken into custody in accordance with the emergency provisions of R.C. 5122.10 may be transported to a community mental health agency for examination, care, and treatment, rather than being transported to a hospital or general hospital. We are informed that such a procedure is commonly followed, and we find that it is consistent with statutes governing psychiatric medical emergencies. *See, e.g.*, R.C. 5122.05(C) (notice of certain rights must be given to "[a]ny person who is involuntarily detained in a hospital or otherwise is in custody under [R.C. Chapter 5122], immediately upon being taken into custody"); R.C. 5122.10 (person taken into custody in psychiatric medical emergency must be told "that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name"). Thus, an alternative available when a person is taken into custody under R.C. 5122.10 is to transport the person to an appropriate community mental health agency.

We conclude, therefore, that pursuant to R.C. 5122.10, a police officer or sheriff may take a person into custody if the police officer or sheriff has reason to believe that the person is a mentally ill person subject to hospitalization by court order under R.C. 5122.01(B) and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The police

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> court order, the chief clinical officer *shall release or discharge the person immediately* unless a court has issued a temporary order of detention applicable to the person under section 5122.11 of the Revised Code. After the examination, if the chief clinical officer believes that the person is a mentally ill person subject to hospitalization by court order, the chief clinical officer *may detain the person for not more than three court days* following the day of the examination and during such period admit the person as a voluntary patient under section 5122.02 of the Revised Code or file an affidavit under section 5122.11 of the Revised Code. If neither action is taken and a court has not otherwise issued a temporary order of detention applicable to the person under section 5122.11 of the Revised Code, the chief clinical officer shall discharge the person at the end of the three-day period unless the person has been sentenced to the department of rehabilitation and correction and has not been released from the person's sentence, in which case the person shall be returned to that department.

R.C. 5122.10 (emphasis added).

officer or sheriff may immediately transport the person to a hospital as defined in R.C. 5122.01(F) (that is, a hospital or inpatient unit licensed by the Department of Mental Health or a place established, controlled, or supervised by the Department of Mental Health) or to a general hospital not licensed by the Department of Mental Health, or the police officer or sheriff may transport the person to an appropriate community mental health agency. R.C. 5122.10; *see also* R.C. 5119.20.

In conversations with my staff you have indicated that your basic concern is whether a public hospital, defined in R.C. 5122.01(G) as a facility that is tax-supported and under the jurisdiction of the Department of Mental Health, may require that a person taken into custody in a psychiatric medical emergency receive a medical examination at a different facility before being received by the public hospital. The law clearly requires a public hospital to receive a person who has been taken into custody pursuant to R.C. 5122.10. On that point, R.C. 5122.05 states: "[T]he chief clinical officer of a public hospital in all cases of psychiatric medical emergencies, *shall receive* for observation, diagnosis, care, and treatment *any person whose admission is applied for under* … (1) *Emergency procedure*, as provided in [R.C. 5122.10]." R.C. 5122.05(A) (emphasis added); *see* 1981 Op. Att'y Gen. No. 81-053, at 2-212 n.7 ("[t]he use of 'shall' in this provision supports the mandatory nature of the duty of the head of a public hospital").

As discussed above, the emergency procedure set forth in R.C. 5122.10 authorizes a law enforcement officer to transport the person in custody to a hospital licensed, established, controlled, or supervised by the Department of Mental Health (including a public hospital), to a general hospital not licensed by the Department, or to a community mental health agency. The law allows a reasonable exercise of discretion in determining whether to take a person into custody under R.C. 5122.10 and where to transport the person. *See* 1988 Op. Att'y Gen. No. 88-070; 1979 Op. Att'y Gen. No. 79-021. It is permissible for a public hospital to request that persons taken into custody pursuant to R.C. 5122.10 be transported first to a general hospital or a community mental health agency, and it is appropriate for law enforcement officials to comply with such a request when reasonably possible. For example, it would appear to be appropriate to take a person to a general hospital if there are medical concerns, or to an appropriate community mental health agency that is responsible for assessment. *See, e.g.*, R.C. 5122.05(A); *Lindow v. City of N. Royalton*, 104 Ohio App. 3d 152, 156, 661 N.E.2d 253, 256 (Cuyahoga County 1995) (psychiatric unit at a general hospital instructed firefighter in emergency medical service unit that individual transported for evaluation should first be taken to the emergency room to be medically cleared).

Nonetheless, a public hospital has no authority to *require* that a preliminary stop be made at another facility before persons are brought to it for observation, diagnosis, care, and treatment. Rather, if such persons are brought initially to the public hospital pursuant to the procedure set forth in R.C. 5122.10, the law plainly requires that the public hospital receive and examine them. *See* R.C. 5122.05; R.C. 5122.10; 1981 Op. Att'y Gen. No. 81-053 (syllabus, paragraph 1) ("R.C. 5122.05 and 5122.10 require the head of a public hospital to receive any person whose admission is applied for under emergency procedures for observation, diagnosis, care, and treatment as authorized by R.C.

5122.10”). Therefore, when a police officer or sheriff takes a person into custody under R.C. 5122.10, transports the person to a public hospital as defined in R.C. 5122.01(G) (that is, a facility that is tax-supported and under the jurisdiction of the Department of Mental Health), and applies for the admission of the person under the emergency procedure of R.C. 5122.10, the chief clinical officer of the public hospital must receive the person for observation, diagnosis, care, and treatment pursuant to R.C. 5122.05(A)(1) and has no authority to require that the person obtain a medical evaluation at another facility prior to being received by the public hospital.

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 5122.10, a police officer or sheriff may take a person into custody if the police officer or sheriff has reason to believe that the person is a mentally ill person subject to hospitalization by court order under R.C. 5122.01(B) and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The police officer or sheriff may immediately transport the person to a hospital as defined in R.C. 5122.01(F) (that is, a hospital or inpatient unit licensed by the Department of Mental Health or a place established, controlled, or supervised by the Department of Mental Health) or to a general hospital not licensed by the Department of Mental Health, or the police officer or sheriff may transport the person to an appropriate community mental health agency.

2. When a police officer or sheriff takes a person into custody under R.C. 5122.10, transports the person to a public hospital as defined in R.C. 5122.01(G) (that is, a facility that is tax-supported and under the jurisdiction of the Department of Mental Health), and applies for the admission of the person under the emergency procedure of R.C. 5122.10, the chief clinical officer of the public hospital must receive the person for observation, diagnosis, care, and treatment pursuant to R.C. 5122.05(A)(1) and has no authority to require that the person obtain a medical evaluation at another facility prior to being received by the public hospital.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 11, 2000

The Honorable Michael G. Spahr
Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

SYLLABUS: 2000-004

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2. When a police officer or sheriff takes a person into custody under R.C. 5122.10, transports the person to a public hospital as defined in R.C. 5122.01(G) (that is, a facility that is tax-supported and under the jurisdiction of the Department of Mental Health), and applies for the admission of the person under the emergency procedure of R.C. 5122.10, the chief clinical officer of the public hospital must receive the person for observation, diagnosis, care, and treatment pursuant to R.C. 5122.05(A)(1) and has no authority to require that the person obtain a medical evaluation at another facility prior to being received by the public hospital.