

**OPINION NO. 88-070**

**Syllabus:**

1. A county sheriff has authority to convey an individual to a hospital for evaluation under R.C. 5122.10 where the sheriff has reason to believe that a person is mentally ill subject to hospitalization and the person represents a substantial risk of harm to himself or others.

2. A sheriff is not authorized to take an allegedly mentally ill person into custody pursuant to R.C. 5122.10 unless the sheriff himself has reason to believe that the person is a mentally ill person subject to hospitalization and represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination.
3. A sheriff, in making a determination pursuant to R.C. 5122.10 that he has reason to believe that a person is mentally ill subject to hospitalization and represents a substantial risk of harm to himself or others may rely upon the determination of a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or parole officer as to the existence of mental illness and risk of harm.

**To: Joseph H. Niemeyer, Hancock County Prosecuting Attorney, Findlay, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988**

I have before me your request for my opinion which raises the following question:

Does the county sheriff have authority to convey an individual to a hospital for evaluation under R.C. 5122.10 where a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or parole officer determines that an individual is a substantial risk to himself or other persons and is in need of immediate hospitalization and no judicial order to convey has been obtained?

The General Assembly has limited involuntary civil commitment of the mentally ill to those mentally ill persons who pose a risk of harm to themselves or others. Emergency hospitalization of an alleged mentally ill person may be made pursuant to R.C. 5122.11 by court order, or pursuant to R.C. 5122.10 without a court order.<sup>1</sup> R.C. 5122.01 sets forth the controlling definitions:

As used in Chapter 5122. of the Revised Code:

(A) "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

(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 others 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, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;

(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

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<sup>1</sup> R.C. 5122.10 and R.C. 5122.11 have been amended effective July 1, 1989. New language was added, none of which is relevant to this opinion. The amendments are part of an extensive revision of Ohio mental health laws contained in Sub. S.B. 156, 117th Gen. A. (1988) (eff. March 28, 1988) (delayed effective dates for numerous sections).

(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.

Your question relates to the authority of the county sheriff under R.C. 5122.10. R.C. 5122.10, in relevant part, 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, or furlougee into custody and may immediately transport him 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 he 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 himself or others if allowed to remain at liberty pending examination. (Emphasis added.)*

The plain language of R.C. 5122.10 authorizes, but does not require, a sheriff to take an alleged mentally ill person into custody if the sheriff has reason to believe that he is a mentally ill person subject to hospitalization by court order and represents a substantial risk of physical harm to himself or others. *See generally Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"). It is also clear under R.C. 5122.10 that only the person determining that someone is subject to emergency hospitalization under that section is authorized to take the alleged mentally ill person into custody and transport him to an appropriate hospital. A sheriff is not authorized to take such a person into custody and to transport him solely upon the determination of another person authorized to act pursuant to R.C. 5122.10 unless the sheriff himself has reason to believe that the person is a mentally ill person subject to hospitalization, and represents a substantial risk of physical harm to himself or others.<sup>2</sup> Your question thus raises the issue of whether, in evaluating an allegedly mentally ill person under R.C. 5122.10, the sheriff may rely upon the determination made by a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or parole officer. This issue was addressed, in part, by my predecessor in 1979 Op. Att'y Gen. No. 79-021. In that opinion he concluded:

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

<sup>2</sup> Your letter does not ask that I assume that the allegedly mentally ill person has committed a breach of the peace. Under R.C. 311.07(A) the "sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the next succeeding term of the court of common pleas..." Accordingly, in those instances in which a breach of the peace has occurred, the duty enjoined upon the sheriff under R.C. 311.07 may require that he take action for reasons independent of the authority conferred upon him under R.C. 5122.10. *See generally* R.C. 311.08(A) ("[t]he sheriff shall...exercise the powers conferred and perform the duties enjoined upon him by statute and by common law"); *State ex rel. Attorney General v. McLain*, 58 Ohio St. 313, 320, 50 N.E. 907, 908 (1898) ("[i]t is the duty of the sheriff, says Lord Coke: 'To preserve the peace in his bailiwick or county. To this end he is the

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.

Op. No. 79-021 (syllabus, paragraph two). The analysis set forth in Op. No. 79-021 recognized that there is a clear distinction between knowledge and belief. My predecessor reasoned that, since R.C. 5122.10 requires only "reason to believe," the sheriff could base his decision to transport an alleged mentally ill person upon statements of others regarding that person. For the same reasons expressed by my predecessor in Op. No. 79-021, I conclude that the statements relied upon may include the determination of a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or parole officer that the person is a mentally ill person subject to hospitalization and represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination.

Therefore, it is my opinion, and you are so advised that:

1. A county sheriff has authority to convey an individual to a hospital for evaluation under R.C. 5122.10 where the sheriff has reason to believe that a person is mentally ill subject to hospitalization and the person represents a substantial risk of harm to himself or others.
2. A sheriff is not authorized to take an allegedly mentally ill person into custody pursuant to R.C. 5122.10 unless the sheriff himself has reason to believe that the person is a mentally ill person subject to hospitalization and represents a substantial risk of physical harm to himself or others if allowed to remain at liberty pending examination.
3. A sheriff, in making a determination pursuant to R.C. 5122.10 that he has reason to believe that a person is mentally ill subject to hospitalization and represents a substantial risk of harm to himself or others, may rely upon the determination of a psychiatrist, licensed clinical psychologist, licensed physician, health officer, or parole officer as to the existence of mental illness and risk of harm.

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first man within the county, and it is incident to that office that he apprehend and commit to prison all person who break or attempt to break the peace"). For purposes of this opinion, however, it is expressly assumed that no breach of the peace has occurred.

I note further that persons acting under authority of R.C. 5122.10 are acting under the color of law. Anyone refusing to be taken into custody, or otherwise interfering with the exercise of the authority conferred under R.C. 5122.10, may be guilty of a breach of the peace. For example, in an analogous situation my predecessor concluded that a state officer was entitled to the protection and assistance of the county sheriff when exercising lawful authority to enter upon private property. 1962 Op. Att'y Gen. No. 3109, p. 514 (the county sheriff has a duty to provide police protection and assistance to the director of highways in order to allow the director to gain access to private property to enforce R.C. 5516.04).