

## OPINION NO. 85-073

## Syllabus:

1. Where a nonpublic hospital or a hospital operated by the Veterans' Administration initiates involuntary hospitalization proceedings pursuant to R.C. 5122.11, an attorney designated by the Attorney General shall represent the state and present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order at a full hearing held pursuant to R.C. 5122.15.
2. Pursuant to R.C. 5119.30, the Department of Mental Health must reimburse the Attorney General for the compensation of assistant attorneys general required to represent the state at full hearings held pursuant to R.C. 5122.15 and for the costs of litigation incurred by the Attorney General under R.C. 5122.15.

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To: Pamela S. Hyde, Director, Ohio Department of Mental Health, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1985

I have before me your request for my opinion concerning the Attorney General's duties with respect to full hearings conducted pursuant to R.C. 5122.15 where the involuntary hospitalization proceedings have been initiated by a nonpublic hospital or a hospital operated by the Veterans' Administration. I have stated your questions as follows:

1. Where a nonpublic hospital or a hospital operated by the Veterans' Administration initiates involuntary hospitalization proceedings regarding a patient at the hospital, is the Attorney General required to present the case demonstrating that such patient is a mentally ill person subject to hospitalization by court order at full hearings held pursuant to R.C. 5122.15?
2. If the Attorney General is required to present the case in such a situation, what are the reimbursement obligations of the Department of Mental Health under R.C. 5119.30?

Involuntary hospitalization proceedings may be initiated against a person pursuant to R.C. 5122.11, which states in part:

Proceedings for the hospitalization of a person pursuant to sections 5122.11 to 5122.15 of the Revised Code, except those pursuant to section 2945.40 of the Revised Code, shall be commenced by the filing of an affidavit in the manner and form prescribed by the department of mental health, 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 the initiation of involuntary hospitalization proceedings pursuant to R.C. 5122.11-.15, there follows a probable cause hearing upon request. R.C. 5122.141. Where the probate court finds probable cause to believe that the respondent is a mentally ill person subject to hospitalization by court order, the court shall order, within a statutorily specified time, a full hearing as provided in R.C. 5122.15 "to be held on the question of whether or not the respondent is a mentally ill person subject to hospitalization by court order." R.C. 5122.141(H). Where the court, at the full hearing, finds clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by court order, it shall order the respondent, for a period not to exceed ninety days to receive care and treatment from a person or from any one of a number of hospitals and facilities including a nonpublic hospital or a hospital operated by the Veterans' Administration. R.C. 5122.15(C). If, at the end of the first ninety-day period or any subsequent period of continued commitment, there has been no disposition of the case, the hospital, facility, or person shall discharge the patient immediately, "unless at least ten days before the expiration of the period the designee of the attorney general or the prosecutor files with the court an application for continued commitment." R.C. 5122.15(H). The court "shall hold a full hearing on applications for continued commitment at the expiration of the first ninety-day period and at least every two years after the expiration of the first ninety-day period." R.C. 5122.15(H). Thus, where a nonpublic hospital or a hospital operated by the Veterans' Administration initiates involuntary hospitalization proceedings against a patient under R.C. 5122.11, R.C. 5122.15 entitles the patient to a full hearing prior to commitment for up to ninety days, upon any application for continued commitment and periodically thereafter.

Your first question concerns legal representation at the full hearings conducted pursuant to R.C. 5122.15. Specifically you ask whether, in those situations where a nonpublic hospital or a hospital operated by the Veterans' Administration has initiated involuntary hospitalization proceedings against a person, the Attorney General is required to present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order at full hearings held pursuant to R.C. 5122.15. As set forth above, the purpose of the full hearings conducted pursuant to R.C. 5122.15 is to determine whether a person is a mentally ill person subject to hospitalization by court order, as that term is defined in R.C. 5122.01(B). I believe that R.C. 5122.15(A)(10) is dispositive of the question you raise. R.C. 5122.15(A)(10) provides as follows:

An attorney designated by the attorney general shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order, except that, if the

respondent has been found not guilty by reason of insanity and the hearing is held pursuant to division (A), (D), (E), or (F) of section 2945.40 of the Revised Code, the prosecutor shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order or the position of the county prosecutor on questions of the transfer, trial visit, or discharge. . . In proceedings under this chapter, the attorney general shall offer evidence of the diagnosis, prognosis, record of treatment, if any, and less restrictive treatment plans, if any.<sup>1</sup> (Emphasis and footnote added.)

Thus, in those instances where involuntary hospitalization proceedings have been initiated pursuant to R.C. 5122.11 by a nonpublic hospital or a hospital operated by the Veterans' Administration, R.C. 5122.15(A)(10) provides that an attorney designated by the Attorney General shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order.

It is apparent that counsel other than counsel designated by the Attorney General may be involved in involuntary hospitalization proceedings at stages prior to full hearings held pursuant to R.C. 5122.15 and that such counsel may be retained by a nonpublic hospital or a hospital operated by the Veterans' Administration. See R.C. 5122.06 (except as otherwise provided, at a probable cause hearing under R.C. 5122.141, the case demonstrating that there is probable cause to believe a respondent is a mentally ill person subject to hospitalization by court order "shall be presented by a person . . . designated by the head of the hospital if the patient is in a hospital not operated by the department"); R.C. 5122.11 (involuntary hospitalization of a person shall be commenced by the filing of an affidavit "by any person or persons with the court"). I note, however, that at the full hearing held pursuant to R.C. 5122.15, R.C. 5122.15(A)(10) clearly requires that where a nonpublic hospital or a hospital operated by the Veterans' Administration initiates involuntary hospitalization proceedings under R.C. 5122.11, an attorney designated by the Attorney General shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order.

Under R.C. 5122.15, where a nonpublic hospital or a hospital operated by the Veterans' Administration has initiated involuntary hospitalization proceedings pursuant to R.C. 5122.11, the Attorney General does not represent such hospitals at the hearings held pursuant to R.C. 5122.15, but rather

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<sup>1</sup>R.C. 2945.40 prescribes commitment procedures for a person found not guilty by reason of insanity. The trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, as defined in R.C. 5122.01 and R.C. 5123.01. R.C. 2945.40(A). Pursuant to R.C. 2945.40, the hearing is to be conducted pursuant to R.C. 5122.15(A)(1) to (5) and (A)(8) to (15), or R.C. 5123.76(A)(1) to (5) and (A)(8) to (14), except as otherwise provided by R.C. 2945.40. Your question, however, does not concern those proceedings prescribed by R.C. 2945.40.

presents the case for the state demonstrating that a person is a mentally ill person subject to hospitalization by court order. See also R.C. 5119.30 ("[t]he attorney general ... shall represent the state in proceedings under [R.C.] 5122.15").

I turn now to your second question concerning the nature of the reimbursement obligations of your department under R.C. 5119.30 if the Attorney General is required to present the case demonstrating that a patient at a nonpublic hospital or a hospital operated by the Veterans' Administration is a mentally ill person subject to hospitalization by court order at full hearings held pursuant to R.C. 5122.15. R.C. 5119.30 provides as follows:

The attorney general shall attend to all suits instituted on behalf of or against any institution under the jurisdiction of the department of mental health and the managing officer thereof, except such institutions as are privately owned or operated under a license from the division of mental health facilities and services, and shall represent the state in proceedings under section 5122.15 of the Revised Code. The department of mental health shall reimburse the attorney general for the compensation of assistant attorneys general required to represent the state in proceedings under section 5122.15 of the Revised Code and shall also pay the costs of litigation incurred by the attorney general under that section.

If a writ of habeas corpus is applied for, the clerk of the court shall give notice of the time and place of hearing to the attorney general. (Emphasis added.)

See also R.C. 109.02. R.C. 5119.30 clearly provides that the Attorney General shall represent the state in proceedings under R.C. 5122.15. Further, as noted above, in the situation about which you ask, R.C. 5122.15(A)(10) provides that, at full hearings, an attorney designated by the Attorney General shall present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order. At the full hearing stage of civil commitment proceedings, where involuntary hospitalization proceedings have been initiated by a nonpublic hospital or a hospital operated by the Veterans' Administration, it is the Attorney General who must represent the state, R.C. 5119.30, and an attorney designated by the Attorney General must present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order, R.C. 5122.15. R.C. 5119.30 further provides that the Department of Mental Health shall reimburse the Attorney General for the compensation of assistant attorneys general<sup>2</sup> required to represent the state in full hearings held pursuant to R.C. 5122.15 and shall also pay the costs of litigation incurred by the Attorney General under R.C. 5122.15.

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<sup>2</sup> Within the scope of R.C. 5122.15(A)(10), an attorney designated by the Attorney General to present the case at a full hearing held pursuant to R.C. 5122.15 clearly may include an assistant attorney general appointed by the Attorney General, see R.C. 109.03.

In conclusion, it is my opinion, and you are hereby advised that:

1. Where a nonpublic hospital or a hospital operated by the Veterans' Administration initiates involuntary hospitalization proceedings pursuant to R.C. 5122.11, an attorney designated by the Attorney General shall represent the state and present the case demonstrating that the respondent is a mentally ill person subject to hospitalization by court order at a full hearing held pursuant to R.C. 5122.15.
2. Pursuant to R.C. 5119.30, the Department of Mental Health must reimburse the Attorney General for the compensation of assistant attorneys general required to represent the state at full hearings held pursuant to R.C. 5122.15 and for the costs of litigation incurred by the Attorney General under R.C. 5122.15.