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July 31, 2000

Attorney General John Cornyn
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

RECEIVED

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OPII

FILE # ML-41537-00
I.D. # 41537

Dear Attorney General John Cornyn:

I am requesting an Attorney General's written opinion pursuant to Government Code §402.043 on the following question:

When is a county sheriff responsible for taking custody of a person who is hospitalized by another law enforcement agency for an injury or illness that was sustained during his/her arrest process? This question assumes that the agency making the arrest has legal jurisdiction in the same county as the sheriff.

We can find no general authority that requires the Sheriff to take custody of a prisoner who was taken to the hospital by another agency for injuries or illness sustained during the arrest process. **Texas Code of Criminal Procedure Art. 104.002** provides that a county is liable for medical expenses incurred in the safekeeping of prisoners confined in the county jail or kept under guard by the county. The article does not require the sheriff to assume custody of prisoners that have been taken to medical facilities by other agencies. Further, **Local Government Code §351.041** provides that the sheriff shall safely keep all prisoners committed to the jail by lawful authority, subject to an order of the proper court. Like **Texas Code of Criminal Procedure Art. 104.002**, **Local Government Code §351.041** also does not require the sheriff to take custody of prisoners that have been taken to a hospital by another agency.

There is authority, however, that if a magistrate issues a commitment order for the prisoner, the sheriff is required to accept custody of the prisoner. **Op. Atty. Gen. 1995, No. DM-313; Texas Code of Criminal Procedure Art. 2.18.** This statute and opinion do not answer the question of how this acceptance must be done? For instance, does the sheriff's duty to accept the prisoner mean that he must travel to the location of wherever the arresting agency has the prisoner (i.e. the hospital)? On the other hand, does it mean that only when a prisoner is brought to the jail, the sheriff must accept him? Whichever one of these answers is correct as to custody of a prisoner with a commitment order, **Texas Code of Criminal Procedure Art. 2.18.** does not apply to arrests made when a magistrate's commitment order does not exist. When there is no commitment order it is the opinion of this office that the sheriff does not have a duty to take custody of a prisoner that has been taken to a hospital by an agency with jurisdiction in the county; but, when a commitment order does exist it is unclear as to how the sheriff's duty under **Texas Code of Criminal Procedure Art. 2.18** should be interpreted.

I appreciate your help in this matter. If you have any questions regarding this request, feel free to give my office a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom O'Connell", written over a horizontal line.

Tom O'Connell
Criminal District Attorney
Collin County, Texas