

BOWIE COUNTY CRIMINAL DISTRICT ATTORNEY

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March 8, 2011

FILE # ML-46688-11
I.D. # 46688

RQ-0952-GA

Honorable Greg Abbott
Attorney General of Texas
Attn: *Opinion Committee*
209 West 14th Street, 7th Floor
Austin, Texas 78711-2548

Re: Request for Opinion

Dear Attorney General Abbott:

The Texarkana, Texas Chief of Police has requested this office to seek an opinion from your office regarding the following:

1. Once a magistrate or judge has signed an emergency detention order requested in the peace officer's application for detention, **V.T.C.A., Health & Safety Code, §573.002**, what agency is responsible for overseeing the individual – the agency who brought the individual to the hospital or the municipal law enforcement agency in whose jurisdiction the hospital is in?
2. Once court-ordered mental health services are ordered and the sheriff's office is ordered to transport the individual, does the sheriff immediately assume oversight of the individual?

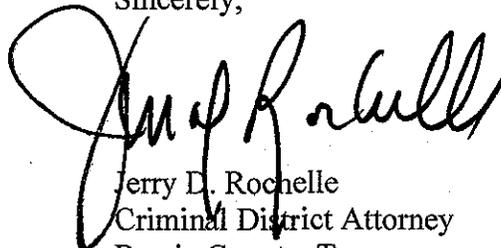
I am also enclosing the Brief in Support of Request for Attorney General Opinion.

Based upon this letter and the accompanying Brief, the Bowie County Criminal District Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to these questions.

Honorable Greg Abbott
Attorney General of Texas
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Thank you for your attention to this matter and if your office should require additional information, please advise.

Sincerely,



Jerry D. Rochelle
Criminal District Attorney
Bowie County, Texas

JDR:lb
Enclosure

March 8, 2011

**BRIEF IN SUPPORT OF
REQUEST FOR ATTORNEY GENERAL OPINION**

The Brief in Support of Request for Attorney General Opinion is filed herein with the accompanying letter request of March 8, 2011.

QUESTIONS

1. Once a magistrate or judge has signed an emergency detention order requested in the peace officer's application for detention, **V.T.C.A., Health & Safety Code, §573.002**, what agency is responsible for overseeing the individual – the agency who brought the individual to the hospital or the municipal law enforcement agency in whose jurisdiction the hospital is in?
2. Once court-ordered mental health services are ordered and the sheriff's office is ordered to transport the individual, does the sheriff immediately assume oversight of the individual?

BACKGROUND AND FACTS

Officers of the Texarkana, Texas Police Department and the Bowie County Sheriff's Department often come in contact with persons who are believed to be mentally ill. There are times in which the person is violent and is a danger to themselves or others and pose a substantial risk of harm. To prevent further violence and pursuant to **V.T.C.A., Health & Safety Code, §573.001 et. seq.**, officers will take the person into protective custody and transport the individual to one of the local hospitals located within the city limits of Texarkana, Texas.

The individual may be detained up to 48 hours under an emergency detention order and then if court-ordered mental health services are ordered, transported by the sheriff's department (assuming no other means of transportation) to a mental health treatment facility.

The sheriff has taken the position that once a person is detained pursuant to **V.T.C.A., Health & Safety Code, §573.001** and taken to a local hospital, the sheriff's department is no longer responsible for the oversight of the person and that responsibility is transferred to the Texarkana, Texas Police Department since the hospitals are within that department's jurisdiction.

Neither of the local hospitals assign employees to the person for the purpose of preventing the person from leaving the hospital. It is up to law enforcement to keep the person in protective custody.

LEGAL AUTHORITIES

V.T.C.A., Health & Safety Code, §573.001 states in part:

- (a) A peace officer, without a warrant, may take a person into custody if the officer:
 - (1) has reason to believe and does believe that:
 - (A) the person is mentally ill; and
 - (B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
 - (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.
- (d) A peace officer who takes a person into custody under subsection (a) shall immediately transport the apprehended person to:
 - (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

V.T.C.A., Health & Safety Code, §573.002 states in part:

- (a) A peace officer shall immediately file an application for detention after transporting a person to a facility under Section 573.001.

V.T.C.A., Health & Safety Code, §573.021 states in part:

- (a) A facility shall temporarily accept a person for whom an application for detention is filed.
- (b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protection is

obtained. ...If the 48 hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day.

DISCUSSION

Texarkana, Texas, is located in Bowie County, Texas. In Bowie County, Texas, there are two hospitals located within the city limits of Texarkana, Texas, which are deemed suitable by the local mental health authority to which a person who is believed to be mentally ill and pose a threat to themselves or to others may be taken. There are no other suitable facilities in Bowie County, Texas.

Typically, the two law enforcement agencies who come in contact with and institute mental health proceeding pursuant to **V.T.C.A., Health & Safety Code, §573.001 et. seq.** are the Texarkana, Texas Police Department whose jurisdiction is generally within the city limits of the city and the Bowie County Sheriff's Department which covers Bowie County, Texas.

Once an officer files an application for emergency detention pursuant to **V.T.C.A., Health & Safety Code, §573.002** a conflict arises between the two above-referenced agencies as to whose responsibility it is to guard the person while in protective custody. The sheriff's position is that once the person is within the confines of the hospital no matter what law enforcement agency transported the person and initiated the application for emergency detention, the Texarkana, Texas Police Department is responsible for the guarding of the person awaiting further orders of mental health services, if any.

An additional question arises as to which agency is responsible for the individual for whom court-ordered mental health services has been ordered. In Bowie County, the sheriff's department transports the patient to a mental health facility, assuming the person has no other means of transport. There is often a time period from the time the order is entered to the time the person is transported to the receiving facility due to lack of beds at the receiving facility. The sheriff's position is that his office is not responsible for the individual until transport actually picks the individual up from the hospital.

Research into these issues has found no guiding authority.

REQUEST FOR LEGAL OPINION

Based upon the foregoing, the Bowie County District Attorney's Office is requesting that the Texas Attorney General issue a legal opinion with regard to the questions present.