

46 Op. Att'y Gen. No. 18

CITIES AND TOWNS - Financial responsibility for costs of precommitment custody of persons who are seriously mentally ill;
COUNTIES - Financial responsibility for costs of precommitment custody of persons who are seriously mentally ill;
HOSPITALS - Financial responsibility for costs of precommitment custody of persons who are seriously mentally ill;
MENTAL HEALTH - Financial responsibility for costs of precommitment custody of persons who are seriously mentally ill;
PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF - Financial responsibility for costs of precommitment custody of persons who are seriously mentally ill;
MONTANA CODE ANNOTATED - Title 53, chapter 21; sections 7-32-222(3); 53-21-102, -124, -129, -132(2), -139(2);
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 5 (1989).

HELD:

Subject to the limitations contained in Mont. Code Ann. § 53-21-132(2), the county of residence is financially responsible for costs incurred in connection with the detention and precommitment custody of persons taken into protective custody pursuant to Mont. Code Ann. § 53-21-124 or -129.

June 5, 1996

Mr. David L. Nielsen
Helena City Attorney
316 North Park Avenue
Helena, MT 59623

Dear Mr. Nielsen:

Your predecessor requested my opinion on the following question:

Is the City of Helena financially responsible for hospitalization and other related medical costs incurred on behalf of persons taken into protective custody in accordance with the provisions of Mont. Code Ann. §§ 53-21-101 to -198?

The letter of request states that the question of the city's possible responsibility arises in situations where the Helena police are called to a scene where someone may be extremely emotionally upset or threatening suicide, but may not have violated the law. Two assumptions underlie my response to your question. First, I assume that the "protective custody" to which you refer would include "emergency" situations in which a person is detained by a peace officer under the authority of Mont. Code Ann. § 53-21-129(1) based on probable cause to believe that the person or another person "is in imminent danger of death or serious bodily injury" as a result of the detained person's serious mental illness. See Mont. Code Ann. §§ 53-21-102(4) (defining "emergency situation") and 53-21-102(15) (defining "seriously mentally ill"); see also In re E.P., 241 Mont. 316, 322, 787 P.2d 322, 326 (1989). Second, I assume from the submissions of the city and the county supporting their respective positions that the question is primarily concerned with expenses that arise as a result of the precommitment proceedings, such as costs of detention in a hospital setting and costs of evaluations, and not with extraordinary expenses, such as unanticipated medical emergencies, which may be incurred during precommitment detention but are not related to the commitment proceedings. I accordingly express no opinion here on the responsibility of the county or the city for extraordinary expenses not directly related to precommitment proceedings under Montana Code Annotated title 53, chapter 21.

The Montana Supreme Court has interpreted these provisions of law several times, often emphasizing concern for procedural safeguards. In re G.P., 246 Mont. 195, 806 P.2d 3 (1990); In re E.P., 241 Mont. 316, 787 P.2d 332 (1990); Reiser v. Prunty, 224 Mont. 1, 727 P.2d 538 (1986); In re M.C., 220 Mont.

437, 716 P.2d 203 (1986); In re Shennum, 210 Mont. 442, 448-51, 684 P.2d 1073, 1076-78 (1984). Clearly, in order to be taken into protective custody or detained, a person must be in an "emergency situation" and appear to be "seriously mentally ill," as those terms are defined in statute. See also 43 Op. Att'y Gen. No. 5 (1989).

The responsibility for payment of costs such as hospitalization is set forth in statute:

The county of residence shall also pay **all precommitment expenses**, including transportation to a mental health facility, **incurred in connection with the detention, examination, and precommitment custody** of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

Mont. Code Ann. § 53-21-132(2) (emphasis added). As the Montana Supreme Court has said in interpreting this section, "[p]ursuant to this statute certain expenses incurred must be paid by the county." In re H.C., 218 Mont. 386, 389, 708 P.2d 1007, 1009 (1985). Precommitment custody is such a cost since it is enumerated in the statute.

There is some dispute as to the applicability of the case of Montana Deaconess Medical Center v. Johnson, 232 Mont. 474, 758 P.2d 756 (1988). That case involved a dispute over financial responsibility for medical costs incurred by a defendant who was arrested by city policemen but ultimately charged with a violation of state law. The Court did not find the only related statute, Mont. Code Ann. § 7-32-2222(3), to be of much help and looked to the courts of other states adopting the "nature of the crime" approach as opposed to the "custody and control" approach in holding the county financially responsible for the medical costs.

I do not find the Court's "common law" approach in the Montana Deaconess case to be persuasive here in light of the Court's declared preference for a strict reading of Montana's statutes regarding the treatment of the seriously mentally ill. M.C. v. Department of Institutions, 211 Mont. 105, 682 P.2d 956 (1984); In re H.C., supra; In re M.C., 220 Mont. 437, 716 P.2d 203 (1985); Reiser v. Prunty, 224 Mont. at 8-14.

I find in the provisions of Mont. Code Ann. § 53-21-139(2) further support for the position that the responsibility for precommitment services provided to persons suspected of being seriously mentally ill rests with the counties. That subsection authorizes the Department of Public Health and Human Services to "provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services," which are defined elsewhere in the section as programs designed to provide safe, short-term alternatives to incarceration in jail for seriously mentally ill persons who are taken into protective custody. Like the other statutes in this area, there is no mention in this statute of any responsibility on municipalities arising from the fact that the event which gave rise to the person's detention occurred within the geographic limits of the municipality.

I have been directed to no authority, and my research has disclosed none, which would require a municipality to assume the cost of providing services in this area. The statutes clearly place that financial responsibility on the county of residence of the person suspected of being seriously mentally ill.

THEREFORE, IT IS MY OPINION:

Subject to the limitations contained in Mont. Code Ann. § 53-21-132(2), the county of residence is financially responsible for costs incurred in connection with the detention and precommitment custody of persons taken into protective custody pursuant to Mont. Code Ann. § 53-21-124 or -129.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/bjh