

Opinion No. 90-15

September 17, 1990

OPINION OF: HAL STRATTON, Attorney General

BY: Katherine Zinn, Assistant Attorney General

TO: Chet Walter, District Attorney, First Judicial District, P.O. Box 2041, Santa Fe, New Mexico 87504

QUESTIONS

Whether the time limitation contained in NMSA 1978, Section 43-1-10(D) regarding confinement of mentally ill persons in a detention facility, is tolled during periods of legal holiday or weekends.

CONCLUSIONS

No.

ANALYSIS

This question has arisen because oftentimes, on weekends or legal holidays, detention officials are unable to obtain the necessary court orders for the transportation of mentally ill persons to evaluation facilities. These detention officials are often reluctant to release a mentally ill person simply because the time requirements contained in 43-1-10(D) have expired.

Section 43-1-10(A) provides that peace officers may detain a person for emergency mental health evaluation and care under the following limited circumstances:

1. the person is otherwise subject to lawful arrest; or
2. the peace officer has reasonable grounds to believe the person has just attempted suicide; or
3. the peace officer, based upon his own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others, and that immediate detention is necessary to prevent such harm... or
4. a licensed physician or a certified psychologist has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

Under Section 43-1-10(D), any person so detained shall, whenever possible, be immediately transported to an evaluation facility. Section 43-1-10(D) further provides in relevant part:

Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and no person taken into custody under the provisions of the code shall remain in a detention facility longer than necessary **and in no case longer than twenty-four hours....**

(Emphasis Added.)

Statutes must be given effect as written and, where free from ambiguity, there is no room for construction. *Wittkowski v. Corrections Department of New Mexico*, 103 N.M. 526, 710 P.2d 93 (Ct. App. 1985); *State v. Elliott*, 89 N.M. 756, 557 P.2d 1105 (1977). The provisions of Section 43-1-10(D) are clear and unambiguous -- mentally ill persons being held in detention facilities pending transfer to a proper evaluation facility may not be so confined for a period longer than twenty-four hours. By including this specific time limitation, and failing to make exceptions for weekends and legal holidays, the legislature intended the twenty-four hour limitation to apply in all instances, including weekends and legal holidays. We cannot ignore the specific time limitation, and we must give Section 43-1-10(D) effect as it is plainly written. *Id.* The legislature intended that detention facilities should only be used to provide shelter for mentally ill persons in cases of extreme emergency and in no event longer than twenty-four hours.

ATTORNEY GENERAL

HAL STRATTON Attorney General