

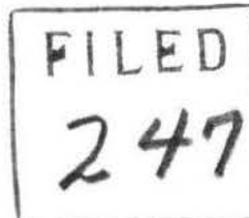
PROBATE COURT:
STATE MENTAL HOSPITALS:
INSANE PERSONS:

With respect to the commitment and hospitalization of the mentally ill, Sections 202.780 to 202.870, RSMo: (1) The probate court may order that commitment for hospitalization pursuant to Section 202.807 be to the Division of Mental Diseases; (2) The Division has authority under Section 202.823 to transfer an involuntary patient from one State hospital to another State hospital without the concurrence of the court ordering the hospitalization.

OPINION NO. 247

June 22, 1965

Honorable George A. Ulett, M.D.
Director
Division of Mental Diseases
722 Jefferson Street
P. O. Box 687
Jefferson City, Missouri



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vault

Dear Dr. Ulett:

This is in response to your opinion request which is as follows:

"With respect to Section 202.807, entitled 'Hospitalization on Court Order - Judicial Procedure', an opinion is requested as to whether or not the court may, upon completion of the hearing and a finding that the proposed patient is mentally ill, order that the patient be committed to the Division of Mental Diseases for 'hospitalization for an indeterminate period' or for a 'temporary observational period' or whether it is mandatory that the court specify in its order the particular place of hospitalization.

"Also, I would appreciate knowing whether Section 202.823, relative to the transfer of involuntary patients from one public hospital to another requires the concurrence of the court that committed the patient."

The sections you have cited pertain to the commitment and hospitalization of the mentally ill within the scope of Sections 202.780 RSMo 1959, to 202.870 RSMo 1959.

Section 202.807, RSMo 1959, contains the judicial procedure for involuntary hospitalization of mentally ill persons and provides in part:

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"5. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is mentally ill, and is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization, it shall order his hospitalization for an indeterminate period or for temporary observational period not exceeding six months; otherwise it shall dismiss the proceedings. If the order is for a temporary period the court at any time prior to the expiration of such period, on the basis of report by the head of the hospital and such further inquiry as it may deem appropriate, may order indeterminate hospitalization of the patient or dismissal of the proceedings. The order of hospitalization shall state whether the individual shall be detained for an indeterminate or for a temporary period and if for a temporary period, then for how long." (Emphasis ours.)

This authority given the probate court should be construed in light of the authority given the Division to transfer patients as provided by Section 202.823, RSMo 1959, as follows:

"1. The division may transfer, or authorize the transfer of an involuntary patient from one public hospital to another if the division determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given to his legal guardian, parents, and spouse, or, if none be known, the nearest known relative or friend. In all such transfers, due consideration shall be given to the relationship of the patient to his family, legal guardian or friends, so as to maintain relationships and encourage visits beneficial to the patient.

"2. Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of an individual heretofore ordered hospitalized pursuant to law or hereafter pursuant to section 202.807 in any hospital for care or treatment of the mentally ill and that such individual is eligible for care or treatment in a hospital or institution of such agency, the division may cause his transfer to such agency of the United States for hospitalization. Upon effecting any such transfer, the court ordering hospitalization, the legal guardian, spouse, and parents, or

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if none be known, his nearest known relative or friend shall be notified thereof immediately by the division. No person shall be transferred to an agency of the United States if he is confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness unless prior to transfer the court originally ordering confinement of such person enters an order for the transfer after appropriate motion and hearing. Any person transferred to an agency of the United States shall be deemed to be hospitalized by such agency pursuant to the original order of hospitalization."

It is noted that the word "hospitalization" is used throughout Section 202.807 (5) and this term in its usual sense would mean, as defined in Black's Law Dictionary, Fourth Edition (1951), "Placing a sick person in a hospital". It is obvious that no other meaning could be ascribed to the language or to the intent of the Legislature.

The term "hospital" is defined in Section 202.780, RSMo 1959, as "A public or private hospital or institution, or part thereof, equipped to provide inpatient care and treatment for the mentally ill." It appears, therefore, that the probate court may order the hospitalization in either a public or private hospital or institution. Section 202.807 (5) does not, however, require that the court designate a particular hospital and insofar as hospitalization within a facility under the control of the Division of Mental Diseases is concerned, the designation of a sole facility would not restrict the authority of the Division to transfer the patient as provided in Section 202.823, supra.

Section 202.823 clearly authorizes the "division" (defined in Section 202.780 as "the division of mental diseases"), to transfer or authorize the transfer of involuntary patients from one public hospital to another as the Division determines would be consistent with the medical needs of the patient. This section requires notice to certain interested persons and it is noteworthy that subsection 1 does not require notice to the court ordering hospitalization although subsection 2 in reference to a transfer by the "division" to an "agency of the United States", does require notice to the court ordering the hospitalization. The Division, therefore, is solely vested with the authority to transfer such patients from one State hospital to another State hospital and may do so without the concurrence of the probate court. It also follows that the probate court cannot restrict the commitment to a certain facility within the Division and, therefore, lacking such authority, Section 202.807 (5) authorizes the probate court to commit the patient to the Division of Mental Diseases for hospitalization.

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CONCLUSION

With respect to Sections 202.780 to 202.870, RSMo 1959, relating to the commitment and hospitalization of the mentally ill, it is the opinion of this office that:

(1) The probate court may order that commitment for hospitalization pursuant to Section 202.807, RSMo 1959, be to the Division of Mental Diseases, and such order need not specify that the patient be committed to a particular facility within the Division; (2) The Division of Mental Diseases has the authority under Section 202.823, RSMo 1959, to transfer or authorize the transfer of an involuntary patient committed under provisions of Section 202.807, RSMo 1959, from one State hospital to another State hospital without the concurrence of the court ordering hospitalization.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Yours very truly,


NORMAN H. ANDERSON
Attorney General