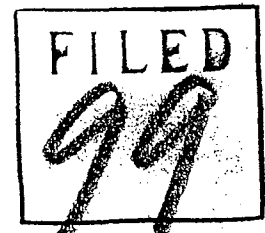


INSANE PERSONS: Subparagraph 3, Section 7, S.B. No. 59, 68th General Assembly provides mechanics for extending proceeding for temporary, emergency confinement under Secs. 5 or 6 of Act into formal judicial proceeding for involuntary hospitalization under Sec. 3 of Act. Court appointing examining physicians under Sec. 3 of Act may appoint physicians of own choosing except when patient confined in municipal hospital, when physicians must be members of staff of municipal hospital. Act contains no provision authorizing state hospital to condition giving of voluntary hospitalization to indigent persons only after hearing and commitment. Line 3, Sec. 8 of Act should be so read as to employ punctuation by use of a comma immediately after the word "court" appearing therein.

September 26, 1955

Honorable Scott O. Wright  
Prosecuting Attorney  
Boone County  
Columbia, Missouri



Dear Sir:

This opinion is rendered in reply to your recent request in which you enclosed the letter of inquiry addressed to you by the Honorable Howard B. Lang, Judge of the Probate Court of Boone County. For the purpose of addressing replies to questions posed in Judge Lang's letter, we quote the same in full as follows:

"Senate Bill No. 59, which becomes effective law on the 29th of this month:- Page 9 of the bill, being subsection 3 of Section 7 contains the following:

"If the proceeding under section 3 is instituted within the five-day period, the court shall hold the hearing therein provided for within ten days thereafter and shall order that all preliminary acts required by section 3 be performed before the hearing."

"Page 3, Section 3, subsection 3 provides that after the commencement of proceedings the court shall appoint two licensed physicians to examine the proposed patient and report their findings as to the mental condition, and if the report is to the effect that the patient is mentally ill then the court is to fix a date for hearing, - subsection 5, - etc.

Honorable Scott O. Wright

"In the first place, if three physicians report to the court that the patient is mentally ill, the hearing would seem rather superfluous so far as additional medical testimony would be concerned, - though it does give the patient the right to appear and to be represented by counsel, etc., which would be his constitutional privilege.

"But suppose the patient is already in the hospital before hearing is set, under the provisions of subsection 3 of Section 7, above quoted, is it required that we send two physicians over to the hospital to examine him and report, or that we employ two Fulton physicians to go to the hospital for examination and report? Considering the number of patients from Boone County, that would be expensive business, if, indeed, we could secure the services of Columbia or Fulton physicians for such trips away from their own busy offices.

"Subsection 3 of section 3, page 3, contains this language:

"'except that if the person is confined in a municipal hospital and is indigent, the examining physicians shall be members of the staff of the municipal hospital.'

"If this phrase is ruled to intend also physicians of the State Hospital (which, like the municipal hospital is a tax supported institution,) it would make the procedure much more practicable, inasmuch as the patient, under this arrangement, is already in the institution. Otherwise, if the requirement be that we would have to send Columbia physicians over to Fulton to make examination and report, it is practically unworkable at all.

"Besides, who would be more competent to give an opinion as to mental condition than the hospital staff physicians?

Honorable Scott O. Wright

"There are other sections of this new law which present difficulties in administration, but just now we need advice from the Attorney General as to just what is included by the phrase in subsection 3 of section 7, 'shall order that all preliminary acts required by section 3 be performed before the hearing.'

"In the white sheet sent out by the Division of Mental Diseases, at the bottom thereof, we find 'Except in case of indigency payment for care \* \* \* will be required upon admission to hospital.' This is the blank for voluntary hospitalization.

"Question: Will the indigent be granted 'voluntary hospitalization'? - without hearing or commitment?

"Section 8, subsection 1, line 3: should there be a comma after 'county court'? If so, it would mean the county court, except in City of St. Louis or class one county, would provide for transportation, - and in St. Louis or class one counties, the probate court would do so. As it is now, I can't tell what is meant.

"As I understand, 'voluntary hospitalization' will be granted upon application, payment for 30 days and a bond guaranteeing future payments, and the certificate of one physician; - in which case no action will be taken by the probate court in the matter. - Is this correct?

"Inasmuch as this law becomes effective August 29th, and we have several cases pending right now, we would appreciate prompt attention to this request for clarification."

Inquiries to be answered in this opinion bring into consideration Sections 3, 5, 6, 7, 8, 17 and 27 of Senate Bill No. 59, passed by the 68th General Assembly of Missouri, and we quote at this point Sections 3, 5, 6, 7 and 8, as follows:

Honorable Scott O. Wright

"Section 3. 1. Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the probate court by a friend, relative, spouse, or guardian of the individual, or by a licensed physician, a health or public welfare officer, or the head of any public or private institution in which such individual may be. Any such application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that the individual is mentally ill and should be hospitalized or a written statement by the applicant that the individual has refused to submit to examination by a licensed physician.

"2. Upon receipt of an application the court shall give notice thereof to the proposed patient, and to his legal guardian or, if he has no legal guardian, to his spouse, parent or nearest known relative or friend.

"3. As soon as practicable after notice of the commencement of proceedings is given the court shall appoint and shall fix a reasonable compensation for two licensed physicians to examine the proposed patient and report to the court their findings as to the mental condition of the proposed patient and his need for custody, care, or treatment in a mental hospital, except that if the person is confined in a municipal hospital and is indigent, the examining physicians shall be members of the staff of the municipal hospital."

"4. The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on his health.

"5. If the report of the two licensed physicians is to the effect that the proposed patient is not mentally ill, the court without taking any further action may terminate the proceedings and dismiss

Honorable Scott O. Wright

the application; otherwise, it shall forthwith fix a date for and give notice of a hearing to be held not less than five nor more than fifteen days from receipt of the report.

"6. The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the court in its discretion may receive the testimony of any other person. The proposed patient shall not be required to be present, and all persons not necessary for the conduct of the proceedings shall be excluded, except as the court may admit persons having a legitimate interest in the proceedings. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and shall not be bound by the rules of evidence. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court shall appoint counsel.

"7. 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 a 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.

Honorable Scott Q. Wright

"8. 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.

"9. The court is authorized to appoint a special commissioner to assist in the conduct of hospitalization proceedings. In any case in which the court refers an application to the commissioner, the commissioner shall cause the proposed patient to be examined promptly and on the basis thereof shall either recommend dismissal of the application or hold a hearing as provided in this section and make recommendations to the court regarding the hospitalization of the proposed patient.

"10. No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone for healing, may be ordered detained or committed under the provisions of this chapter unless substantial evidence is produced upon which the court finds in addition to the other findings required by this act, that he is or would likely become dangerous to himself, or to the person or property of others, or unless he or his legal guardian, if any, consent to such detention or commitment. This chapter does not authorize any form of compulsory medical treatment of any person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone for healing.

"11. Nothing in this Section will be construed to prohibit the temporary emergency treatment of any person who is acting or appears to be immediately about to act in such a manner as to endanger the person, lives, or property of himself or others, or both.

"Section 5. 1. Any individual may be admitted for temporary confinement to a hospital upon:

"(1) Written application to the hospital by any health or police officer or any other person stating his belief that the individual is likely

Honorable Scott O. Wright

to cause injury to himself or others if not immediately restrained, and the grounds for such belief; and

"(2) A certification by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his illness, is likely to injure himself or others if not immediately restrained.

"2. An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after the expiration of three days after the date of examination.

"3. Such a certificate, upon indorsement for such purpose by a judge of any court of record of the county in which the individual is present, shall authorize any health or police officer to take the individual into custody and transport him to a hospital as designated in the application.

"Section 6. 1. Any health or police officer may take an individual into custody, apply to a hospital for his admission and transport him thereto for temporary confinement if such officer has reason to believe that;

"(1) the individual is mentally ill and, because of his illness is likely to injure himself or others if allowed to be at liberty pending examination and certification by a licensed physician; or

"(2) the individual, who has been certified under Section 5 as likely to injure himself or others, cannot be allowed to remain at liberty pending the indorsement of the certificate as provided in that section.

"2. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the officer's belief.

Honorable Scott O. Wright

"Section 7. 1. Within five days after the admission of any person under the provisions of sections 5, or 6 the head of the hospital shall notify the probate court of the county of residence of such patient. Such notification shall contain the full name of the patient, his address, manner of admission, the name of his next of kin, spouse or guardian, and such other information concerning the patient as may be necessary.

"2. Upon receipt of the notice the judge shall note it on his docket and if no proceeding is instituted under section 3 by any person authorized to do so within five days, he shall order the patient's release. The head of the hospital upon receipt of the order of release shall release the patient immediately.

"3. If the proceeding under section 3 is instituted within the five-day period, the court shall hold the hearing therein provided for within ten days thereafter and shall order that all preliminary acts required by section 3 be performed before the hearing. The court may order the temporary confinement continued until the rendition of judgment in the proceeding, but the judgment shall be rendered not later than five days after the end of the hearing.

"Section 8. 1. Whenever an individual is about to be hospitalized under the provisions of sections 3, 4, 5 or 6, the county court or the probate court if the individual is a resident of the City of St. Louis or a class one county, upon the request of a person having a proper interest in the individual's hospitalization, and if the court finds that the individual is entitled to be hospitalized as a county patient, or that such action is necessary for the individual's physical and mental health, shall arrange for the individual's transportation to the hospital with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. Whenever practicable, the individual to be hospitalized shall be accompanied by one or more of his friends or relatives.



Honorable Scott O. Wright

"2. Pending his removal to a hospital, a patient taken into custody or ordered to be hospitalized pursuant to this act may be detained in his home, a licensed foster home, or any other suitable facility under such reasonable conditions as the probate judge may fix, but the patient, except because of and during an extreme emergency, shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. Reasonable measures, including provision for medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section shall be taken."

The first pointed question to which this opinion is addressed is found on page two of Judge Lang's letter of August 20, 1955, and we quote such portion of the inquiry as follows:

"There are other sections of this new law which present difficulties in administration, but just now we need advice from the Attorney General as to just what is included by the phrase in subsection 3 of section 7, 'shall order that all preliminary acts required by section 3 be performed before the hearing.'"

Section 7 of the Act is concerned with admissions under Sections 5 or 6 of the Act, which sections relate solely to temporary, emergency confinement in a hospital. Section 3 of the Act must be viewed as the formal judicial proceeding for involuntary hospitalization, not of an emergency nature, and referred to in Section 2 of the Act as a procedure for "(1) Hospitalization on court order, judicial procedure." Under Section 7 of the Act, when temporary, emergency confinement has been effected under either Section 5 or 6 of the Act, we find that the hospital is allowed five days to notify the probate court of the county of residence of the patient confined. On receipt of such notice the probate judge makes a docket entry of having received such notice. If no person has instituted a formal judicial proceeding for involuntary hospitalization under Section 3 of the Act within five days after docketing the notice, the probate judge is obliged to order the patient's release from temporary, emergency confinement effected under Sections 5 or 6 of the Act.

Honorable Scott O. Wright

We now come to a consideration of subparagraph 3 of Section 7 of the Act. This subparagraph 3 comes into play only in the event that a formal judicial proceeding for involuntary hospitalization under Section 3 of the Act has been instituted subsequent to temporary, emergency confinement. At this point we observe the necessity for the following language directed to the probate court and found in subparagraph 3 of Section 7 of the Act:

"If the proceeding under section 3 is instituted within the five-day period, the court shall hold the hearing therein provided for within ten days thereafter and shall order that all preliminary acts required by section 3 be performed before the hearing.\* \*"  
(Emphasis added.)

By incorporating the above quoted provision in Section 7 of the Act, the mechanics for extending a proceeding for temporary, emergency confinement under Sections 5 or 6 of the Act, into a formal judicial proceeding for involuntary hospitalization under Section 3 of the Act becomes obvious.

Having disclosed the purpose of subparagraph 3 of Section 7 of the Act, we feel that consideration should next be given to the following question appearing on page one of Judge Lang's letter:

"But suppose the patient is already in the hospital before hearing is set, under the provisions of sub-section 3 of Section 7, above quoted, is it required that we send two physicians over to the hospital to examine him and report, or that we employ two Fulton physicians to go to the hospital for examination and report?"

A reading of Section 7 of the Act will disclose that the only instance when a patient will be in the hospital at the time a hearing is had under subparagraph 3 of said Section 7, is when he is there by reason of temporary, emergency hospitalization under Sections 5 or 6 of the Act. To find the directive which the probate court is to follow with reference to physical examination of the person about to be proceeded against by formal proceedings outlined in Section 3 of the Act, we must examine subparagraphs 3, 4 and 5 of Section 3.

Before proceedings initiated under Section 3 of the Act even reach the court, the person or persons responsible for initiating the same must append to the application a certificate

Honorable Scott O. Wright

of a licensed physician stating that he has examined the individual, and such examination is not initiated by the court. After proceedings are filed in the court under Section 3 of the Act, we find that subparagraphs 3, 4 and 5 of Section 3 deal with the appointment of two licensed physicians by the court to examine the person proceeded against, and nothing contained therein discloses that the court may not appoint qualified physicians of its own choosing, without regard to their being residents of the county where the proceeding has been instituted. However, in the single instance where the person proceeded against is confined in a municipal hospital and is indigent, the examining physicians appointed must be members of the staff of the municipal hospital. The Act does not contain a similar provision relative to appointment of examining physicians when the person proceeded against is confined in a State maintained hospital, but the reason is quite obvious when we consider that the State maintained hospital is adequately staffed with qualified physicians who can make such examinations by appointment of the court where the proceedings are instituted. We conclude that the court appointing examining physicians under Section 3 of the Act is limited only by the language appearing in subparagraph 3 of Section 3 which provides:

"\* \* \* except that if the person is confined in a municipal hospital and is indigent, the examining physicians shall be members of the staff of the municipal hospital."

The next question to be considered is found on page two of Judge Lang's letter in the following language:

"Will the indigent be granted 'voluntary hospitalization'?-without hearing or commitment?"

The admission of voluntary patients to a private or public hospital is authorized by Section 17 of the Act, which provides:

"Section 17. The head of a private hospital may and the head of a public hospital, subject except in case of medical emergency to the availability of suitable accommodations, shall admit for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being sixteen years of age or over, applies therefor, and any individual under sixteen

Honorable Scott O. Wright

years of age who is mentally ill or has symptoms of mental illness, if his parent or legal guardian applies therefor in his behalf."

Section 17 of the Act, quoted above, does not make any distinction between indigent persons and those able to pay for hospitalization, but we do direct attention to Section 27 of the Act which classifies patients as "private patients" or as "county patients." Subparagraph 3 of Section 27, provides as follows:

"3. If any person is admitted to a state hospital who is unable to pay for care and treatment, the superintendent of the hospital shall notify the county court of the county of residence of the fact and the county court shall hold a hearing on the case within ten days following the notification. If it is determined at the hearing that the person is unable to pay for care and treatment the county court shall order the hospitalization of the person as a county patient. Appeals from the decision of the county court may be taken in the manner provided in sections 49.230 to 49.250, RSMo."

We find no provision in Senate Bill No. 59 which would authorize a state hospital to condition the giving of voluntary hospitalization to indigent persons under Section 17 of the Act only after hearing and commitment, and such state hospital can only look to the procedure set forth in subparagraphs 3, 4 and 5 of Section 27 of the Act for reimbursement for treatment and care given to such indigent person who has been accepted by a state hospital for treatment under authority found in Section 17 of the Act. Of course, under Section 17, just referred to, a private hospital may accept voluntary patients as provided therein, but if an indigent person is accepted as a voluntary patient in such private hospital, the private hospital may not look to the county court for reimbursement under procedures outlined in subparagraphs 3, 4 or 5 of Section 27 of the Act.

Lastly, we take up the inquiry found on page 2 of Judge Lang's letter, reading as follows:

Honorable Scott O. Wright

"Section 8, subsection 1, line 3: should there be a comma after 'county court'? If so, it would mean the county court, except in City of St. Louis or class one county, would provide for transportation,--and in St. Louis or class one counties, the probate court would do so. As it is now, I can't tell what is meant."

Subparagraph 1 of Section 8 of the Act reads as follows:

"Section 8. 1. Whenever an individual is about to be hospitalized under the provisions of sections 3, 4, 5 or 6 the county court or the probate court if the individual is a resident of the City of St. Louis or a class one county, upon request of a person having a proper interest in the individual's hospitalization, and if the court finds that the individual is entitled to be hospitalized as a county patient, or that such action is necessary for the individual's physical and mental health, shall arrange for the individual's transportation to the hospital with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. Whenever practicable, the individual to be hospitalized shall be accompanied by one or more of his friends or relatives." (Emphasis supplied.)

In the course of passage, Senate Bill No. 59 was amended in several particulars. As this Senate Bill was "perfected" we find subparagraph 1 of Section 8, reading, in part, as follows:

"Section 8. 1. Whenever an individual is about to be hospitalized under the provisions of sections 3, 4 or 5, the county court, upon the request of a person having a proper interest in the individual's hospitalization, \* \* \*" etc.  
(Emphasis ours.)

House Substitute for House Committee Amendment No. 5, to Senate Bill No. 59, as perfected, read, in part as follows:

Honorable Scott O. Wright

"Amend Senate Bill No. 59, Page 8, Section 8, Line 3; by inserting after the word 'court' and before the comma the following: 'or the probate court if the individual is a resident of the City of St. Louis or a class one Counties' \* \* \*"

A reading of the amendment quoted above clearly discloses that the only amendment intended to be made in line 3 of Section 8 of the Act was to insert the language "or the probate court if the individual is a resident of the City of St. Louis or a class one Counties." Immediately preceding the amendment the Act had designated the "county court" exclusively as the court to determine whether the patient was to be hospitalized at county expense. The amendment is in the disjunctive and obviously selects the probate court, in the City of St. Louis and in Class One counties, as the court which will determine whether the patient is to be hospitalized at the expense of Class One counties and the City of St. Louis. The language of the amendment will outweigh the directive therein as to the new position of the comma, for to construe the amendment otherwise would result in an unreasonable and absurd construction. License for this interpretation is found in the following language from State ex rel. Geaslin v. Walker, 257 S.W. 470, 302 Mo. 106, 1.c. 124:

"Clearly the use of a comma, or even a period, is not controlling upon the question of proper construction, where such use would result in an unreasonable or absurd construction. Cases may be found in our reports where entirely different words, and in fact words of exactly opposite meaning, have been held to have been intended in place of the word actually used, where the word used was clearly an error and would give an absurd or impossible meaning to the statute."

The plain language of the amendment in this instance indicates that the legislature did not intend to place the power in the county court or the probate court, with a choice being uncontrolled; for the additional language of the amendment directs in what specific instances the probate court may act, to-wit, in those instances where the person to be confined is a resident of the City of St. Louis or a resident of a Class One County. We conclude that line 3, Section 8 of Senate Bill No. 59, as truly agreed to and finally passed, should be so read as to employ punctuation by the use of a comma immediately after the word "court" appearing therein.

Honorable Scott O. Wright

CONCLUSION

It is the opinion of this office that subparagraph 3, Section 7, of Senate Bill No. 59, passed by the 68th General Assembly of Missouri provides the mechanics for extending a proceeding for temporary, emergency confinement under Sections 5 or 6 of the Act into a formal judicial proceeding for involuntary hospitalization under Section 3 of the Act; that the court appointing examining physicians under Section 3 of the Act may appoint qualified physicians of their choosing except when the patient is confined in a municipal hospital, and in such event the physicians chosen must be members of the municipal hospital staff; that the Act contains no provision which would authorize a state hospital to condition the giving of voluntary hospitalization to indigent persons under Sections 17 and 27 of the Act only after hearing and commitment; and that line 3, Section 8 of Senate Bill No. 59, as truly agreed to and finally passed, should be so read as to employ punctuation by the use of a comma immediately after the word "court" appearing therein.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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