

OFFICE OF THE ATTORNEY GENERAL

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W. Forrest Killough
Judge of Probate
Probate Court of Talladega County
P. O. Drawer 755
Talladega, Alabama 35160

Probate Judges - Competency
Hearings - Mental Health

A judge of probate may not order city police to detain or confine a person pending the final outcome of commitment proceedings since such orders should be directed solely to the county sheriff.

Dear Judge Killough:

The Office of the Attorney General has received your opinion request concerning the authority of a judge of probate to order city police to detain a person prior to final commitment proceedings. Specifically you asked:

1. Does the Judge of Probate have the authority to issue a hold order to the City Police Department if the person is confined to the City Jail.
2. Does the Judge of Probate have the authority to issue a pick-up and hold order to the City Police Department, for a person residing in the City.

The response to both of your questions is no. A judge of probate may not order city police to pick up or hold a person who is the subject of commitment proceedings. It is the opinion of the Attorney General that a judge of probate is only authorized to issue such an order to the sheriff of the county in which the person is located.

Section 22-52-7, Code of Alabama 1975, states in part:

When a petition has been filed seeking to have limitations placed upon the liberty of a person pending the outcome of a final hearing on the merits, the probate judge shall order the sheriff of the county in which such person is located to serve a copy of the petition upon such person and to bring such person before the probate judge instanter. ... (Emphasis added.)

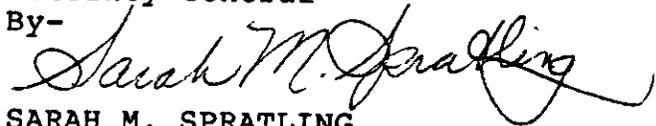
It is clear that in certain circumstances a judge of probate has the authority to order a person detained prior to final commitment proceedings. However, the statute very specifically designates that such an order should issue to a sheriff and not to city police.

A reading of the entire statute governing commitment of mentally ill persons, found at §§ 22-52-1 et seq., Code of Alabama 1975, bolsters this conclusion. The judge of probate and sheriff, both of which are county officials, are mentioned throughout the statute but there is no mention of any municipal officials. Therefore, it would seem that the temporary confinement of persons pending commitment proceedings is the responsibility of the county. For this reason and since the county sheriff is the only official designated to carry out such orders, the Attorney General is of the opinion that a judge of probate may not order city police to pick up or hold persons in city jail pending final commitment hearings.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



SARAH M. SPRATLING
Assistant Attorney General