



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 10, 2021

The Honorable Jansen T. Owen
State Representative, District 106
Post Office Box 249
Poplarville, Mississippi 39470

Re: Housing Pre-Commitment Drug and Alcohol Abuse Respondents in
County Jail

Dear Representative Owen:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, Mississippi's civil commitment statute for those in need of mental health treatment provides for pre-commitment housing in the county jail under certain circumstances. Miss. Code Ann. § 41-21-67(4). However, in the statutes governing individuals in need of treatment for drug and/or alcohol treatment, there is no authority to house such individuals in the county jail pending their commitment to private treatment facilities. Miss. Code Ann. § 41-32-7.

Question Presented

Is there any statutory authority to house respondents to drug and alcohol civil commitment petitions in the county jail pending commitment to either a state or private facility?

Brief Response

No. There is no statutory authority to house respondents to drug and alcohol civil commitment petitions in the county jail pending commitment to either a state or private facility.

Applicable Law and Discussion

There is limited statutory authority to house pre-commitment individuals in need of mental health treatment in a county jail. Miss. Code Ann. § 41-21-67(4). However, there is no corresponding authority for housing respondents to drug and alcohol abuse commitment petitions in a county jail.

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This office has previously opined that there is no indication that the commitment proceedings under Sections 41-21-61 *et seq.* and 41-30-1 *et seq.* are in any way interchangeable. MS AG Op., *Presley* at *1 (Mar. 3, 1994). Additionally, this office has stated that “the legality of detaining respondents to commitment proceedings in jail will depend to a large extent on the facts surrounding each individual case.” MS AG Op., *Bustin* at *1 (Mar. 11, 1986).

While Section 41-31-9 vests the chancellor with the power to enforce writs, including those directed to the sheriff to take an individual into custody and deliver him or her to the director of the proper institution, the sheriff is not authorized to detain the individual in the county jail. The same holds true for Section 41-32-7, which authorizes a chancellor to detain an individual at risk of fleeing the jurisdiction, harming himself, or harming others. However, the authority to detain under Section 41-32-7 pertains only to “a chemical dependency unit, alcohol or drug unit, outpatient house or any other private facility for the treatment of chemically dependent persons” and does not extend to detainment in the county jail.

In conclusion, there is no statutory authority to house individuals in need of alcohol and drug treatment in the county jail while they await commitment at either a public or private treatment facility.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Special Assistant Attorney General