

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 8, 1974

To Dean Fisher, M.D., Commissioner Dept. Health and Welfare
From Andrews B. Campbell, Assistant Dept. Attorney General
Subject Meaning of "forthwith" in P.L. 1973, c. 566.

Your memorandum asking for an interpretation of the term "forthwith" appearing in Chapter 566 of P.L. 1973 quotes the following portion of that Act:

"A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police or the emergency service patrol and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. * * * " P.L. 1973, c. 566 enacting 22 M.R.S.A. § 7118, sub-§2. (Emphasis supplied)

22 M.R.S.A. §7114, sub-§3, states that: "The office shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under § 7117 to 7120. Treatment may not be provided at a correctional institution, except for inmates."

Your memorandum points out that Chapter 566 anticipates the establishment of numerous local facilities for the treatment of intoxicated and incapacitated persons. You also note that because of funding limitations, a single facility may be required to service large geographic areas in the State. It is proposed that in order to avoid requiring the police to drive long distances for the purpose of transporting incapacitated persons to public treatment facilities, the office of Alcoholism and Drug Abuse Prevention is considering the acquisition of "shuttle vehicles" as a means of transportation to public treatment facilities. A limited number of such vehicles may be required to cover a large geographic area.

You ask: "Whether an incapacitated person may lawfully be detained in protective custody in a jail or cell for a reasonable length of time (2-3 hour maximum) while awaiting transportation to a treatment facility." The answer to the question will necessarily depend upon the particular circumstances. Thus, the question cannot be answered with a yes or no. However, it may be stated that under ordinary circumstances an incapacitated person must be taken immediately to an emergency treatment center or treatment facility. Only under exceptional circumstances may an incapacitated person be held in a cell awaiting transportation. In such instances, efforts must be made to segregate detainees from other arrestees or criminals.

"Forthwith" is defined to mean "immediately, promptly." Webster's New Collegiate Dictionary. However, it is also said to mean "...without delay, hence within a reasonable time under the circumstances of the case; promptly and with reasonable dispatch..." Black's Law Dictionary (4th ed.). "Forthwith" at page 782.

The public policy expressly declared in chapters 566 and 582, P.L. 1973, is to remove alcoholics from the criminal and arrest processes and to afford them a continuum of treatment. See, e.g. Section 7102, Chapter 566, section 1361, Chapter 582, P.L. 1973. It must be considered that an "incapacitated" person is by definition in need of treatment, 22 M.R.S.A. §7103 (14); that section 7118 commands that "every reasonable effort to protect his health and safety" shall be made for the incapacitated person, and that section 7118 does contemplate by its terms transportation by the police.

Although the requirement of immediate transportation by detaining officers of incapacitated persons may impose serious administrative burdens on local police officers, the statutory command is clear. In this respect, it must be considered that statutes authorizing restraint of personal liberty are strictly construed.

However, under exceptional or compelling circumstances, immediate transportation to a facility or emergency medical service may not be required. All such circumstances obviously cannot be anticipated. However, the following examples may illustrate where temporary detainment in a cell might or might not be reasonable.

Suppose that law enforcement officers come upon a person who appears to be incapacitated by alcohol and that the officers transport the person to the police station, which has been designated as a pick up location for the "shuttle" van. Assume further that the vehicle used to convey persons to a treatment facility left the station a half hour ago and is en route to the facility and will not return for an hour. The period of time the incapacitated person is kept in protective custody awaiting return of the vehicle may well be reasonable under the circumstances. However, assume additionally that treatment may be available at a hospital emergency room twenty minutes away, and that other means of conveyance is available, detainment in protective custody for an hour probably would be unreasonable. Similarly it would not be reasonable to detain an incapacitated person at the stationhouse while officers determine if other intoxicated persons are likely to be encountered in the community in need of transportation to a treatment facility.

In conclusion, "forthwith" in section 7118 cannot be defined in terms of a specific length of time, nor can all circumstances be foreseen which would justify a stationhouse detention. What exceptional circumstances will justify such a detention will involve considerations of distance to treatment facilities from the stationhouse, distance to emergency medical services, the availability and arrival time of "shuttle" vehicles, the acuteness of the incapacitated person's condition, the need for physical restraint of the incapacitated person, and additional factors. However, the aim of any detaining officer must be to obtain treatment for the incapacitated person by the most expeditious means possible. Ordinarily this will mean immediate transportation to an emergency medical service or treatment facility by the detaining officer.

AN INFORMAL OPINION