

## Opinion No. 56-6496

July 18, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. H. R. Swenson, Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

You have asked our opinion on the question:

"Can provision be made for administrative transfer of mentally ill prisoners to the State Mental Hospital instead of formal commitment?"

You cite transfer by administrative procedure as desirable because less expensive and less time consuming. On this, we agree with you.

However, commitment to the Hospital for the Mentally Ill is regulated by statute and the procedures provided are, in our opinion, exclusive. Two methods are provided; voluntary and involuntary commitment.

Under the first, the hospital may receive a patient upon his application. Section 34-2-2, N.M.S.A., 1953. And discharge is made when the head of the hospital determines that the patient has recovered or otherwise determines hospitalization no longer advisable. Section 34-2-3, N.M.S.A., 1953. It would seem that many of your cases could be handled under the voluntary commitment method and thus necessity for judicial commitment obviated.

It should be kept in mind that time served in the hospital is time served on the prisoner's sentence.

"The time that a prisoner lawfully spends in a hospital for physical or mental illness should be counted as part of his term, even though the hospital is beyond the confines of the prison, . . ." 24 C.J.S. 1229.

And if this be the case, it seems to us, and we hold as our opinion, that upon good deportment while in the hospital, statutory good time may be earned. Thus, there occurs no prejudice to the prisoner who needs and is given treatment at the hospital.

Thus, within the framework of voluntary commitment procedures and in those cases where the prisoner's consent and cooperation can be secured, transfers to the hospital from the Penitentiary and back to the Penitentiary could be effected with minimum expense and time.

However, should the prisoner refuse to give his consent to commitment, the only other method provided therefor is upon judicial order.

"Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the district 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.** . . ." (Emphasis supplied). Section 34-2-5 a, N.M.S.A., 1953.

The language underlined above indicates that administrative transfer in the case where prisoner does not consent is not available. The statute clearly covers the Penitentiary.

It should be observed that should the prisoner's release date occur while the prisoner is at the hospital, his discharge from the Penitentiary is effected and subsequent hospitalization is dependent on the nature of patient's original commitment to the hospital. See Sections 34-2-3 and 34-2-4 on discharge or release of voluntary patients, and Section 34-2-10 on discharge of patients under involuntary commitments.

We trust the above helps answer your inquiries.

By Santiago E. Campos

Assistant Attorney General