



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Karen T. Mullins, Esquire
County Attorney, Wise County
Post Office Box 570
Wise, Virginia 24293-0570

Dear Ms. Mullins:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You seek clarification regarding which law enforcement agency should be tasked with executing an order of emergency custody under § 37.2-808, or a temporary involuntary detention order under § 37.2-810 of the *Code of Virginia*, as well as orders for the transport of persons subject to emergency custody or temporary involuntary detention. Specifically, you ask who, for purposes of those statutes, serves as “the primary law-enforcement agency” for towns that have established police departments but that are located in a county that relies on the sheriff’s office for law enforcement functions.

Response

It is my opinion that when a magistrate orders a law enforcement agency to execute an order subjecting a person to emergency custody or temporary detention, or providing for the transportation of such persons, the magistrate should specify the police department of the town as the “primary law-enforcement agency of the jurisdiction” when a town is served by its own police department. If the town is not served by its own police department, the sheriff’s office of the surrounding county is tasked with executing such orders and with transporting persons subject to such orders.

Applicable Law and Discussion

Sections 37.2-808 and 37.2-810 govern the procedures for the execution of emergency custody orders and orders of involuntary commitment, and the associated need to transport such persons. Section 37.2-808 provides, in relevant part:

C. The magistrate issuing an emergency custody order shall specify the *primary law-enforcement agency and jurisdiction* to execute the emergency custody order and provide transportation. . . . When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the *specified primary law-enforcement agency* to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. . . .

D. In specifying the *primary law-enforcement agency and jurisdiction* for purposes of this section, the magistrate shall order the *primary law-enforcement agency* from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the *primary law-enforcement agency* [as opposed to an alternative transportation provider], provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the *primary law-enforcement agency* from the particular jurisdiction within the community services board's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the *primary law-enforcement agency* from the jurisdiction where the person is presently located to execute the order and provide transportation. (Emphasis added.)

The provision addressing the transportation of persons subject to temporary detention similarly requires the magistrate to "specify the law enforcement agency to execute the order and provide transportation,"¹ and provides that in "specifying the primary law-enforcement agency and jurisdiction ... the magistrate shall specify . . . the law-enforcement agency of the jurisdiction in which the person resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation."²

Your inquiry concerns two issues: 1) whether the sheriff's office or the police department serves as the primary law enforcement agency of a jurisdiction, and 2) whether the term "jurisdiction" as used in §§ 37.2-808 and 37.2-810 refers to counties only or also includes political subdivisions located within the boundaries of county.

With respect to the first aspect of your question, Virginia law affords localities options with respect to law enforcement. Generally, every county and city is required to elect a sheriff.³ The duties of a sheriff include the duty to enforce the law, to assist in the judicial process, and to oversee the custody and maintenance of all prisoners confined in the jail.⁴ In addition, § 15.2-1701 authorizes any locality, which includes towns,⁵ to "provide for the organization of its authorized police forces." If a locality opts to have a police department, the chief of police serves as the chief law-enforcement officer of that locality and the police force is given the primary law-enforcement responsibility for that jurisdiction.⁶

A 2004 opinion of this Office has addressed this issue in the context of emergency custody and temporary detention orders.⁷ It concluded that "the General Assembly intends the city and county police

¹ VA. CODE ANN. § 37.2-810(B) (2010).

² Section 37.2-810(A). Note, however, that if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located must execute the order and provide transportation.

³ VA. CODE ANN. § 15.2-1609 (2008).

⁴ *Id.*

⁵ "Locality" "shall be construed to mean a county, city, or town . . ." Section 15.2-102 (2008).

⁶ Section 15.2-1701 (2008).

⁷ 2004 Op. Va. Att'y Gen. 155. See also 1996 Op. Va. Att'y Gen. 161, 162-63 (providing explanation of the respective responsibilities of sheriffs' offices and police departments in fulfilling the requirements of the predecessor statutes to current §§ 37.2-808 and 37.2-810 and noting that any law-enforcement officer requested by a court to execute either order should do so without delay).

departments and, and sheriff's offices in counties without police departments, that perform the primary law-enforcement functions to execute emergency custody orders and provide transportation for emergency medical evaluation or treatment."⁸ The opinion, however, further concluded that the magistrate, in issuing temporary detention and transportation orders, could specify either the police department or the sheriff's office to execute them.⁹ This second conclusion was based on the fact that, while the statute providing for emergency custody orders required specification of the *primary* law-enforcement agency, the statute governing temporary detention orders did not include the modifier "primary" thereby giving the magistrate discretion. The temporary detention statute subsequently was amended in 2009, with "primary" inserted in relevant portions, and now reads more like the emergency custody and transportation statute.¹⁰ I therefore now conclude that in jurisdictions served by police departments, the police department rather than the sheriff is to execute both emergency custody and temporary detention orders and to provide transportation pursuant to such orders.

Turning to what constitutes the appropriate "jurisdiction" under the statutes, I note that the 2004 opinion also addressed this issue, stating "when a particular word in a statute is not defined therein, and the word should be accorded its ordinary meaning" and "in the absence of a statutory definition, the plain and ordinary meaning of the term in controlling."¹¹ "Jurisdiction" remains undefined in the current statutes. As the prior opinion found, "jurisdiction" generally means a "geographic area within which political or judicial authority may be exercised."¹² As such, "jurisdiction" encompasses any locality or political subdivision, so that if a town has organized its own police department, that department, rather than the surrounding county's sheriff's office or police department is the primary law-enforcement agency. If the town does not have its own police department, then the responsibility for the orders and accompanying transportation falls to the county police department if there is one, and to the sheriff's office if there not.

This conclusion is supported by the language of § 37.2-810(C), which provides that a law enforcement officer "may lawfully go or be sent beyond the territorial limits of county, city or *town* in which he serves . . . for the purpose of executing any temporary detention order pursuant to [§ 37.2-810,]" and by § 15.2-1724, which similarly provides that "[w]henver the necessity arises . . . during execution of the provisions . . . relating to orders for temporary detention or emergency custody . . . the police officers and other officers, agents and employees of *any* locality . . . may . . . lawfully go or be sent beyond the territorial limits of such locality." (Emphasis added). These provisions demonstrate that the Code clearly contemplates that the police departments of towns may be specified by a magistrate to execute emergency custody and temporary detention orders and to provide transportation for those subject to them.

In sum, I conclude that, as with counties and cities,¹³ the General Assembly intends the "primary law-enforcement agency" of a town to mean the town's police department in towns that have established

⁸ 2004 Op. Va. Att'y Gen. at 158.

⁹ *Id.*

¹⁰ 2009 Va. Acts ch. 112; 2009 Va. Acts ch. 697. I note that § 37.2-810 does not use the adjective "primary" to modify every use of the term "law-enforcement agency," but the fact that § 37.2-810(A) now reads "In specifying the *primary* law-enforcement agency and jurisdiction for purposes of *this section*, the magistrate shall specify...." is significant and, in my view, dispositive. VA. CODE ANN. § 37.2-810(A) (emphasis added).

¹¹ 2004 Op. Va. Att'y Gen. at 158.

¹² *Id.*

¹³ *Id.* at 157-58.

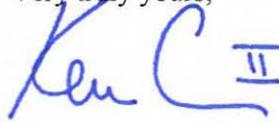
such departments, and the sheriff's office of the surrounding county only when no police department serves the town or county.

Conclusion

Accordingly, it is my opinion that when a magistrate orders a law enforcement agency to execute an order subjecting a person to emergency custody or temporary detention, or providing for the transportation of such persons, the magistrate should specify the police department of the town as the "primary law-enforcement agency of the jurisdiction" when a town is served by its own police department. If the town is not served by its own police department, the sheriff's office of the surrounding county is tasked with executing such orders and with transporting persons subject to such orders.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General