



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

October 10, 1975

The Honorable Ted Butler
Criminal District Attorney
County of Bexar
San Antonio, Texas 78204

Opinion No. H- 714

Re: Whether a writ of habeas corpus
is available to a proposed patient
under an order for protective custody
pursuant to article 5561c-1, V. T. C.S.

Dear Mr. Butler:

You have requested our opinion concerning whether a writ of habeas corpus is available to a proposed alcoholic patient under an order for protective custody.

Article 5561c, section 9(c), V. T. C. S., provides that upon the filing of a petition and a Certificate of Medical Examination for Alcoholism which states that it is:

the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody. . . .

While section 11 of article 5561c recognizes the availability of a writ of habeas corpus for one committed to the Texas Commission on Alcoholism, it contains no provision which would authorize the issuance of a writ of habeas corpus for one in protective custody under section 9(c).

However, article 1, section 12 of the Texas Constitution provides:

The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

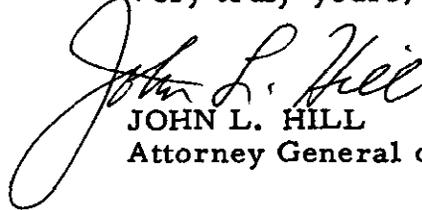
In our opinion this provision of the Texas Constitution provides the remedy of habeas corpus to persons held in protective custody pursuant to article 5561c,

section 9(c). See Code Crim. Proc. arts. 11.01 and 11.64; Ex parte Ramzy, 424 S. W. 2d 220 (Tex. Sup. 1968); Ex parte Calhoun, 91 S. W. 2d 1047 (Tex. Sup. 1936); Strode v. Silverman, 217 S. W. 2d 454 (Tex. Civ. App. --Waco 1949, writ ref'd). Of course, the issue at a habeas corpus hearing is the legality of the custody involved. Clark v. Matthews, 5 S. W. 2d 221 (Tex. Civ. App. --San Antonio 1928, no writ).

SUMMARY

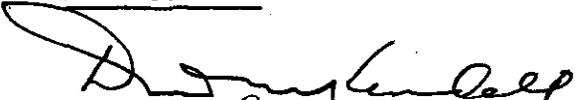
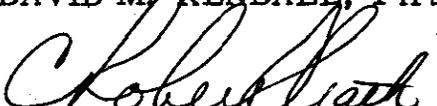
A writ of habeas corpus is available to a proposed alcoholic patient held under a writ of protective custody.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant
C. ROBERT HEATH, Chairman
Opinion Committee

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