

Inmate Housing Current Issues

Sheriff Steve Rushing

Lincoln County Sheriff's Office



- Graduate of the University of Southern Mississippi
- 28 years in law enforcement
- 18 years as Sheriff
- member of MS Sheriff's Association, past President 2012-2013, 2018-2019
- member of National Sheriff's Association

The Big Question!

When does a city inmate become a county inmate in relation to the housing, medical, and food cost?

First:

I am not a lawyer. This class is for training and information
ONLY!

Anything discussed here today you need to run by your county attorney.

Reasons behind the request for a opinion:

1. In 2017 the Mississippi Rules of Criminal Procedure began requiring Sheriffs and courts to have jail census reviews to identify pre-trial inmates that have been in local jails over 90 days without being indicted.
2. One of the issues we discovered was that municipal agencies were not turning in case files for grand jury which delays the pre-trial inmate from indictment.
3. These city agencies were not bearing the cost for the inmate once the city court bound over that inmate to grand jury. The cities would bound an inmate over for grand jury within days of an arrest and the county would have to pay the full cost of inmates for months.

Office of the Attorney General January 28, 1981
Honorable James Hall

Question-

When does a city prisoner become a county prisoner

My Board of Supervisors needs your interpretation of the law and advice as to when a prisoner who has been arrested by the city police on a felony committed in the city limits becomes a county prisoner for purposes of city-v-county liability for payment of housing, meals and medical expenses for said prisoner, and city-v-county entitlement to work such prisoner on the city or county work crew.

Hall, continued

Response-

It is the opinion of this office that such prisoner becomes a county prisoner for such purposes when he is bound over to the county grand jury at a preliminary hearing held by the city police justice (or waiver of such preliminary hearing by the prisoner).

Bill Allain

Attorney General

1981 WL 156672 (Miss.A.G.)

- For 43 years *Hall* opinion has been the rule for when a city inmate becomes a county inmate for the purpose of cost and housing.
- *Hall* did not cite any law, prior opinion, or court ruling in making this determination.
- *Hall* mentioned at the end two other rulings, *Garner*, November 12, 1980, and *Montone*, September 15, 1980
- *Montone* discussed housing county prisoners in city jails and *Garner* mentioned state statute 47-1-39 which is the key to the housing issue.

MS Code § 47-1-39

Municipal prison and prisoners; municipality to pay expenses of jail officer education courses.

- The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, **and to contract with the board of supervisors,** which is empowered in the premises, for the use of the county jail by the municipality

February 14, 2024

To: Honorable Mississippi Attorney General Lynn Fitch

From: Sheriff Steve Rushing

RE: Opinion Request

I am researching the legal authority when a “city prisoner” becomes a “County prisoner” for the purpose of the housing and medical cost associated with the prisoner. The prior opinion I have found on the issue is ***James M Hall dated January 28, 1981***. It states that it is the opinion of your office that a city inmate become a county inmate once they are bound over to the county grand jury. Below is the question I have concerning that opinion:

1. ***Hall*** does not reference any statute to support the opinion. Can you provide a statute or court ruling which supports the ***Hall*** opinion on when a city prisoner becomes a county prisoner?
2. Other opinions refer to MS Code Annotated (1972) 47-1-39 in which a city may contract housing with the county. If this statute governs the process by which a city can contract with a county to hold prisoners, may the county include in the contract that a city inmate will not become a county prisoner until said prisoner is indicted by the county grand jury?

April 4, 2024
The Honorable Steve Rushing
MS Attorney General Opinion

Re: Housing Municipal Prisoners in the County Jail

Questions Presented:

1. Is there statutory authority or case law stating that a city prisoner becomes a county prisoner when bound over to the county grand jury at a preliminary hearing?
2. Does Mississippi Code Annotated Section 47-1-39 authorize a county to include in the contract that a city inmate will not become a county prisoner until said prisoner is indicted by the grand jury?

Rushing.. Continued

Response:

1. We are not aware of any statutory authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the county grand jury at a preliminary hearing.
2. If a county and municipality choose to contract with one another for the holding of municipal prisoners in the county jail pursuant to Section 47-1-39, said contract should include the terms negotiated between the parties in accordance with the law. We are unable to officially opine as to the terms or interpretation of a contract.

Municipal inmates

If your jail houses municipal inmates, then you need a contract in place that defines:

- Define when the county takes over the cost of inmate
- Cost per day for inmate
- Who is responsible for inmate medical
- Defines when that inmate becomes a county inmate (Ag opinion *Rushing, April 4, 2024*)
- Contract should give the Sheriff the right to refuse a municipal inmate if in medical distress, requiring the inmate to be cleared by medical first.
- Contract is between the board of supervisors and the municipal city board.

Sheriff Bill Rasco
Office of the Attorney General
September 5, 2008

Question-

1. The Board of Supervisors in Desoto County stated that unless the cities of this county paid the county jail for their city inmates, the county jail would no longer house them. As Sheriff, I need to know if the Board of Supervisors has the authority to make the Sheriff's Department adhere to this rule.

Rasco, Continued..

Answer-

As this statute (Section 47-1-39) reflects, the city may construct its own jail or contract with the county to house the municipal inmates. Absent the contract there is no requirement that the county house municipal inmates.

The jail is county property and therefore the statute provides that the contract is to be entered into between the governing authorities of the municipality and the board of supervisors, which is the governing authority of the county. The Sheriff is bound by the terms of the contract, if one exists. *If there is no contract then the board of supervisors may refuse to house city inmates in the county jail.*

OPTIONS:

1. City can agree to terms or whatever both boards agree on as long as they do not violate law.
2. Cities could work with DA office and request more Grand Jury sessions
3. According to a recent meeting with crime lab, they stated that they would rush cases if court was approaching or special request.
4. City can build their own jail.

What is one thing a city may do concerning inmate housing cost that a county can not do?

Charge the cost back to the inmate!

Miss. Code Ann. § 21-23-7

Powers and duties of municipal judge; mayor serving as municipal judge.

(11) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

Jail cost per day — actual jail cost paid by the municipality but not to exceed \$ 35.00

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