



City Inmates in County Jails: Where do we go from here?

Miss. Ass'n Supervisors Annual Meeting
Summer 2026

Will Allen

Butler Snow

HOLD ON

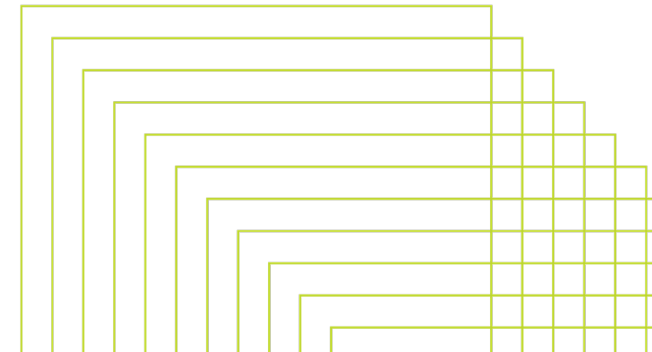
- I am not a duly elected County official.
- I am not your board attorney.
- My advice is general: you and your Board attorney must make decisions here.
- This presentation does not create an attorney-client relationship between you, your County and me.

INTERESTING

- This program relies on statutes and AGs opinions.
- No appellate decision has touched these issues.

CITY OPTIONS FOR HOUSING DETAINEES

- Miss. Code Ann. § 47-1-39(1)
 - The governing authorities of municipalities shall have the power
 1. To construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and
 2. To contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality.
 - These are the only two choices.



WANT TO BUILD A JAIL?

Jail Size	Approximate Cost Range
100 beds	\$25M-\$50M
200 beds	\$50M-\$100M
300 beds	\$75M-\$150M
500 beds	\$125M-\$250M+

THE CONTROVERSY

- The vast majority of Municipalities do NOT have Jails.
 - Thus, County jails regularly house municipal inmates.
 - A County and a City agree to the arrangement for a set fee per day.

CRITICAL QUESTIONS FOR COUNTIES

- When do City detainees become County detainees?
- How much can a County charge municipality for housing City detainees?

**WHEN DO CITY
DETAINEES BECOME
COUNTY DETAINEES?**



HISTORICALLY – BOUND OVER

- A city prisoner becomes a county prisoner **when he is bound over** to the county grand jury or waives his right to a preliminary hearing. *Gilfoy*, 1996 WL 562748, at *1 (Miss. A.G. Sept. 23, 1996)
- Municipal prisoners, whether arrested on felony or misdemeanor charges, will remain municipal prisoners while incarcerated in the county jail up and until such time as said prisoners are **bound over to the grand jury** or waive their preliminary hearing. *Lococo*, 1996 WL 562701, at *1 (Miss. A.G. Sept. 13, 1996)
- A city prisoner becomes a county prisoner when he is **bound over** to the county grand jury or waives his right to a preliminary hearing. 1996 WL 562748, at *1 (Miss. A.G. Sept. 23, 1996)

EXAMPLE – BOUND OVER

- City pulls Derrick Surrrette over for speeding and notices he has three 70 inch televisions in his truck.
 - Shockingly, fifteen minutes before the stop a nearby homeowner complained someone broke in his house and stole some electronics.
 - What was stolen – three 70 inch televisions.
- City officer arrests Mr. Surrrette based on probable cause.
- Within 48 hours Mr. Surrrette must have an initial appearance.

HISTORICALLY – BOUND OVER

- Post initial appearance = bound over?
- What does City do next?
 - Investigate.
 - Turn file over to prosecuting attorney.
- No time constraints so investigation lingers, and lingers....

RUSHING, 2024 WL 2273353
(MISS. A.G. APR. 4, 2024)

- **Question Presented**

- 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?

- **Brief Response**

- 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.

- **Summary**

- There are just a bunch of Attorney General Opinions and long time custom and practice.

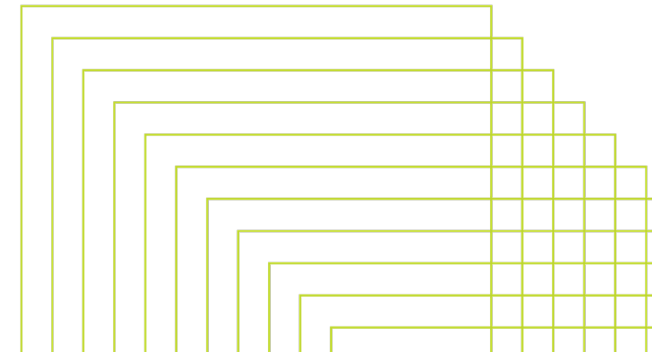
Rushing, 2024 WL 2273353 (Miss. A.G. Apr. 4, 2024)

Question

- 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**?

Brief Response

- 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.



Rushing, 2024 WL 2273353 (Miss. A.G. Apr. 4, 2024)

- **Next to last sentence in Opinion:**
 - “To the extent that any prior opinions conflict, they are modified prospectively to conform herewith.”
- **This was a reset.**
 - Based on the *Rushing Opinion*, County can clearly charge a Municipality for housing a city arrestee until indictment.
- **BUT**

*KEVIN NULL, 2025 WL 2748876, AT *1
(MISS. A.G. AUG. 21, 2025)*

- **Question Presented**
 - Which entity is responsible for inmate expenses when a municipal prisoner is bound over to the grand jury for indictment?
- **Brief Response**
 - Once a municipal prisoner is **bound over** to the grand jury for indictment, the County becomes responsible for inmate expenses.
- **Relevant Statutory Authority**
 - Miss. Code Ann. § 47-1-39 authorizes municipalities and counties to contract for housing municipal prisoners in county jails.

*Kevin Null, 2025 WL 2748876, at *1
(Miss. A.G. Aug. 21, 2025)*

- “Mississippi Code Annotated Section 47-1-39 authorizes the housing of municipal prisoners in the county jail under a contract between the governing authorities of the municipality and the county board of supervisors but is otherwise silent as to any point at which a “municipal” prisoner becomes a “county” prisoner for purposes of inmate expenses.”
- See MS AG Op., Purdie (Apr. 17, 2025); MS AG Op., Mallette (Mar. 18, 2025) (explaining the statutory caps on payment for housing prisoners); but see MS AG Op., Rushing at *1 (Apr. 4, 2024) (explaining that neither statutory nor case law exists regarding city prisoners becoming county prisoners upon being bound over to the grand jury).

*Kevin Null, 2025 WL 2748876, at *1* *(Miss. A.G. Aug. 21, 2025)*

Cited Authority

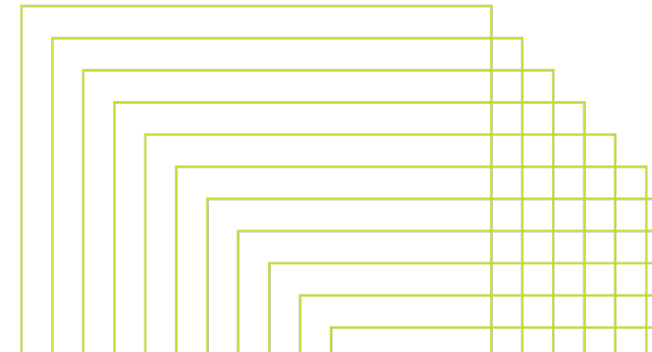
- MS AG Op. Wright (Apr. 13, 1994)
- MS AG Op. Hall (Jan. 28, 1982)
- MS AG Op. Birdsong (May 7, 1992)

These opinions consistently hold that a prisoner becomes a county prisoner once:

- Bound over to the grand jury at a preliminary hearing; or
- The defendant waives the preliminary hearing.

But

- No law
- No statement that this opinion supersedes other opinions including Rushing Opinion.



R. Adam Kirk, J. Ryan Taylor,
**2026 WL 992966, at *1 (Miss.
A.G. Mar. 10, 2026)**

- **Question Presented**

- Which entity is obligated to pay the expenses of municipal prisoners **bound over** to the grand jury for indictment?

- **Brief Response**

- It is the responsibility of the County to pay for the upkeep and expenses of a municipal prisoner who has been **bound over** to a grand jury for indictment.

- **Description**

- This office has “previously opined that a municipal prisoner becomes a county prisoner when said prisoner is either 1) bound over to the grand jury at a preliminary hearing or 2) waives said preliminary hearing.”
- That is to say, the County becomes responsible for the prisoner's expenses once a preliminary hearing has either been held or waived, and the prisoner has been bound over for grand jury indictment.

**R. ADAM KIRK, J. RYAN TAYLOR,
2026 WL 992966, AT *1 (MISS. A.G. MAR. 10, 2026)**

- Citations
 - MS AG Op., Null at *1; see also MS AG Op., Nowak at *1 (Apr. 15, 2016); MS AG Op., Birdsong at *1 (May 7, 1992).
- But
 - “You note in your request that there are conflicting opinions of this office addressing this issue. To the extent such opinions conflict, this opinion is controlling on the issues presented in your request.”
- Analysis
 - This effectively negates the *Rushing Opinion* for all practical purpose.

WHERE ARE WE NOW?

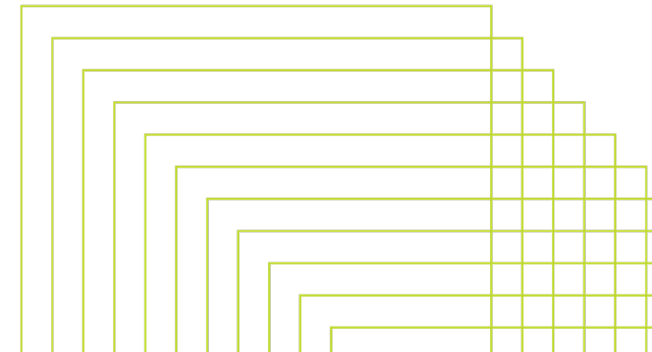
While attorney general opinions are not binding on Mississippi courts, they can be persuasive authority for consideration by our courts.

- *DuPree v. Carroll*, 967 So.2d 27, 31 (Miss.2007).

An attorney general's opinion is entitled to careful consideration and regarded as persuasive; however, the opinion is not binding upon the court considering the same question of law."

- *McGhee v. Johnson*, 868 So. 2d 1051, 1053 (Miss. Ct. App. 2004)

So, this is not the law – it's just the AGs Opinion.



APPROACH DIFFERS DEPENDING ON CONTRACT

- **Current Contract to house City Arrestees**
 - Must house per the contract.
 - If it states City detainees become County detainees when bound over you are stuck.
- **No Current Contract to house City Arrestees**
 - County does NOT have to house City arrestees.
 - “a sheriff is not lawfully obligated to receive municipal prisoners unless the city has a contract with the county to do so.” MS AG Op., Sanders (December 9, 2005).
 - “...a sheriff is only required to accept municipal prisoners in the county jail if the municipality has a contract with the board of supervisors to house that municipality's prisoners.” MS AG Op., Tanner (October 13, 2006)
 - What if the City does not like it or agree?
 - County may refuse to house municipal prisoners absent an agreement and therefore has substantial bargaining leverage in negotiating contract terms.
 - Can specify time City inmates become County responsibility.
 - **Cannot alter statutory payment scheme because its in statute.**

SUMMARY

- No Contract
 - County can dictate terms of housing NOT price.
 - If the City disagrees, give them an adequate opportunity to remove City inmates and no longer house them.

SUMMARY

- Contract
 - County must follow specific terms in the Contract.
- What if the Contract does not specify the transition?
- The elements of a valid contract are:
 - (1) two or more contracting parties,
 - (2) consideration,
 - (3) an agreement that is sufficiently definite,
 - (4) parties with legal capacity to make a contract,
 - (5) mutual assent,
 - (6) no legal prohibition precluding contract formation.”
 - *Woodruff v. Thames*, 143 So. 3d 546, 554 (Miss. 2014)
- “A contract is unenforceable if the material terms are not sufficiently definite.”

WOODRUFF V. THAMES, 143 SO. 3D 546, 554 (MISS. 2014)

- If vagueness or ambiguity exist, the terms must be “strongly construed” against the drafting party.
- Only when the intent of the parties is not clear after examining the language and construing the language most favorably to the non-drafting party should the Court resort to examining extrinsic evidence.
 - “It is only when the review of a contract reaches this point that prior negotiation, agreements and conversations might be considered in determining the parties' intentions in the construction of the contract.”

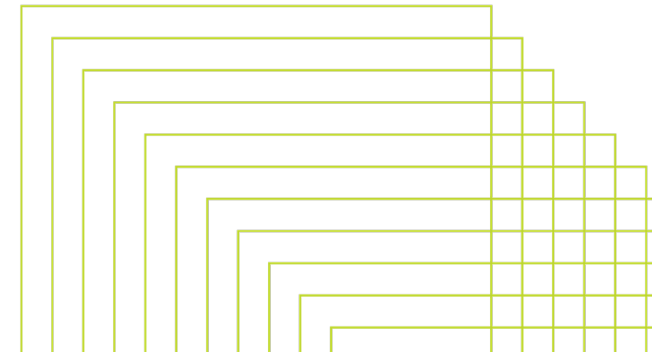
WHAT CAN THE COUNTY CHARGE?



THE LAW

Miss. Code Ann. § 19-25-73(3)

- In the event that prisoners are housed in the county jail **by any political subdivision** of the state, the county may charge the political subdivision for
 - housing,
 - feeding and
 - otherwise caring for such prisoners
 - an amount not to exceed the payments provided under state law for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.



STATUTORY SCHEME

- **Miss. Code Ann. § 47-1-39(1)**
 - Authorizes municipalities and counties to contract for use of the county jail.
 - Does not set daily rate.
- **Miss. Code Ann. § 47-5-901(2)**
 - If state prisoners are housed in county jails...the DOC shall determine the cost for food and medical attention for such prisoners.
 - The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner.
 - DOC is encouraged to negotiate a reasonable per day cost per prisoner, which in no event may exceed Twenty-five Dollars (\$25.00) per day per offender,
- **Miss. Code Ann. § 47-5-909(2)**
 - Authorizes the higher reimbursement rate – currently \$32.71/day for days 31+ for certain offenders.

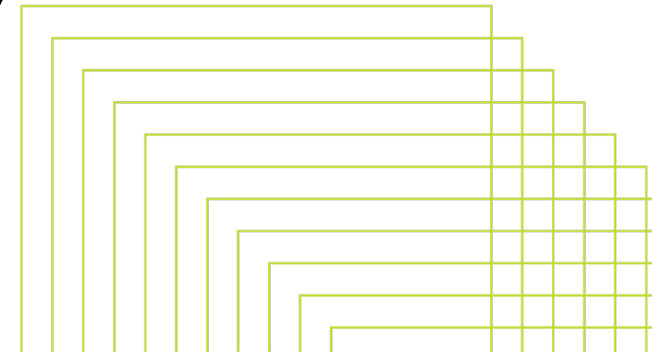
Mallette, 2025 WL 927271, at *1 (Miss. A.G. Mar. 18, 2025)

Question

- Is the City allowed to increase the amount it pays to counties for holding a City pretrial detainee or prisoner in the county jail up to as much as \$32.71 for days thirty-one and greater, as provided by Mississippi Code Annotated Section 47-5-909?

Brief Response

- The City is authorized to pay a county up to \$25 per day for days one through thirty and \$32.71 for days thirty-one or greater for holding a municipal pretrial detainee or prisoner in the county jail in accordance with Sections 19-25-73(3), 47-5-901(2) & (3) 47-5-909.



MALLETTE, 2025 WL 927271, AT *1
(MISS. A.G. MAR. 18, 2025)

- It is the opinion of this office that for holding a municipal pretrial detainee or prisoner in the county jail, a municipality is authorized to pay a county
 - up to \$25 per day for days one through thirty and
 - up to \$32.71 for days thirty-one or greater.

PURDIE, APRIL 17, 2025

- **Question Presented**

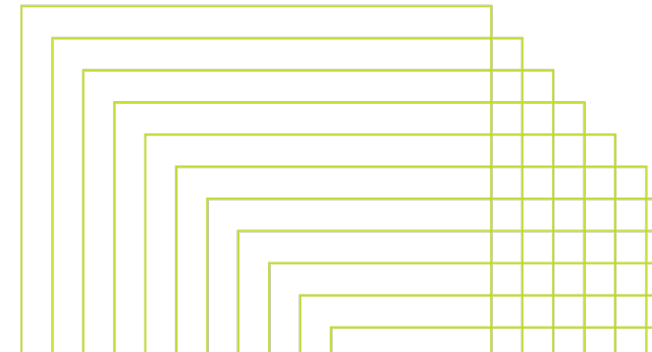
- Is there a statutory cap on the amount municipalities may pay to a county for housing inmates in the county jail pursuant to a contract under Section 47-1-39(1)?

- **Brief Response**

- Yes. As amended, Section 19-25-73(3) provides that municipalities may only pay up to the amount “provided under state law for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.”
 - Specifically, “for holding a municipal pretrial detainee or prisoner in the county jail, a municipality is authorized to pay a county up to \$25 per day for days one through thirty and up to \$32.71 for days thirty-one or greater.”

THE LAW

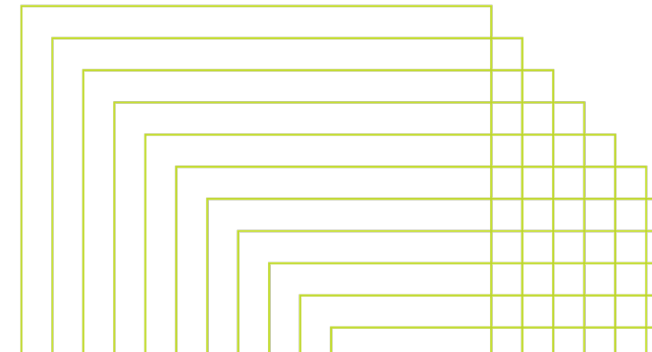
- Bottom line is that the most you can charge a municipality per day for housing a municipal inmate is \$25.00 for first 30 days and \$32.71 for days 31 forward.
 - No ifs, ands or buts – end of story.
 - Otherwise, the City is making an illegal donation and both of you risk serious consequences with the auditor.



OCTOBER 22, 2025

MEETING WITH AG FITCH

- Sheriff Tucker, Derrick Surette and a few others met with AG.
- Explained MSA position
 - Losing money
 - Need to work this out on local level
- Legislative Solutions
 - No flat fee



PROPOSED LEGISLATION

- **HB No. 1691 (Larry Byrd--Forrest)**
 - (double referred – county affairs & appropriations)
- **HB 1695 (Currie--Brookhaven)**
 - (double referred – county affairs & appropriations)
- **SB 2432 (Barrett--Brookhaven)**
 - *Single referred to Acct., Efficiency, Transparency.*
- **SB 2775 (Simmons--Bolivar)**
 - Double referred to County Affairs and Corrections

All failed.



**LOCKLEY, 2025 WL 2748879, AT *1
(MISS. A.G. AUG. 28, 2025)**

- **Question Presented:**

- When a municipality is paying a county to hold a municipal detainee or prisoner in the county jail, does the \$25 per day for days one through thirty and \$32.71 per day for days thirty-one or greater **include meals, medical treatment and transportation?**

- **Answer**

- Meals - yes.
- Medical Treatment - no.
- Transportation - no.

MAINTENANCE FEE?

- Miss. Code Ann. § 17-5-1(1)
 - The board of supervisors of any county of the state and the governing authorities of any municipality within such county may enter into a contract for the joint construction, expansion, remodeling and/or maintenance and equipping of a jail in such municipality, or within one (1) mile of the corporate limits thereof, and may issue bonds
- Mississippi law expressly recognizes municipal participation in jail maintenance costs.
 - BUT

MAINTENANCE FEE

- This section is within the joint construction section and will likely be construed as only applying in joint construction situations.
- BUT
 - Section 19-25-73(3) does not include any language indicating maintenance is included in the daily rate
 - Remember, it covers
 - housing,
 - feeding and
 - otherwise caring for such prisoners
 - There is no authority expressly authorizing or prohibiting a separate maintenance fee.

Hatcher, 1997 WL 306900, at *1 (Miss. A.G. May 30, 1997)

- Question Presented:
 - Can the Town of Marietta, Mississippi, contract with other municipalities or counties to house its municipal prisoners?
- Answer
 - In, Miss. Code Ann. Section 47-1-39 authorizes a municipality to contract with the county in which it is located to hold municipal prisoners in the county jail. We do not find authority for a municipality to contract with another municipality or a county other than the one in which it is located to house its municipal prisoners.

END OF THE DAY

- Is there a current contract?
 - If no,
 - County has authority to tell City to go build their own jail.
 - County has authority to negotiate a contract with City to house City arrestees and to include a term that the arrestee becomes a County inmate upon indictment.
 - If yes,
 - Must abide by terms of contract until expiration.
- Regardless,
 - Maximum amount County can charge as daily rate for housing city inmates
 - up to \$25 per day for days one through thirty and
 - up to \$32.71 for days thirty-one or greater.