discovering MONTANA
Department of Justice · Mike McGrath, Attorney General

Opinions of the Attorney General

49 Op. Att'y Gen. No. 13

CORRECTIONAL FACILITIES - Stage of criminal justice process at which Department of Corrections assumes financial responsibility for sentenced inmates;
CORRECTIONS, DEPARTMENT OF - Stage of criminal justice process at which department assumes financial responsibility for sentenced inmates;
COUNTY GOVERNMENT - Stage of criminal justice process at which Department of Corrections assumes financial responsibility for sentenced inmates;
SENTENCE - Stage of criminal justice process at which Department of Corrections assumes financial responsibility for sentenced inmates;
MONTANA CODE ANNOTATED - Title 46, chapters 20, 21; sections 7-11-101 to -108, 7-32-2144, -2242, -2243, 46-9-101, 46-18-402, 53-1-201 to -203.

HELD:

> Upon oral pronouncement of a sentence that transfers legal custody of an inmate to the Department of Corrections, the financial responsibility for the inmate also transfers to Corrections.

November 29, 2001

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You have requested my opinion concerning the following question:

> At what stage of the criminal justice process does the Department of Corrections assume financial responsibility for sentenced inmates?

Mont. Code Ann. § 7-32-2243 provides that contracts concerning detention center services and facilities between government units must be made pursuant to the Interlocal Cooperation Act, Mont. Code Ann. §§ 7-11-101 to -108. Mont. Code Ann. § 7-32-2242
provides for the apportionment of costs for confinement and medical expenses of individuals contained in detention centers:

> (2) (a) If a person is confined in a detention center by an arresting agency not responsible for the operation of the detention center, the costs of holding the person in confinement must be paid by the arresting agency at a rate that is agreed upon by the arresting agency and the detention center and that covers the reasonable costs of confinement. . . .

The financial responsibility of an arrestee prior to sentencing clearly rests with the arresting agency.

It is then the responsibility of the Department of Corrections (Corrections) to employ with maximum efficiency the resources of state government to develop and maintain comprehensive services and programs in the field of adult and youth corrections. Mont. Code Ann. § 53-1-201. Further, Corrections is charged with adopting rules necessary for admission, custody, transfer, and release of persons in department programs. Mont. Code Ann. § 53-1-203. Thus when the sentence pronounced places a prisoner within a program under Corrections, that prisoner becomes the legal responsibility of Corrections. The issue then becomes, Precisely when does the financial responsibility for prisoners shift

from a county to Corrections?

The Montana Supreme Court clearly held that the sentence orally pronounced from the bench in the presence of the defendant is the legally effective sentence. State v. Lane, 1998 MT 76, 40, 288 Mont. 286, 299, 957 P.2d 9, 17. The Court held:

> After review of our statutory sentencing framework and mindful of the constitutional protections afforded criminal defendants, we now hold that the sentence orally pronounced from the bench in the presence of the defendant is the legally effective sentence and valid, final judgment. Accordingly, the written judgment and commitment will serve as evidence of the sentence orally pronounced.

Id., 40.

There are numerous aspects of the criminal justice system that change once sentence is orally pronounced. Generally, the rights of an individual to bail terminate upon sentencing. Mont. Code Ann. § 46-9-102. The sentencing hearing shifts the process to appellate or post-conviction avenues of relief. See generally Mont. Code Ann. tit. 46, chs. 20 and 21, *Appeals and postconviction hearing*. Finally, the sentencing clock begins to run upon oral pronouncement of sentence and any incarceration beyond the sentencing hearing counts towards the inmate's sentence. Mont. Code Ann. § 46-18-402.

Placement of inmates to Montana State Prison or another Corrections facility after being sentenced is primarily the function of Corrections. The wide variety of potential placements ranges from the Prison to a pre-release center, to a treatment center, or to community supervision. See generally Mont. Code Ann. § 53-1-202. Although supervision is transferred to Corrections, the inmate may remain, at Corrections' option, in a local or regional detention facility until an open bed at a pre-release center or a treatment center is obtained. In some cases, the prison sentence may be served in a local or regional facility in the form of pre-sentence jail time served and post-sentencing time served waiting for pre-release placement or a bed date for treatment at a Corrections facility. Though under the supervision of Corrections, the inmate may never be transported to a different place of incarceration within the system.

It is the duty of the county sheriff to transport the prisoner to the dictated Corrections facility. Mont. Code Ann. § 46-9-101. The sheriff will be reimbursed by either the state or the board of county commissioners, as the case may be, for the transport of prisoners to a corrections facility, including the state prison or mental health facility. Mont. Code Ann. § 7-32-2144. The sheriff has no discretion as to when the prisoner is transported to a corrections facility. The transport occurs only when Corrections indicates that a placement is available. Though the duty and costs of transporting an inmate may be assigned to the arresting agency, nothing in this statutory structure allows Corrections to allocate to a county the expense of housing an inmate under its supervision who is awaiting transport, especially considering that the date of transport is solely in the discretion of Corrections.

In summary, the sentencing hearing represents the only common date by which the criminal justice system can definitely measure when the legal and financial responsibility for an inmate shifts from the county to the state. State v. Lane clearly established that the oral pronouncement of sentence from the bench in the presence of the defendant constituted final judgment. Lane, 40. The written judgment and commitment simply memorialize the oral sentence pronounced. Id. Once sentenced, the inmate is in the "legal custody" of Corrections. Upon imposition of sentence, the local or regional detention center simply serves as a place of temporary detention until Corrections can place the inmate. Therefore, when a sentence is handed down that dictates the transfer of supervision of the prisoner to Corrections, the financial responsibility for that prisoner transfers to Corrections as well.

THEREFORE, IT IS MY OPINION:

> Upon oral pronouncement of a sentence that transfers legal custody of an inmate to the Department of Corrections, the financial responsibility for the inmate also transfers to Corrections.

Very truly yours,