Part 22
Detention Centers

Part Cross-References

Detention center defined, 7-32-2241.

Part Administrative Rules

Title 23, chapter 14, subchapter 6, ARM Regional youth detention services.

Part Case Notes

Evidence of Negligence in County Jail Sufficient to Uphold Verdict — Duty of Jailer to Inmate: Moralli was injured when she slipped on the wet floor of a bathroom in the Lake County jail. The Supreme Court held that there was sufficient evidence of negligence on the part of the county to prevent a directed verdict and for the court to be bound by the jury verdict. Following Pretty On Top v. Hardin, 182 M 311, 597 P2d 58 (1979), the Supreme Court found that the county owed a duty to the plaintiff, the duty had been breached, and the breach was the cause of the plaintiff's injury. Moralli v. Lake County, 255 M 23, 839 P2d 1287, 49 St. Rep. 872 (1992).

Part Attorney General's Opinions

Act Allowing Private Parties to Contract for Jails Not in Conflict With Local Government Regulatory Statutes: The act allowing counties to contract with private parties for the building, maintenance, and operation of jails, enacted as Chapter 447, L. 1985, does not directly conflict with other Montana statutes regulating the indebtedness, contracts, jail facilities, or interlocal agreements of local governments. However, Chapter 447 is subject to the various applicable limitations contained in those statutes. 42 A.G. Op. 81 (1988).

7-32-2201. Establishing detention center — detention center contract — regional detention center — authority for county to lease its property for detention center. For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the governing body of two or more local governments it is necessary or desirable to build, provide, or use a multijurisdictional detention center, they may do so in any of the jurisdictions concerned. The multijurisdictional detention center must be built or provided and kept in good repair at the expense of the local governments concerned on a basis as the governing bodies agree.

(2) A county or two or more local governments acting together may provide for the detention center allowed by subsection (1) by:

(a) establishing in the county government the position of detention center administrator and hiring a person, who is answerable to the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the detention center.

(3) The detention centers in this state are kept by the detention center administrators of the local governments in which they are situated. In the case of a multijurisdictional detention center as provided in subsection (1), the detention center must be kept by the local governments using the detention center on a basis as the governing bodies agree.

(4) The board of county commissioners has jurisdiction and power, under limitations and restrictions that are prescribed by law, to cause a detention center to be erected, furnished, maintained, and operated. The costs must be paid for out of the county treasury.

(5) The board of county commissioners has the power to lease to any person or entity any real or personal property of the county necessary or appropriate for use as a detention center. A lease entered into under this section must be for a period not to exceed 30 years and may not be limited by 7-8-2231.

(6) A county or two or more local governments acting together may enter into a lease-purchase agreement with a person or entity for a period not to exceed 20 years for the construction, furnishing, and purchasing of a detention center.

History: (1)En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973; Sec. 16-2802.1, R.C.M. 1947; (2)En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; Sec. 16-2803, R.C.M 1947; (3)En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; Sec. 16-1008A, R.C.M. 1947; R.C.M. 1947, 16-1008A(part), 16-2802.1, 16-2803(part); amd. Sec. 10, Ch. 447, L. 1985; amd. Sec. 15, Ch. 461, L. 1989; amd. Sec. 2, Ch. 21, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 21 inserted (5) allowing a board of county commissioners to lease county property for use as a detention center for not more than 30 years; inserted (6) allowing a county or two or more local governments acting together to enter a lease-purchase agreement for not more than 20 years for the construction, furnishing, and purchasing of a detention center; and made minor changes in style. Amendment effective March 16, 2007.

1989 Amendment: Inserted introductory clause; throughout section changed references to jail to detention center, county commissioners to governing body, and county to local government; at beginning of (1) changed "shall" to "may" and in two places substituted "multijurisdictional detention center" for "common jail"; near beginning of (2) substituted "detention center allowed" for "jail required"; in (2)(a), after "administrator and", deleted "with the sheriff's concurrence" and at end, after "position", inserted "or appointing the sheriff as detention center administrator"; near beginning of (2)(b), after "agreement", deleted "with the concurrence of the sheriffs of all participating counties"; substituted (3) (see 1989 Session Law for text) for former subsection that read: "The common jails in the several counties of this state are kept by the sheriffs, jail administrators, or private parties agreeing to act as jailers of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in subsection (1), such jail shall be kept by the sheriffs of the counties utilizing the common jail on a basis as the sheriffs shall agree, by a jail administrator hired by the county in which the jail is situated, or by a private party agreeing to act as the jailer"; at end of (4), after "maintained", inserted "and operated. The costs must be paid for out of the county treasury"; and made minor changes in phraseology and punctuation.

1985 Amendment: Inserted (2) relating to a multicounty jail; in (3) in first sentence, after "sheriffs", inserted "jail administrators, or private parties agreeing to act as jailers" and at end after "agree", inserted "by a jail administrator hired by the county in which the jail is situated, or by a private party agreeing to act as the jailer".

Cross-References

General authority of County Commissioners, 7-5-2101.

Interlocal agreements, Title 7, ch. 11, part 1.

Use of detention center — payment of costs, 7-32-2242.

Regional correctional facilities, Title 53, ch. 30, part 5.

Case Notes

County Responsibility for Medical Costs of Detained Person Unable to Pay — "Nature of the Crime" Approach: In determining whether a city or a county is responsible for medical costs incurred by a person ultimately charged with a violation of state law but who is unable to pay, the Supreme Court adopted the "nature of the crime" approach. This approach determines financial responsibility not on the basis of which agency first takes a person into custody, but rather on the basis of the crime charged. Because the county is vested with the primary responsibility for enforcing state law and maintaining facilities to accomplish that responsibility, performance of the task necessarily includes assumption of the associated financial burden. Mont. Deaconess Medical Center v. Johnson, 232 M 474, 758 P2d 756, 45 St. Rep. 1207 (1988).

Attorney General's Opinions

Limited Use of Multijurisdictional Detention Center for Confinement of

Out-of-State and Federal Inmates: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by 7-32-2203. Those purposes do not include the confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. In conformity with the intent of the Legislature to not allow routine interstate exchanges of inmates in and out of Montana, the authority to confine adult offenders who are committed by an out-of-state jurisdiction or the federal government is reserved to the Department of Corrections under narrow circumstances only. 52 A.G. Op. 4 (2007), overruled in City of Hardin v. Attorney General, Cause No. BDV-2007-955, First Judicial District Court, Lewis and Clark County, June 5, 2008.

County Primarily Responsible for Postarrest Medical Care: A county is primarily responsible to third-party providers for postarrest medical care given to a person who is ultimately charged with a violation of state law. Following conviction, an inmate who has the means to pay is responsible for the ultimate payment of medical costs pursuant to 7-32-2245, and a county at that point may seek recovery from another party pursuant to state law. 47 A.G. Op. 2 (1997).

Prisoners in County Jail for Municipal Violations — County Charge for Maintenance: A county may charge a city or town for maintaining prisoners committed to the county jail at the request of a city or town police department in the course of enforcing city or town ordinances. 42 A.G. Op. 70 (1988).

7-32-2202. Use of detention center in contiguous county. (1) When there is no detention center in the county or when the detention center becomes unfit or unsafe for the confinement of inmates, the district court judge may, by written appointment filed with the district court clerk, designate the detention center of a contiguous county for the confinement of the inmates of the judge's county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the detention center administrator of each county involved, who must receive into the administrator's detention center all inmates authorized to be confined in the detention center pursuant to this section and who is responsible for the safekeeping of the persons committed in the same manner and to the same extent as if the administrator were the detention center administrator of the county for whose use the administrator's detention center is designated. With respect to the persons committed, the administrator is considered the detention center administrator of the county from which they were removed.

(3) When a detention center is erected in the county for the use of which the designation was made or its detention center is rendered fit and safe for the confinement of inmates, the district court judge of that county shall, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk shall immediately serve a copy of the revocation upon the detention center administrator of each county involved. The detention center administrator in the designated county shall remove the inmates to the detention center from which they were removed.

History: En. Secs. 3028, 3029, 3030, 3031, Pen. C. 1895; re-en. Secs. 9765, 9766, 9767, 9768, Rev. C. 1907; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1921; Cal. Pen. C. Secs. 1603, 1604, 1605, 1606; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1935; R.C.M. 1947, 16-2810, 16-2811, 16-2812, 16-2813; amd. Sec. 11, Ch. 447, L. 1985; amd. Sec. 16, Ch. 461, L. 1989; amd. Sec. 701, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Throughout section changed "jail" to "detention center", "prisoners" to "inmates", and "sheriff", "jail administrator", and "keeper of the jail" to "detention center administrator"; near beginning of (2), after "county", substituted "involved" for "or the keeper of the designated jail if the keeper is not the sheriff" and in two places, after "detention center administrator", deleted

"or private party jailer"; at end of first sentence of (4), after "county", substituted "involved" for "or the keeper of the jail in each county if the keeper is not the sheriff"; and made minor changes in phraseology.

1985 Amendment: In (2) near beginning, after "served on", substituted "the sheriff of each county, or the keeper of the designated jail if the keeper is not the sheriff" for "the sheriff or keeper of the designated jail", in two places near end of (2), after "sheriff", inserted "jail administrator, or private party jailer"; substituted (4) relating to service of revocation for former text that read: "The clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail from which the removal was had"; and made minor changes in phraseology.

Cross-References

District Judge — expenses when not in county of residence, 3-5-215.

7-32-2203. Who may be confined in a detention center. Detention centers are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime;

(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center.

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; R.C.M. 1947, 16-2803(part); amd. Sec. 17, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: At beginning substituted "Detention centers" for "The common jails"; and inserted (5) relating to confinement of persons sentenced to State Prison.

Cross-References

Commitment of defendant, 46-19-101.

Location and function of prison, 53-30-101.

Contracts for confinement of inmates in other institutions, 53-30-106.

Attorney General's Opinions

Limited Use of Multijurisdictional Detention Center for Confinement of Out-of-State and Federal Inmates: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by 7-32-2203. Those purposes do not include the confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. In conformity with the intent of the Legislature to not allow routine interstate exchanges of inmates in and out of Montana, the authority to confine adult offenders who are committed by an out-of-state jurisdiction or the federal government is reserved to the Department of Corrections under narrow circumstances only. 52 A.G. Op. 4 (2007), overruled in City of Hardin v. Attorney General, Cause No. BDV-2007-955, First Judicial District Court, Lewis and Clark County, June 5, 2008.

7-32-2204. Maintenance of detention center. The county commissioners, or the private party when provided in an agreement entered into under 7-32-2201(2), have the duty of building, operating, inspecting, and repairing the detention center and must take all necessary precautions against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895; re-en. Sec. 9777, Rev. C. 1907; re-en. Sec. 12486, R.C.M. 1921; re-en. Sec. 12486, R.C.M. 1935; R.C.M. 1947, 16-2822; amd. Sec. 12, Ch. 447, L. 1985; amd. Sec. 18, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: Near middle, after "building", inserted "operating" and substituted "detention center" for "jail"; and deleted former (2) that read: "(2) The county commissioners must inquire into the security of the jail and the condition of the prisoners every 3 months."

1985 Amendment: In (1) (formerly introductory clause), after "commissioners", inserted "or the private party when provided in an agreement entered into under 7-32-2201(2)" and after "have

the" substituted "duty" for "care"; deleted former (1) that read: "must, once every 3 months, inquire into its state, as respects the security thereof, and the treatment and condition of prisoners"; and inserted (2) relating to county commissioner inquiry.

Cross-References

General authority of County Commissioners, 7-5-2101.

7-32-2205. Confinement of inmates. The detention center administrator shall receive all persons committed to the detention center by competent authority and provide them with necessary food, clothing, and bedding.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 13, Ch. 447, L. 1985; amd. Sec. 19, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: At beginning substituted "detention center administrator" for "sheriff, jail administrator, or private party jailer", after "committed to" substituted "the detention center" for "jail", and at end, after "bedding", deleted "for which sheriffs or jail administrators, but not jailers operating a jail under an agreement provided for in 7-32-2201(2), shall submit claims for the actual expenses incurred to the board of county commissioners for their determination and, except as provided in 7-32-2207, to be paid out of the county treasury".

1985 Amendment: Near beginning, after "sheriff", inserted "jail administrator, or private party jailer"; near middle of section, after "for which", deleted "he" and inserted "sheriffs or jail administrators, but not jailers operating a jail under an agreement provided for in 7-32-2201(2)".

Cross-References

False claims by detention center administrator, 7-32-2249.

Case Notes

Failure to Admit Person to Jail When Committed by Competent Authority — Negligence Per Se Argument Not Considered for First Time on Appeal: Russell violated the terms of his suspended sentence and was ordered to report to the county jail no later than 8 a.m. on December 28, 1998. When Russell appeared at the jail, a written order of commitment could not be found, so Russell was turned away. When Prindel was subsequently injured by Russell, Prindel argued that failure to admit Russell to jail constituted negligence per se on the part of the county. However, Prindel did not allege any elements of negligence per se in the action, so the Supreme Court declined to address the issue on appeal. Prindel v. Ravalli County, 2006 MT 62, 331 M 338, 133 P3d 165 (2006).

Failure to Admit Person to Jail When Committed by Competent Authority Negligent Violation of Duty of Care: Russell violated the terms of his suspended sentence and was ordered to report to the county jail no later than 8 a.m. on December 28, 1998. When Russell appeared at the jail, a written order of commitment could not be found, so Russell was turned away. On December 30, Russell stabbed Prindel at a party, and Russell was sentenced to life in prison for attempted deliberate homicide. Prindel subsequently sued the county, alleging that the failure to incarcerate Russell on the 28th, despite a court order that Russell begin serving a sentence on that day, amounted to negligence that proximately caused Prindel's injury. The District Court granted summary judgment to the county, concluding that the county had no duty to prevent Russell from injuring Prindel and that the issue of causation need not be addressed. On appeal, the Supreme Court reversed. The county's argument that it had no duty of care without a written order was without merit because the oral pronouncement of sentence constituted the competent authority to incarcerate Russell, and the jail's ignorance of the commitment order did not diminish the court order's status as a competent authority. The county had a special relationship of custody under this section to take Russell into custody for the protection of the public, and failure to do so was negligence as a matter of law. Russell posed a foreseeable risk, Prindel was a foreseeable plaintiff, and the county owed a duty to Prindel to exercise reasonable care to protect him against Russell.

Reasonable minds could differ as to whether Russell's act of stabbing Prindel was so unforeseeable as to sever the chain of causation, so summary judgment for the county was error. Prindel v. Ravalli County, 2006 MT 62, 331 M 338, 133 P3d 165 (2006), following Lopez v. Great Falls Pre-Release Serv., Inc., 1999 MT 199, 295 M 416, 986 P2d 1081 (1999), and LaTray v. Havre, 2000 MT 119, 299 M 449, 999 P2d 1010 (2000).

Accounting to Commissioners: Prior to the 1971 amendment of this section, a Sheriff had no clear legal duty to provide the Board of County Commissioners with a detailed itemized accounting of county funds received for furnishing board to prisoners of county jail. State ex rel. Lucier v. Murphy, 156 M 186, 478 P2d 273 (1970).

Expense of Providing Food: The Sheriff is compelled by law to supply prisoners with food. The law does not prescribe where the food shall be prepared, whether inside the jail or out, at the option of the Sheriff. It is intended that the Sheriff not make any profit or gain out of providing food, but neither is it intended that the Sheriff suffer a loss in furnishing food. A part of the necessary expense in providing food is the cost of the fuel with which the food is cooked. Pac. Coal Co. v. Silver Bow County, 79 M 323, 256 P 386 (1927).

Contract With Federal Government: The provision of section 5547, United States Revised Statutes, making it the duty of the Attorney General of the United States to contract with "the managers or proper authorities having control" of federal prisoners in county jails for their subsistence, contemplates that the contract shall be made with the Sheriffs and not with the Boards of County Commissioners. The former, under this section, are the custodians of the jails and answerable for the safekeeping of the persons confined. Majors v. County of Lewis & Clark, 60 M 608, 201 P 268 (1921).

Attorney General's Opinions

County Primarily Responsible for Postarrest Medical Care: A county is primarily responsible to third-party providers for postarrest medical care given to a person who is ultimately charged with a violation of state law. Following conviction, an inmate who has the means to pay is responsible for the ultimate payment of medical costs pursuant to 7-32-2245, and a county at that point may seek recovery from another party pursuant to state law. 47 A.G. Op. 2 (1997).

7-32-2206. Repealed.

Sec. 31, Ch. 461, L. 1989.

History: (1)En. Sec. 1, Ch. 120, L. 1923; re-en. Sec. 12472.1, R.C.M. 1935; Sec. 16-2807, R.C.M. 1947; (2)En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; re-en. Sec. 12472.2, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971; Sec. 16-2808, R.C.M. 1947; (3)En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R.C.M. 1921; Cal. Pen. C. Sec. 1602; re-en. Sec. 12473, R.C.M. 1935; Sec. 16-2809, R.C.M. 1947; R.C.M. 1947, 16-2807, 16-2808, 16-2809; amd. Sec. 1, Ch. 671, L. 1979; amd. Sec. 14, Ch. 447, L. 1985; amd. Sec. 1, Ch. 645, L. 1985.

7-32-2207. Confinement of persons on civil process.

(1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party to the action, the detention center administrator is not bound to receive the person unless security is given on the part of the party at whose instance the process is issued. The security must be a deposit of money, to meet the expenses for the person's necessary food, clothing, and bedding. The detention center administrator is not required to detain the person any longer than the period for which these expenses are provided.

(2) This section does not apply to cases in which a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 12483, R.C.M. 1921; Cal. Pen. C. Sec. 1612; re-en. Sec. 12483, R.C.M. 1935; R.C.M. 1947, 16-2819; amd. Sec. 15, Ch. 447, L. 1985; amd. Sec. 20, Ch. 461, L. 1989; amd. Sec. 702, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Near middle of (1) substituted "detention center administrator" for "sheriff, jail administrator, or private party jailer".

1985 Amendment: In (1) after "sheriff", inserted "jail administrator, or private party

jailer".

7-32-2208. Actual confinement of inmates required. An inmate committed to a detention center for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted must be actually confined in the detention center until the inmate or prisoner is legally discharged.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R.C.M. 1921; Cal. Pen. C. Sec. 1600; re-en. Sec. 12471, R.C.M. 1935; R.C.M. 1947, 16-2806; amd. Sec. 4, Ch. 361, L. 1989; amd. Sec. 21, Ch. 461, L. 1989; amd. Sec. 703, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendments — Composite Section: Chapter 361 in first sentence substituted "A prisoner committed to the county jail for trial or examination or, except as provided in 7-32-2225 through 7-32-2227, a prisoner convicted of a public offense" for "A prisoner committed to the county jail for trial, for examination, or upon conviction for a public offense"; and near end of second sentence inserted "or pursuant to a program established by law". The deletion of the second sentence by Ch. 461 rendered part of the amendments made by Ch. 361 ineffectual.

Chapter 461 at beginning substituted "An inmate" for "A prisoner", after "committed to" substituted "a detention center" for "the county jail", near middle, after "conviction", deleted "for a public offense", after "confined in the" substituted "detention center" for "jail", and deleted former second sentence that read: "If he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape."

Cross-References

Liability for escape in civil actions, 7-32-2250.

7-32-2209. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 2, Ch. 671, L. 1979; amd. Sec. 16, Ch. 447, L. 1985; amd. Sec. 2, Ch. 645, L. 1985.

7-32-2210. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R.C.M. 1921; Cal. Pen. C. Sec. 1610; re-en. Sec. 12481, R.C.M. 1935; R.C.M. 1947, 16-2817.

7-32-2211. Service of papers upon detention center administrator for inmate. A detention center administrator who is served with a paper in a judicial proceeding that is directed to an inmate in the administrator's custody shall immediately deliver it to the inmate.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R.C.M. 1921; Cal. Pen. C. Sec. 1609; re-en. Sec. 12480, R.C.M. 1935; R.C.M. 1947, 16-2816; amd. Sec. 22, Ch. 461, L. 1989; amd. Sec. 704, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: At beginning substituted "detention center administrator" for "sheriff or jailer", near middle substituted reference to inmate for reference to prisoner, and at end inserted "inmate" and deleted "prisoner, with a note thereon of the time of its service. For neglect to do so, he is liable to the prisoner for all damages occasioned thereby."

Cross-References

Sheriff — liability in civil actions, 7-32-2131.

7-32-2212. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 3041, Pen. C. 1895; re-en. Sec. 9778, Rev. C. 1907; re-en. Sec. 12487, R.C.M. 1921; re-en. Sec. 12487, R.C.M. 1935; R.C.M. 1947, 16-2823; amd. Sec. 17, Ch. 447, L. 1985.

7-32-2213. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R.C.M. 1921; re-en. Sec. 3070, R.C.M. 1935; R.C.M. 1947, 41-1106.

7-32-2214 through 7-32-2220 reserved.

7-32-2221. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Secs. 3023, 3024, Pen. C. 1895; re-en. Secs. 9760, 9761, Rev. C. 1907; re-en. Secs. 12469, 12470, R.C.M. 1921; Cal. Pen. C. Secs. 1598, 1599; re-en. Secs. 12469, 12470, R.C.M. 1935; R.C.M. 1947, 16-2804, 16-2805;

amd. Sec. 1, Ch. 82, L. 1983; amd. Sec. 18, Ch. 447, L. 1985; amd. Sec. 12, Ch. 475, L. 1987; amd. Sec. 1, Ch. 434, L. 1989.

7-32-2222. Health and safety of inmates. (1) Each detention center shall comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

History: (1)En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R.C.M. 1921; Cal. Pen. C. Sec. 1607; re-en. Sec. 12478, R.C.M. 1935; Sec. 16-2814, R.C.M. 1947; (2)En. Sec. 3033, Pen. C. 1895; re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 12479, R.C.M. 1921; Cal. Pen. C. Sec. 1608; re-en. Sec. 12479, R.C.M. 1935; Sec. 16-2815, R.C.M. 1947; (3)En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; Sec. 16-2818, R.C.M. 1947; R.C.M. 1947, 16-2814, 16-2815, 16-2818(part); amd. Sec. 19, Ch. 447, L. 1985; amd. Sec. 23, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 768, L. 1991; amd. Sec. 1, Ch. 388, L. 1995; amd. Sec. 31, Ch. 546, L. 1995; amd. Sec. 1, Ch. 579, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 579 deleted former (4) that read: "(4) (a) If in the opinion of the detention center administrator an inmate under the administrator's jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in 7-32-2245 or subsection (4)(b) of this section.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved in accordance with 7-32-2245." Amendment effective May 5, 2003.

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

1995 Amendments: Chapter 388 in (4)(a), near end before "subsection", inserted "7-32-2245"; at end of first and second sentences in (4)(b) inserted exception clause; at end of (4)(c) substituted "in accordance with 7-32-2245" for "if he determines the inmate is financially able to pay"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 546 in (4)(b), in second sentence, substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 768 in (4)(a), near end before "agency", inserted "arresting", in two places, after "agency", deleted reference to authority at whose instance the inmate was arrested, and at end inserted "as provided in subsection (4)(b)"; in (4)(b) inserted second sentence concerning payment of expense when Department of Institutions (now Department of Corrections and Human Services) is the arresting agency; and made minor changes in style.

1989 Amendment: Substituted entire section (see 1989 Session Law for text) for former section that

read: "(1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff, jail administrator, or private party jailer must remove them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff, jail administrator, or private party jailer to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.

(3) If in the opinion of the sheriff, jail administrator, or private party jailer any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay."

1985 Amendment: Throughout section after "sheriff" inserted "jail administrator, or private party jailer"; and made minor change in phraseology.

Cross-References

Powers of judges at chambers, 3-5-311.

County Attorney — actions to recover money, 7-4-2713.

Sanitary inspections, 50-1-203.

Case Notes

Conditions of Jail Held Not to Violate Statute — Defendant's Release Not Required: Collier was arrested and charged with solicitation of deliberate homicide, which was reduced to criminal endangerment by a plea bargain. At the District Court level and on appeal, Collier challenged her continued incarceration in a county jail allegedly failing to comply with this section. The Supreme Court noted that the District Court had taken testimony on the issue and that the testimony showed that although the jail was not in 100% compliance with this section, conditions were not so bad as to constitute a health hazard. The Supreme Court pointed out that testimony also showed that Collier brought some of the unsanitary conditions upon herself. St. v. Collier, 277 M 46, 919 P2d 376, 53 St. Rep. 534 (1996).

County Responsibility for Medical Costs of Detained Person Unable to Pay — "Nature of the Crime" Approach: In determining whether a city or a county is responsible for medical costs incurred by a person ultimately charged with a violation of state law but who is unable to pay, the Supreme Court adopted the "nature of the crime" approach. This approach determines financial responsibility not on the basis of which agency first takes a person into custody, but rather on the basis of the crime charged. Because the county is vested with the primary responsibility for enforcing state law and maintaining facilities to accomplish that responsibility, performance of the task necessarily includes assumption of the associated financial burden. Mont. Deaconess Medical Center v. Johnson, 232 M 474, 758 P2d 756, 45 St. Rep. 1207 (1988).

Due Process Right of Official Detainees to Medical Care: The Supreme Court cited Revere v. Mass. Gen. Hosp., 463 US 239, 77 L Ed 2d 605, 103 S Ct 2979 (1983), in holding that due process demands that persons detained by government agencies receive adequate medical care regardless of their ability to pay; responsibility for costs is a matter of state law. Mont. Deaconess Medical Center v. Johnson, 232 M 474, 758 P2d 756, 45 St. Rep. 1207 (1988).

Attorney General's Opinions

Prisoner Medical Care — Prior to and Subsequent to Judgment: The expenses for medication, medical services, and hospitalization for prisoners confined in the county jail prior and subsequent to judgment for violation of state fish and game laws or state highway laws must be borne by the appropriate state agency

charged with the enforcement of such laws. 34 A.G. Op. 24 (1971).

7-32-2223. Repealed. Sec. 31, Ch. 461, L. 1989.

History: En. Secs. 3038, 3039, Pen. C. 1895; re-en. Secs. 9775, 9776, Rev. C. 1907; re-en. Secs. 12484, 12485, R.C.M. 1921; Cal. Pen. C. Secs. 1613, 1614; re-en. Secs. 12484, 12485, R.C.M. 1935; R.C.M. 1947, 16-2820, 16-2821.

7-32-2224. Payment of medical costs by entities other than inmate. (1) The detention center administrator shall forward to the appropriate arresting agency all charges for medical treatment for which the agency is responsible.

(2) When the inmate is in the custody of a county detention center and the detention center administrator determines that the inmate requires medical treatment, the county or the arresting agency is responsible for medical costs associated with:

(a) conditions that are not preexisting;

(b) injuries incurred by the inmate:

(i) while in the custody of the detention center if the injuries are the result of an accident, an assault by another inmate, or negligent or intentionally torturous acts committed by the detention center administrator or the administrator's staff;

(ii) during the arrest of the inmate by the sheriff or the sheriff's staff if the injuries were not incurred while unlawfully resisting arrest; or

(iii) while on a work program or while the inmate is performing duties assigned by the detention center administrator or the administrator's staff;

(c) infections or contagious or communicable diseases that the inmate contracts while in the custody of the detention center; or

(d) medical examinations that are required by law or court order unless the order provides otherwise.

(3) In order to determine which entity is responsible for medical charges that are not the responsibility of the inmate, the following applies:

(a) If the arresting agency is a law enforcement agency whose jurisdiction is limited to the county boundaries of the county or a municipality in the county where the detention center is located, then the county is responsible.

(b) If the arresting agency is a law enforcement agency with statewide jurisdiction or whose jurisdiction is a county or municipality in a county other than the county where the detention center is located, then the arresting agency is responsible.

(c) If a municipality commits a person to the detention center of the county in which the municipality is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that municipality, then the county in which the municipality is located is responsible.

(4) For the purposes of 7-32-2245 and this section, "preexisting condition" means an illness or condition that began or injuries that were sustained before a person was in the custody of county officers.

History: En. Sec. 3, Ch. 579, L. 2003.

Compiler's Comments

Effective Date: Section 5, Ch. 579, L. 2003, provided: "[This act] is effective on passage and approval." Approved May 5, 2003.

7-32-2225. County jail work program. (1) A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor.

History: En. Sec. 1, Ch. 361, L. 1989.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program,

Title 46, ch. 18, part 7.

7-32-2226. Operation of county jail work program. (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of 7-32-2227 to work on public projects as designated by the board of county commissioners. Upon a request of a federal or state agency, city government, or nonprofit corporation and upon mutually agreeable terms or on their own action for county projects, the board of county commissioners may designate projects as public projects for purposes of this section. A person participating in a county jail work program may not:

(a) have the person's labor or other work contracted out to a private party;

(b) be required to do labor or other work that furthers the private interests of a government employee or official;

(c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

(d) be used to displace any regular government employee;

(e) perform the duties of any vacant government position; or

(f) work on any construction or reconstruction project.

(2) A county may not reduce its current workforce in order to transfer the duties of a reduction to persons participating in a county jail work program.

(3) A person participating in a county work program may not be physically confined in the county jail during the course of the person's participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 2 days of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. An unexcused failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

(7) Weed management, as defined in 7-22-2101, whether on public or private land, and other maintenance projects authorized by a board of county commissioners are county projects for purposes of 7-32-2225 through 7-32-2227.

History: En. Sec. 2, Ch. 361, L. 1989; amd. Sec. 2, Ch. 203, L. 2001; amd. Sec. 1, Ch. 414, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 414 in first sentence near end after "work on" substituted "public projects" for "county projects or for county departments" and inserted second sentence concerning designation of public projects upon request of certain entities; in (1)(d) and (1)(e) substituted "government" for "county"; in (3) in third sentence increased time from 1 day to 2 days; in (6) at beginning of second sentence substituted "An unexcused failure" for "Failure"; and made minor changes in style. Amendment effective April 25, 2005.

2001 Amendment: Chapter 203 inserted (7) concerning weed management and other maintenance projects authorized by county commissioners; and made minor changes in style. Amendment effective October 1, 2001.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

7-32-2227. Inmate eligibility for participation. A person may be permitted to participate in a county jail work program if the person:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, partner or family member assault, incest, or any other offense in which violence is an element of the crime or for an offense during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace or by the judge's, magistrate's, or justice's successor; and

(4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has approved the participation.

History: En. Sec. 3, Ch. 361, L. 1989; amd. Sec. 2, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (2), near middle, substituted "partner or family member assault" for "domestic abuse"; and made minor changes in style.

Severability: Section 31, Ch. 350, L. 1995, was a severability clause.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Jail work release program, Title 46, ch. 18, part 7.

7-32-2228 through 7-32-2230 reserved.

7-32-2231. Purpose to allow private industry involvement. It is the purpose of 7-32-2231 through 7-32-2234 to allow multijurisdictional or single-jurisdiction detention centers to be built by private industry and leased to the participating local government or governments for operation by the local government, collectively by participating local governments, or by a private entity with the concurrence of the local governments involved.

History: En. Sec. 1, Ch. 447, L. 1985; amd. Sec. 24, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning, after "allow", substituted "multijurisdictional" for "regional", substituted "single-jurisdiction detention centers" for "single-county jails", after "leased" deleted "back", in three places substituted reference to local government for reference to county, and near end substituted "local governments" for "sheriff or sheriffs".

7-32-2232. Detention centers — contracts with private parties. (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the detention center and the incarceration of inmates;

(b) a performance bond from the private party acceptable to the local government;

(c) a promise from the private party to indemnify the local government for any damages for which the local government is found liable as a result of the operation of the detention center;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the local government;

(e) minimum standards for the training of detention center staff and a provision that the private party will ensure such training; and

(f) a provision that the local government may immediately terminate the contract for good cause.

(3) The provisions of Title 7 relating to bids for local government contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section.

History: En. Sec. 2, Ch. 447, L. 1985; amd. Secs. 25, 30, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section substituted "detention center" for "jail" and "local government" for "county"; at end of (2)(a) substituted "inmates" for "prisoners"; and in (2)(e) substituted "detention center staff" for "jailers".

Coordination — Text Not Codified: As amended by sec. 25, Ch. 461, L. 1989, 7-32-2232 contained a subsection (2)(g) referencing the Detention Center

Standards Commission. Section 30, Ch. 461, L. 1989, provided: "If House Bill No. 282 (LC 20) is not passed and approved, the amendment in [section 25 of this act] [7-32-2232] that inserts 7-32-2232(2)(g) is void." House Bill No. 282 was not passed; therefore, the Code Commissioner has removed subsection (2)(g) from the text of 7-32-2232.

7-32-2233. Requests for contract proposals. (1) A local government seeking to enter into a contract under 7-32-2201 and 7-32-2232 may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of detention center services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing detention center services. The Montana board of crime control shall maintain a list of persons providing detention center services and furnish the list to a local government upon request.

(3) In selecting a proposal and awarding a contract, a local government need not accept the proposal with the lowest cost.

(4) The local government must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the detention center services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The local government must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the local government.

History: En. Sec. 3, Ch. 447, L. 1985; amd. Sec. 26, Ch. 461, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section changed "county" to "local government" and "jail" to "detention center".

7-32-2234. Powers of detention center administrators. A detention center administrator is responsible for the immediate management and control of the detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of an administrator and detention center personnel employed under the administrator's authority include control over inmates:

(1) within the confines and grounds of the detention center; and

(2) outside the detention center confines and grounds while transporting any inmate or in the hot pursuit or apprehension of any escapee.

History: En. Sec. 4, Ch. 447, L. 1985; amd. Sec. 27, Ch. 461, L. 1989; amd. Sec. 705, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Throughout section changed "jail" to "detention center"; near beginning of introductory clause, after "administrator", deleted "or a private party acting as a jailer under an agreement, as provided for in 7-32-2201(2)" and near end substituted "detention center" for "corrections" and "inmates" for "prisoners"; and in (2) substituted "inmate" for "prisoner".

7-32-2235 through 7-32-2240 reserved.

7-32-2241. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

History: En. Sec. 1, Ch. 461, L. 1989.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

Attorney General's Opinions

Limited Use of Multijurisdictional Detention Center for Confinement of Out-of-State and Federal Inmates: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by 7-32-2203. Those purposes do not include the confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. In conformity with the intent of the Legislature to not allow routine interstate exchanges of inmates in and out of Montana, the authority to confine adult offenders who are committed by an out-of-state jurisdiction or the federal government is reserved to the Department of Corrections under narrow circumstances only. 52 A.G. Op. 4 (2007), overruled in City of Hardin v. Attorney General, Cause No. BDV-2007-955, First Judicial District Court, Lewis and Clark County, June 5, 2008.

7-32-2242. Use of detention center — payment of costs. (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(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, excluding capital construction costs, except as provided in 7-32-2245 or subsection (2)(b) of this section.

(b) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county, except as provided in 7-32-2245. If the department of corrections is the arresting agency and the inmate is a probation violator, the costs must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the arresting agency.

(3) If a person is a fugitive from justice from an out-of-state jurisdiction, the costs, including medical expenses, of holding the person in a detention center pending extradition must be paid by the out-of-state jurisdiction.

History: En. Sec. 2, Ch. 461, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 768, L. 1991; amd. Sec. 2, Ch. 388, L. 1995; amd. Sec. 32, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 388 in (2)(a), near end before "subsection", inserted "7-32-2245"; and at end of first and second sentences in (2)(b) inserted exception clause. Amendment effective April 12, 1995.

Chapter 546 in (2)(b), in second sentence, substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 768 in (2)(a), near beginning after "person is", substituted "confined in" for "committed to", after "by" substituted "an arresting agency" for "a government unit", before "costs" deleted "committing government unit shall pay the", after "confinement" substituted language requiring payment of holding costs by the arresting agency for "as agreed upon by the government unit and the detention center", and at end inserted "as provided in subsection (2)(b)"; in (2)(b) inserted second sentence concerning payment of costs when Department of Institutions (now Department of Corrections and Human services) is the arresting agency; at end of (2)(c) substituted "arresting agency" for "committing government unit"; inserted (3) regarding payment of costs of holding a person who is a fugitive from an out-of-state jurisdiction; and made minor changes in style.

Attorney General's Opinions

State Financial Responsibility for Sentenced Inmate Upon Oral Pronouncement of Sentence: A sentencing hearing represents the only common date by which the criminal justice system can definitely measure when legal and financial responsibility for an inmate shifts from a county to the state. Oral pronouncement of sentence from the bench in the presence of a defendant constitutes final judgment (see St. v. Lane, 1998 MT 76, 288 M 286, 957 P2d 9 (1998)). Once sentenced, an inmate is considered to be in the legal custody of the Department of Corrections, even though a local or regional detention center may serve as a place of temporary detention until the inmate can be placed by the Department. Therefore, upon oral pronouncement of sentence that transfers legal custody of an inmate to the Department, the financial responsibility for the inmate transfers to the Department as well. 49 A.G. Op. 13 (2001).

7-32-2243. Contracts for detention center services. (1) Contracts concerning detention center services and facilities between state or local government units, the state of Montana, or the federal government must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(2) A government unit responsible for a detention center may contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction.

History: En. Sec. 3, Ch. 461, L. 1989.

Attorney General's Opinions

State Financial Responsibility for Sentenced Inmate Upon Oral Pronouncement of Sentence: A sentencing hearing represents the only common date by which the criminal justice system can definitely measure when legal and financial responsibility for an inmate shifts from a county to the state. Oral pronouncement of sentence from the bench in the presence of a defendant constitutes final judgment (see St. v. Lane, 1998 MT 76, 288 M 286, 957 P2d 9 (1998)). Once sentenced, an inmate is considered to be in the legal custody of the Department of Corrections, even though a local or regional detention center may serve as a place of temporary detention until the inmate can be placed by the Department. Therefore, upon oral pronouncement of sentence

that transfers legal custody of an inmate to the Department, the financial responsibility for the inmate transfers to the Department as well. 49 A.G. Op. 13 (2001).

7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with Title 41, chapter 5, part 3.

History: En. Sec. 4, Ch. 461, L. 1989; amd. Sec. 10, Ch. 547, L. 1991; amd. Sec. 40, Ch. 42, L. 1997; amd. Sec. 2, Ch. 286, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 substituted "Title 41, chapter 5, part 3" for "41-5-301 through 41-5-307, 41-5-309, and 41-5-311". Amendment effective March 12, 1997.

Chapter 286 at end substituted "Title 41, chapter 5, part 3" for "41-5-301 through 41-5-307, 41-5-309, and 41-5-311".

Saving Clause: Section 50, Ch. 286, L. 1997, was a saving clause.

Applicability: Section 51, Ch. 286, L. 1997, provided: "[This act] applies to proceedings commenced after [the effective date of this act]." Effective October 1, 1997.

1991 Amendment: Deleted reference to 41-5-308 and inserted reference to 41-5-311; deleted former (2) that read: "(2) Detention centers that hold juveniles must comply with the standards for the detention of juveniles promulgated by the department of family services"; and made minor changes in style. Amendment effective July 1, 1992.

7-32-2245. Payment of confinement and medical costs by inmate. (1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's confinement in a detention center. The rate for confinement costs must be determined in accordance with 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) If an inmate requires medical treatment, the inmate is responsible for medical costs associated with:

(a) preexisting conditions;

(b) self-inflicted injuries while in custody;

(c) injuries incurred while in custody if the injuries are not the result of negligent or intentionally torturous acts committed by the detention center administrator or a member of the administrator's staff;

(d) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting to avoid an arrest; and

(e) any other injuries or illnesses that are not the responsibility of other entities as provided in 7-32-2224 and 7-32-2242(3).

(3) (a) If an inmate is found to be able to pay for the inmate's medical costs, as provided in subsections (1) and (2), the health care provider who treats the inmate shall collect the cost of the treatment from the inmate or the detention center administrator may arrange with the health care provider to pursue reimbursement from a third-party payor for the services provided.

(b) If the health care provider is unable to collect from the inmate or third-party payor within 120 days from the date of the service, the county is responsible for reimbursing the health care provider for the services at:

(i) the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges, whichever is greater; or

(ii) a negotiated rate.

(c) If the health care provider is reimbursed by the inmate or the third-party payor after the provider has been reimbursed by the county, the provider shall refund to the county the amount that the provider had been paid by the county for the services provided to the inmate.

(4) Inability to pay may not be a factor in providing necessary medical care for an inmate.

(5) This section does not restrict an inmate's right to use a third-party payor.

(6) If a city or town is the arresting agency and commits a person to the detention center of the county in which the city or town is located, the inmate is responsible for the inmate's medical expenses and the provisions of this section apply.

History: En. Sec. 5, Ch. 461, L. 1989; amd. Sec. 3, Ch. 388, L. 1995; amd. Sec. 2, Ch. 579, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 579 substituted (2) concerning inmate responsibility for medical costs for former text that read: "An inmate is responsible for the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor"; inserted (3) concerning collection of inmate's medical costs; inserted (4) concerning inability to pay; inserted (5) concerning right to use third-party payor; and inserted (6) concerning city or town as arresting agency. Amendment effective May 5, 2003.

1995 Amendment: Chapter 388 in (1), in first sentence after "costs", inserted "including actual medical costs", in second sentence substituted "The rate for confinement costs must be determined in accordance with 46-18-403" for "The rate at which the inmate must pay the costs must be established at the sentencing hearing", and inserted third sentence concerning payment of court-ordered confinement costs; inserted (2) concerning an inmate's responsibility for medical costs; and made minor changes in style. Amendment effective April 12, 1995.

Case Notes

No District Court Authority to Order Sale of Firearms During Sentencing: The defendant pleaded nolo contendere to robbery, assault with a weapon, and burglary. As part of the sentencing the District Court directed the County Sheriff to sell the defendant's firearms and apply the proceeds to the cost of incarceration at the county detention facility. On appeal, the Supreme Court reversed the condition that the firearms be sold and the proceeds applied against the defendant's incarceration costs. The court reasoned that the Legislature did not provide the District Court with the statutory authority to order the sale of firearms. St. v. Lee, 2015 MT 259, 381 Mont. 33, 358 P.3d 168.

Requirement to Pay Costs of Confinement in Detention Center — Not Applicable to Montana State Prison: The Supreme Court ordered the District Court to strike a condition from the defendant's sentence requiring the defendant to pay "all future costs of incarceration and medical costs while incarcerated" pursuant to 7-32-2245. The statute applies only to costs of confinement in a detention center as defined in 7-32-2201. St. v. Ring, 2014 MT 49, 374 Mont. 109, 321 P.3d 800.

Conditions Imposed in Written Judgment and Sentence Different From Those Imposed in Oral Sentence — Lane, Waters, and Simpson Reviewed — Test to Determine Which New Conditions Lawful or Unlawful — Payment of Restitution and Costs: Johnson was sentenced orally for writing bad checks and later contended that four of the conditions imposed in the written judgment and sentence by the District Court were unlawful under St. v. Lane, 1998 MT 76, 288 M 286, 957 P2d 9 (1998), because they were not announced orally when she was sentenced in open court. The Supreme Court reviewed its decisions in St. v. Waters, 1999 MT 229, 296 M 101, 987 P2d 1142 (1999), and St. v. Simpson, 1999 MT 259, 296 M 335, 989 P2d 361 (1999), and reasoned that a written sentence would be held unlawful only if it substantively increased the defendant's loss of liberty or the defendant's sacrifice of property. Under this test, the Supreme Court held that two of the four penalties not mentioned by the District Court in its oral pronouncement of Johnson's sentence were unlawful, those being the restitution ordered to the Missoula County jail of money expended for Johnson's medical care and the requirement that Johnson pay for the costs of her prosecution in District Court. The Supreme Court held that the other two parts of the written sentence, the requirement that Johnson make restitution from money earned in prison and the

imposition of certain "civil" restrictions as conditions of Johnson's suspended sentence, such as the requirement that Johnson stay out of gambling casinos, were lawfully imposed because they did not increase the amount of money that Johnson was ordered to pay or increase Johnson's deprivation of liberty in addition to those penalties imposed orally. The requirement for payment from prison earnings only specified where the money was to come from, and the "civil" restrictions were largely mentioned by the District Court at Johnson's sentencing hearing. St. v. Johnson, 2000 MT 290, 302 M 265, 14 P3d 480, 57 St. Rep. 1225 (2000), followed in St. v. Greene, 2015 MT 1, 378 Mont. 1, 340 P.3d 551.

Attorney General's Opinions

County Primarily Responsible for Postarrest Medical Care: A county is primarily responsible to third-party providers for postarrest medical care given to a person who is ultimately charged with a violation of state law. Following conviction, an inmate who has the means to pay is responsible for the ultimate payment of medical costs pursuant to this section, and a county at that point may seek recovery from another party pursuant to state law. 47 A.G. Op. 2 (1997).

7-32-2246. Temporary release from detention center. A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;

(2) working at employment;

(3) conducting the inmate's own business or self-employment;

(4) attending to the needs of the inmate's family;

(5) attending an educational institution; or

(6) obtaining medical treatment.

History: En. Sec. 6, Ch. 461, L. 1989; amd. Sec. 706, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-32-2247. Annoyance of inmate prohibited — penalty. (1) The detention center administrator or staff member in charge of an inmate must use necessary and proper means to protect an inmate from purposeful or knowing insults and annoyance by others and to prevent others from communicating with the inmate while the inmate is at or is going to or returning from employment.

(2) A person persisting in purposefully or knowingly insulting, annoying, or communicating with an inmate after being told by the detention center administrator or staff member to desist commits the offense of inmate annoyance.

(3) A person convicted of the offense of inmate annoyance shall be fined an amount not to exceed $500.

History: En. Sec. 7, Ch. 461, L. 1989.

7-32-2248. Inmate endangerment — penalty. (1) A detention center administrator or staff member commits the offense of inmate endangerment if the administrator or staff member knowingly:

(a) places or keeps a juvenile with adult inmates;

(b) uses corporal punishment against an inmate; or

(c) uses physical force against an inmate, except as necessary for:

(i) self-defense;

(ii) control of inmates;

(iii) protection of another person from imminent physical attack; or

(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500.

History: En. Sec. 8, Ch. 461, L. 1989; amd. Sec. 707, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-32-2249. False claims by detention center administrator. A detention center administrator who falsely represents to the governing body of a local government the actual expenses of boarding detention center inmates, furnishing food and supplies, or providing services, who presents to the governing body false items in a claim or false vouchers, or if the administrator is not a private detention center administrator, who makes any profit from the keeping of inmates in the administrator's custody and a person who gives a false item or false voucher to be used by the detention center administrator in any claim against the local government is guilty of a misdemeanor.

History: En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R.C.M. 1921; re-en. Sec. 4910, R.C.M. 1935; amd. Sec. 19, Ch. 513, L. 1973; R.C.M. 1947, 25-229; amd. Sec. 1, Ch. 446, L. 1979; amd. Sec. 12, Ch. 461, L. 1989; Sec. 7-32-2128(1), MCA 1987; redes. 7-32-2249 by Code Commissioner, 1989; amd. Sec. 708, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: Substituted entire section (see 1989 Session Law for text) for former subsection that read: "Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, for furnishing food and supplies therefor, or for any service rendered in connection therewith or presents to said board false items in a claim or false vouchers or makes any profit whatever out of the board or keeping of prisoners in his custody and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board is guilty of a misdemeanor."

Cross-References

False claims by Sheriff, 7-32-2128.

Confinement of inmates, 7-32-2205.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

7-32-2250. Liability for escape in civil actions. (1) A detention center administrator who fails to prevent the escape or rescue of a person who was arrested in a civil action and who is in the administrator's custody without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the detention center administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the detention center administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the detention center administrator is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in the detention center administrator's custody, the administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a detention center administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after the rescue or escape and before the commencement of the action, the inmate returns to the detention center or is retaken by the administrator.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979; amd. Sec. 9, Ch. 447, L. 1985; amd. Sec. 13, Ch. 461, L. 1989; Sec. 7-32-2132, MCA 1987; redes. 7-32-2250 by Code Commissioner, 1989; amd. Sec. 709, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: In seven places substituted reference to detention center administrator for reference to Sheriff or jail administrator, in seven places deleted reference to private party jailer, and in (3) substituted "inmate" for "prisoner" and "detention center" for "jail".

1985 Amendment: Throughout section, after "sheriff", inserted "jail administrator, or private party jailer"; in (1) after "person", inserted "in his custody"; and in (2) after "rescue", inserted "of a person in his custody".

Cross-References

Execution of judgment, Title 25, ch. 13.

Arrest and bail in civil actions, Title 27, ch. 16.

Bail, Title 46, ch. 9.

7-32-2251 through 7-32-2254 reserved.

7-32-2255. Inmate phone calls to attorney. As needed and subject to policies adopted by the local government that operates or contracts for the lease or operation of a detention center, the detention center administrator shall allow an inmate to speak on the telephone with the inmate's attorney without charge.

History: En. Sec. 1, Ch. 60, L. 2017.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

7-32-2256. *(Temporary)* Identification of veteran status by detention center. Upon a person's admission to a detention center in a county that operates a veterans treatment court, the detention center staff shall inquire if the person is a veteran. If the person is a veteran, the detention center staff shall notify the veterans treatment court, and the court shall provide information regarding eligibility and the goals and operation of the court to the person. *(Terminates June 30, 2021—sec. 4, Ch. 101, L. 2019.)*

History: En. Sec. 1, Ch. 101, L. 2019.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

Applicability: Section 3, Ch. 101, L. 2019, provided: "[This act] applies to detention centers in counties that operate veterans treatment courts."

Termination: Section 4, Ch. 101, L. 2019, provided: "[This act] terminates June 30, 2021."

Cross-References

Veterans, Title 10, ch. 2.