

VOLUME NO. 37

OPINION NO. 129

COMMITMENTS - Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization; INCOMPETENTS - Commitment to Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization; COUNTIES - Commitment to Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization; SHERIFFS - Commitment to Warm Springs State Hospital, financial responsibility for returning persons who leave without authorization; REVISED CODES OF MONTANA, 1947 - Sections 16-2723, 38-1305, 38-1308, 80-1602, 80-1603, 95-506, 95-508.

HELD: 1. A sheriff who returns a patient to Warm Springs pursuant to section 16-2723 when the patient has been subjected to an involuntary civil or a criminal commitment, is entitled to reimbursement for his costs, as specified below.

2. The applicable county is financially responsible for returning a person who is committed pursuant to section 95-506.
3. The institution to which the person is committed is financially responsible for returning a person who is committed pursuant to sections 95-508 and 38-1305.

7 April 1978

Mental Health Advisory Council
1218 East 6th Avenue
Helena, Montana 59601

Ladies and Gentlemen:

You have requested my opinion on the following question:

Who is responsible for returning to Warm Springs State Hospital, patients who depart without authorization and who are subject to criminal or involuntary civil commitments?

Criminal commitments of persons to Warm Springs by the district court can arise in two situations. Under section 95-506, a criminal defendant who is unfit to proceed to trial because of mental disease or defect, may be committed as long as the unfitness continues. Under section 95-508, a criminal defendant who is acquitted because of mental disease or defect must be committed. Involuntary civil commitments are ordered by the district court upon petition of the county attorney under section 38-1305.

Your question ultimately involves the fiscal rather than physical responsibility for returning these persons to Warm Springs. Any number of different persons could return a previously committed person to Warm Springs. The important question is who must pay. Section 16-2723 clearly envisions that sheriffs will often be responsible for "delivering... mentally ill persons at the state hospital." When they do, however, they are entitled to "actual expenses necessarily incurred," claims for which must be "allowed" by the "department of administration or by the board of county commissioners, as the case may be..." No further explanation is offered in section 16-2723 for determining what actual entities are ultimately financially responsible in any given case for these claims which must be "allowed" by the Department of Administration or the county commissioners.

In the case of a defendant adjudged unfit to proceed to trial under section 95-506, subsection (5) thereof provides:

(5) The expenses of sending the defendant to the custody of the director of the department of institutions, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere.

In this situation, the legislative intent is clear that the appropriate county "in the first instance" is financially responsible for "sending," "keeping," and "bringing...back" a defendant committed under section 95-506. Thus, if a sheriff returns such a person who has left without authorization, he is entitled to reimbursement from the county pursuant to sections 16-2723 and 95-506(5). The county can then obtain reimbursement from the "estate of the defendant" or from a "town, city or county bound to provide for and maintain him elsewhere." It should be noted that this right to reimbursement does not conflict with section 80-1603(7), which prohibits the Department of Institutions from recovering from the patient the costs of "care" provided to him if he is committed under a criminal statute. This prohibition applies to the department seeking reimbursement for the charges allowed by section 80-1603 but not to a county seeking reimbursement under section 95-506.

There is no specific cost allocation such as that found in section 95-506(5) which is applicable to criminal defendants committed after an acquittal pursuant to section 95-508. Under section 95-508, the person is specifically "committed to the custody of the superintendent of Warm Springs...for custody, care, and treatment." (Emphasis added.) The institution is responsible for the person's "custody" which includes whatever measures are necessary to maintain that custody, including returning the person to the institution if he leaves without authorization. Thus, if a sheriff returns a person committed under section 95-508, he is entitled to reimbursement from the state under section 16-2723.

The financial responsibility for returning persons under involuntary civil commitments under section 38-1305 is likewise not specifically addressed. If the person enjoys conditional outpatient release under section 38-1308, but becomes a "danger to himself or others," he may be "apprehended" and the local sheriff has the "duty of transporting" him to Warm Springs. This "duty," however, must be read in light of section 16-2723 which allows for reimbursement of the sheriff's costs. Since there is no provision otherwise, the state institution which is responsible for the person's custody, is liable to the sheriff for his costs.

That same reasoning is applicable to a person, not on conditional release, who leaves Warm Springs without authorization. That conclusion is bolstered by section 80-1603, which allows the state to recover "per diem" and "ancillary" charges from the patient or a "financially responsible person." While transportation costs after unauthorized departures are not specifically mentioned, "per diem" under section 80-1602(3) is based upon "the gross daily cost of operating an institution, as budgeted,...."

THEREFORE, IT IS MY OPINION:

1. A sheriff who returns a patient to Warm Springs pursuant to section 16-2723 when the patient has been subjected to an involuntary civil or a criminal commitment, is entitled to reimbursement for his costs, as specified below.
2. The applicable county is financially responsible for returning a person who is committed pursuant to section 95-506.
3. The institution to which the person is committed is financially responsible for returning a person who is committed pursuant to sections 95-508 and 38-1305.

Very truly yours,

MIKE GREELY
Attorney General