

VOLUME NO. 37

OPINION NO. 37

COUNTIES - Criminal trials - financial obligation for psychiatric evaluation. REVISED CODES OF MONTANA, 1947 - Sections 95-505 and 95-506.

HELD: The county is financially responsible for psychiatric evaluations conducted to determine whether a criminal defendant is mentally fit to proceed at trial.

21 June 1977

Nick A. Roterling, Esq.
Department of Institutions
1539 Helena Avenue
Helena, Montana 59601

Dear Mr. Roterling:

The Department of Institutions has requested my opinion as to whether the department or the local county government bears the financial responsibility of conducting psychiatric evaluations. The evaluations are required of criminal defendants for the purpose of determining the defendant's fitness to proceed at trial under chapter 5, Title 95, Revised Codes of Montana.

Section 95-504, R.C.M. 1947, provides:

No person who as a result of mental disease or defect is unable to understand the proceedings

against him or to assist in his own defense, shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

When there is reason to believe that a defendant in a criminal action lacks the necessary mental fitness to proceed at trial, the court must make a determination based upon a psychiatric evaluation of the defendant.

Section 95-505, R.C.M. 1947, establishes the procedure for psychiatric evaluations. The section applies to all situations where the defendant intends to rely on the defense of mental disease or defect excluding responsibility; where there is otherwise reason to believe that mental disease or defect of the defendant will become an issue in the trial; as well as when there is reason to doubt the defendant's fitness to proceed at trial.

Section 95-506, R.C.M. 1947, on the other hand, deals solely with the determination of the defendant's fitness to proceed at trial. When a defendant's fitness to proceed becomes a question, the issue must be determined by the court based upon the reports filed under section 95-505. Section 95-506 further outlines a procedure for institutional commitment until the individual is ready to stand trial.

Section 95-506(4) concerns expenses and is the crucial section to the question at hand. Subsection (4) states:

The expenses of sending the defendant to the custody of the superintendent of the Montana State Hospital, 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.

The question now arises as to whether the above-quoted subsection requires the counties to bear the cost of the psychiatric evaluation for determination of the defendant's fitness to proceed at trial. Section 95-506 does not specifically discuss the evaluation procedure; rather it gives direction to the courts upon receipt of the evalua-

tion, including the procedure for commitment until the person is fit to stand trial. It is the contention of some that the section does not apply to the cost of the evaluation proscribed by section 95-505. It is my opinion, however, that the sections must be read together and construed as applying to the entire procedure. Under that interpretation the county is financially obligated to pay for the evaluations.

Subsection 4 was added to 95-506 by section 3, chapter 513, Session Laws of 1973. Chapter 513 contained the new Montana Criminal Code in its other sections, and therefore was not limited in its scope to mental competency. The bill as written specifically attached subsection (4) to section 95-506.

In determining the legislative intent it is helpful to look at the Revised Commission Comment to section 95-504, which asserts that:

The procedure for determining fitness to proceed and all related steps are set out in section 95-506. (Emphasis added.)

By reading the chapter as a whole and reviewing the comment we can deduce that the legislative intent is that the sections be construed together, and that the counties assume the expenses of the evaluation. The fact that section (4) was added to 95-506 in 1973, after the comment was written, lends more credence to that interpretation.

Irrespective of how those statutes are interpreted, however, it is my opinion that the county would be liable for the evaluation expense in any event. It is traditional in the State of Montana that expenses relating to criminal trials are borne primarily by the county in which the trial is conducted. Article II, section 24, 1972 Montana Constitution, declares that among the rights of an accused is the right to,

...a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed....

Further, section 95-401, R.C.M. 1947, regarding venue, states:

In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

Inherent in those provisions is the fact that the county bears responsibility for the expenses connected with criminal prosecution.

It is significant that in enumerating the general powers and limitations upon counties, section 16-801, R.C.M. 1947, asserts:

Every county...has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.
(Emphasis added.)

Section 16-3802, R.C.M. 1947, contains an enumeration of county charges; expenses which must be paid by the county.

(1) the following are county charges:

(b) One half of the salary of the county attorney and all expenses necessarily incurred by him in criminal cases arising within the county.
(Emphasis added.)

In discussing a similar statute involving the expenses necessarily incurred by justices of the peace, the Supreme Court found that the county was obligated to meet those expenses and that the board of commissioners had no power to disallow the claims regardless of budget ramifications. State ex rel. Browman v. Wood, 32 St. Rptr. 1136, 543 P.2d 185 (1975).

Note that the county is required to pay virtually all expenses relating to the conduct of trial and the administration of the district courts. Section 93-513 requires the counties to maintain courtrooms and also attendants and supplies. Section 25-601 declares the county must pay one half the salary of the county attorney as well as the salary of the clerk of the court and the sheriff, who has a principal duty of serving the court. Section 93-1906 requires the county to pay the salary of the court reporter. The county is required to provide indigent defendants with attorneys in criminal cases under section 95-1005. Section 93-1904 outlines the county obligation to make payments for transcripts of court proceedings. Section 93-514 requires the

counties to pay expenses of interpreters in court. Section 25-401 also refers to the counties' responsibility to pay for witness and juror fees, as does Section 16-3802, which also imposes a duty to provide board to prisoners of the county jail. Only the expenses and salary of district judges are charged to the state pursuant to section 93-904.

It is necessarily implied from the expressed duties of the county that counties are financially responsible for any expense necessarily generated in the conduct of trial, unless otherwise provided. This is consistent with the logic in State ex rel. Browman v. Wood, supra, as well as section 16-801, supra.

Moreover, when an individual who is incarcerated requires medical attention, the expense of that medical administration is borne by the county in which the individual is incarcerated unless the individual was imprisoned at the instance of a state agency or other authority, pursuant to section 16-2823, R.C.M. 1947. The reasoning of that statute would certainly seem to apply to the expenses of the psychiatric evaluation.

Finally, we can draw an analogy between the present question and instances where individuals are involuntarily committed to the Department of Institutions pursuant to Title 38 of the Revised Codes of Montana. 36 OP. ATT'Y GEN. NO. 98, citing section 38-1303(4), R.C.M. 1947, to reinforce its conclusion, holds that the county is required to pay for those expenses. The opinion found that although the statutes do not specify who is to bear the cost of an involuntary commitment, it is obvious that the Legislature intended the county to pay the costs.

THEREFORE, IT IS MY OPINION:

The county is financially responsible for psychiatric evaluations conducted to determine whether a criminal defendant is mentally fit to proceed at trial.

Very truly yours,

MIKE GREELY
Attorney General