

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

January 24, 2019

Sheriff Steve Rushing  
Lincoln County  
215 Justice Street  
Brookhaven, Mississippi 39601

Re: Housing of MDOC Probation/Parole Violators in County Jails

Dear Sheriff Rushing:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

### Background and Issues Presented

Your request states:

I am requesting an official opinion on the following questions.

1. At what point does the Mississippi Department of Corrections (MDOC) become responsible for the housing/medical costs of an inmate housed in a county jail for a probation violation? Who is responsible for getting that probationer before the judge within the 21 days as required by state law? Finally, is MDOC responsible for the housing/medical costs of a probationer the entire time they are housed in a county jail if such offender's probation has been revoked and that individual is awaiting transfer to a MDOC Technical Violation Center?

2. Is MDOC responsible for the housing/medical costs of a parole violator the entire time that person is housed in a county jail?

For instance, a person is brought to a county jail for a MDOC probation violation on a MDOC field officer's warrant. The MDOC probation officer then requests that the circuit judge issue a judge's warrant for the same offense. MDOC asserts that they are only responsible for the cost of the inmate while he is held on the officer's warrant, not while the inmate is

held on the judge's probation violation warrant. MDOC further asserts that the probationer's right to a hearing before the circuit judge within twenty one (21) days becomes the responsibility of the Judge and not the field officer. Then, if the probationer is revoked to a technical violation center, MDOC takes the position they are only responsible for the cost of the first 21 days and any costs incurred after the 21 days is the county's responsibility.

We understand your questions to be:

1. Who is responsible for the housing/medical costs of an inmate housed in a county jail for a probation violation?
2. Who is responsible for ensuring that an inmate appears before a circuit court judge within twenty-one (21) days for a revocation hearing?
3. Who is responsible for housing and medical costs of an inmate who has been revoked but has not been transferred to a Mississippi Department of Corrections (MDOC) Technical Violation Center?
4. Is MDOC responsible for the housing/medical costs of a parole violator the entire time that person is housed in a county jail?

### Response

Section 47-7-37 of the Mississippi Code specifically deals with probation violations and revocations and provides, in part:

(3) Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.

Miss. Code Ann. Section 47-7-37 (as amended). This statute discusses two distinct hearings. The first is an "informal preliminary hearing" which appears to be an administrative matter by MDOC. The second hearing is a "revocation hearing" conducted by a court which must occur within twenty-one (21) days of arrest. If the revocation hearing is not conducted by the court within twenty-one (21) days, the

person "shall be released from custody and returned to probation status" by MDOC. Section 47-7-37(2) provides for two types of arrest by warrant as follows:

(2) At any time during . . . probation, the court, . . . may issue a warrant for violating any of the conditions of probation . . . and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other officer with power of arrest to do so **by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered** with the probationer by the arresting officer to the official in charge of a county jail or other place of detention **shall be sufficient warrant for the detention of the probationer.**

(Emphasis added.) Furthermore, Section 47-5-901(3)(c) states that if the probation or parole of the offender is revoked, the additional cost of housing the offender pending the revocation hearing is assessed as part of the offender's court costs and shall be paid to MDOC. In regard to your specific questions as we understand them, we provide the following:

1. **Who is responsible for the housing/medical costs of an inmate housed in a county jail for a probation violation?**

The answer to question number one is that MDOC "shall pay . . . reimbursement costs" where offenders are held in a county jail "pending a . . . probation revocation hearing." This obligation is not dependent on the method of arrest or whether the warrant to arrest the probationer is issued by the court or via statement by the probation officer. We note that Section 47-5-901(3)(b) states that "upon vouchers submitted by the board of supervisors of any county housing offenders in county jails **pending a probation or parole revocation hearing, the department shall pay the reimbursement costs provided in paragraph (a).**" (Emphasis added.) We recall from a previous phone conversation with you on December 6, 2018 that you stated you had not submitted any type of bill to MDOC. In order to be reimbursed, you would need to have the board of supervisors submit a voucher to MDOC pursuant to Section 47-5-901(3)(b).

2. **Who is responsible for ensuring that an inmate appears before a circuit court judge within twenty-one (21) days for a revocation hearing?**

In response to the second question, the statute states that the court is the entity that is responsible for having the probationer brought before it within twenty-one (21) days. Section 47-7-37(5)(a) states that "within twenty-one (21) days of arrest and detention by warrant as herein provided, **the court shall cause the probationer to be brought before it** and may continue or revoke all or any part of the probation or the suspension of sentence." (Emphasis added.) As a practical matter, the court has to rely on MDOC or the Sheriff to inform the court that a violator has been arrested and when the deadlines for a required judicial revocation hearing expire. A violator is typically in jail at the behest, in some form, of MDOC. Section 47-7-37(3) states:

Whenever an offender is arrested on a warrant for an alleged violation of probation as herein provided, the department shall hold an informal preliminary hearing within seventy-two (72) hours of the arrest to determine whether there is reasonable cause to believe the person has violated a condition of probation. A preliminary hearing shall not be required when the offender is not under arrest on a warrant or the offender signed a waiver of a preliminary hearing. The preliminary hearing may be conducted electronically. If reasonable cause is found, **the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer shall be released from custody and returned to probation status.**

(Emphasis added.) If a probationer is not given a hearing within twenty-one (21) days, the probationer is entitled to be released from custody and returned to probation status by MDOC. For these reasons, the interests of both the Sheriff and MDOC are implicated in that both have some part to play to ensure that the law is followed. Although the duty is by statute on the court, the practicalities of the situation demonstrate a strong need for MDOC and the sheriffs to work together and cooperate to ensure that the probationers are provided the procedural safeguards provided by statute and that prisoners that should be incarcerated are not released by default.

**3. Who is responsible for housing and medical costs of an inmate who has been revoked but has not been transferred to a Mississippi Department of Corrections (MDOC) Technical Violation Center?**

The third question asks who is responsible for the housing and medical costs of an inmate who has been revoked but has not been transferred to a Mississippi Department of Corrections Technical Violation Center. We understand that on occasion, prisoners are serving their entire probation revocation period in the county jail. Under the statutes, this does not shift the financial burden of prisoner housing to the county. Section 47-7-37 assumes that upon revocation, the probationer becomes a state prisoner again. Once revoked, Section 47-7-37 requires the offender to be sentenced to a restitution center or technical violation center operated by MDOC. The offender is clearly a state inmate, and MDOC is required to pay for the housing, medical, and transportation costs of such inmate. Section 47-5-901 allows MDOC to certify in writing that space is not available to house an offender and have the person serve their sentence in a county jail of the county where the person was convicted. Upon this determination, MDOC is further required to determine the cost of food and medical attention for the offender based on actual or contract prices; and upon submission of a voucher from the county, MDOC is required to pay the county for housing the offender. However, MDOC is prohibited from paying more than twenty (20) dollars a day per prisoner to the county under Section 47-5-901(2).

**4. Is MDOC responsible for the housing/medical costs of a parole violator the entire time that person is housed in a county jail?**

As to the fourth question, the facts of a particular case would determine who is responsible for the inmate's housing/medical costs. We cannot answer this question in the abstract. It is possible that a parole violator could be housed in the county jail and be the responsibility of the county. For example, if the defendant committed another felony and is incarcerated in the county jail awaiting trial, the county would be responsible for the costs while the prisoner is awaiting trial on the new felony. Our office discussed this issue in a prior opinion as follows:

Essentially, when a probationer or parolee is arrested for an unrelated crime the prisoner is in the custody of the local government and the local government must bear the costs of medical expenses. However, upon the issuance of a warrant pursuant to Miss. Code Ann. Section 47-7-27 or Section 47-7-37 the prisoner becomes a state inmate and the Mississippi Department of Corrections must then bear the cost of medical expenses. This does not mean that an inmate must be transported to and treated at the hospital at Parchman, only that the county may be reimbursed for medical expenses by MDOC.

MS AG Op., Smith (April 6, 2001). The statutes clearly contemplate that MDOC is liable for the expenses of a violator once they seek to have the violator revoked; and that once a violator is revoked, he is a state prisoner. Accordingly, we reaffirm our opinion in Smith.

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben  
Special Assistant Attorney General