

OPINION NO. 85-054**Syllabus:**

Where a person confined in the county jail is in need of medical care, including hospitalization, the county sheriff must provide such care at county expense, even where medical care is necessary as a result of injuries which have been self-inflicted.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 17, 1985

I have before me your request for my opinion concerning a county sheriff's responsibility for the medical care of individuals who have been confined to the county jail. Your question arises in light of the most recent amendment of R.C. 311.20. See Am. Sub. S.B. 23, 114th Gen. A. (1982) (eff. July 6, 1982).

It is my understanding that an individual who was confined in the Geauga County jail, awaiting trial on a felony charge, suffered chest pains and was tested at a local community hospital. After these tests had been completed, the individual attempted suicide and was placed on a life support system for approximately three weeks before he died. According to your letter of request, the bills for this individual's medical care total more than \$20,000. Your specific questions with regard to these medical expenses are:

1. Has the legislature, by amending Section 311.20 and deleting what had previously been in Section 311.20 determined that the

sheriff is no longer responsible for providing nursing services when required?

2. If your answer is that a sheriff still has to provide nursing services, is the county wherein the prisoner is housed responsible for the payment of those nursing services?
3. If the county is still responsible for payment of the nursing services, is the county responsible for payment of all nursing services when the prisoner attempts and successfully commits suicide?

I turn first to R.C. 311.20, which states:

On or before the twenty-first day of June of each year, the sheriff shall prepare and submit to the board of county commissioners a budget estimating the cost of operating the jail and feeding its inmates for the ensuing fiscal year.

On the fifth day of each month the sheriff shall render to the board an itemized and accurate account, with all bills attached, showing the actual cost of keeping and feeding prisoners and other persons placed in his charge and the number of meals served to each such prisoner or other person during the preceding month. The number of days for which allowance shall be made shall be computed on the basis of one day for each three meals actually served.

As you have noted, R.C. 311.20 was amended by Am. Sub. S.B. 23. Prior to the enactment of Am. Sub. S.B. 23, R.C. 311.20 included the following language: "The sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing, and nursing, when required, and other necessaries as the court, in its rules, designates."¹ See 1965 Ohio Laws 207 (Am. S.B. 187, eff. Sept. 6, 1965). The phrase, "other necessaries" was interpreted as including medical care, and R.C. 311.20, as it read, was found to impose a duty upon the county sheriff to furnish, at the expense of the county, medical care, including hospitalization, to those persons confined to the county jail. See University Hospitals of Cleveland v. City of Cleveland, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971); 1982 Op. Att'y Gen. No. 82-007; 1980 Op. Att'y Gen. No. 80-084; 1948 Op. Att'y Gen. No. 3131, p. 221; 1939 Op. Att'y Gen. No. 869, vol. II, p. 1168; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505. Because R.C. 311.20 no longer requires the county sheriff to furnish prisoners "other necessaries," you wish to know whether the county sheriff must provide to prisoners, at county expense, medical care, including hospitalization.

I note first that R.C. 341.01, as well as R.C. 311.20 as it read prior to the enactment of Am. Sub. S.B. 23, has been interpreted as requiring the county sheriff to provide medical care to his prisoners. R.C. 341.01 reads: "The sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction."² The duty imposed upon the county sheriff to keep safely persons confined within the jail has been interpreted as including the duty to provide medical care. See 1954 Op. Att'y Gen. No. 4177, p. 429; 1948 Op. No. 3131; 1928 Op. No. 2246. See also Op. No. 80-084; 1956 Op. Att'y Gen. No. 6768, p. 483.

¹ At one time, the court of common pleas had the duty to prescribe rules for the regulation and government of the county jail. See 1965 Ohio Laws 230 (Am. S.B. 187, eff. Sept. 6, 1965). Minimum standards for jails are now promulgated by the Ohio Department of Rehabilitation and Correction. See R.C. 341.01; R.C. 341.08; R.C. 5120.10.

² 8 Ohio Admin. Code 5120:1-8-09 provides for the medical care of prisoners within a full service jail, but does not expressly address hospital care.

In addition, I note that in Cuyahoga County Hospital v. City of Cleveland, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Cuyahoga County 1984), the court concluded, without direct reliance upon a particular statute, that the responsibility for providing and paying the cost of care and sustenance, including medical treatment, for a prisoner falls upon whoever has actual, physical control over the prisoner at the time treatment is rendered.

A prisoner also has a constitutional right to receive medical treatment. The United States Supreme Court has held that a governmental body's deliberate indifference to the serious medical needs of its prisoners violates the eighth amendment to the United States Constitution which proscribes cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97 (1976). See City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983); Byrd v. Wilson, 701 F.2d 592 (8th Cir. 1983). Further, in Fitzke v. Shappell, 468 F.2d 1072, 1076 (8th Cir. 1972), the court stated: "[t]hus it is that fundamental fairness and our most basic conception of due process mandate that medical care be provided to one who is incarcerated and may be suffering from serious illness or injury." Accord Scharfenberger v. Wingo, 542 F.2d 328 (6th Cir. 1976); Westlake v. Lucas, 537 F.2d 857 (6th Cir. 1976).

In light of the above, I conclude that a county sheriff continues to bear the responsibility of providing medical care, including hospitalization, at county expense,³ to those persons who are confined in the county jail. The fact that an individual's medical costs result from treatment rendered for a self-inflicted wound appears to be irrelevant to the county sheriff's duty to provide medical care. See Scharfenberger v. Wingo, 542 F.2d at 330 ("a prisoner's custodians cannot lawfully deny him adequate medical care even in instances of deliberate self injury"); University Hospitals of Cleveland v. City of Cleveland (concluding that the public agency which had custody over a prisoner suffering from a self-inflicted wound was required to pay the cost of his medical treatment); 1939 Op. No. 869 (county sheriff housing prisoner who attempted suicide found responsible for furnishing, at county expense, medical care).

In the recently enacted Am. Sub. H.B. 363, 115th Gen. A. (1984) (eff. Sept. 26, 1984), the legislature has provided a method whereby a board of county commissioners, among others, may seek reimbursement from a prisoner for expenses incurred as a result of his confinement. Concerning reimbursement from persons confined in a county jail, R.C. 341.19 states:

The board of county commissioners may require a person who was convicted of an offense other than a minor misdemeanor and who is confined in the county jail to reimburse the county for its expenses incurred by reason of his confinement, including, but not limited to, the expenses relating to the provision of food, clothing, and shelter. The amount of reimbursement shall be determined by a court at a hearing held pursuant to section 2929.15 of the Revised Code.

³ R.C. 341.01 has been described as merely a codification of the common law duty of a sheriff to employ ordinary care in keeping the prisoners confined to his custody. See Jenkins v. Krieger, 67 Ohio St. 2d 314, 423 N.E.2d 856 (1981); Justice v. Rose, 102 Ohio App. 482, 144 N.E.2d 303 (Lawrence County 1957).

⁴ Pursuant to R.C. 311.20, the sheriff must render to the board of county commissioners "an itemized and accurate account, with all bills attached, showing the actual cost of keeping. . . prisoners and other persons placed in his charge." "Keeping" may be broadly construed to encompass medical care provided to prisoners. See Webster's New World Dictionary 770 (2d college ed. 1978) (defining "keep" as: "to take care of. . . a) to protect; guard; defend b) to look after; watch over; tend. . . d) to maintain in good order or condition; preserve e) to supply with food, shelter, etc.; provide for; support"). See also 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505 (R.C. 311.20 and R.C. 341.01 are in pari materia, and must be construed together).

Upon the authorization of the board of county commissioners, the prosecuting attorney of the county may institute an appropriate civil action in the name of the state in the court of common pleas of the county, to recover from the convict the reimbursement for the expenses of his confinement in the county jail, as determined by a court pursuant to section 2929.15 of the Revised Code. The action shall be brought within one year after the person is released from incarceration. The amount recovered shall be paid into the county treasury. (Emphasis added.)

See R.C. 307.93; R.C. 341.14; R.C. 341.23; R.C. 2947.19. Am. Sub. H.B. 363 also enacted R.C. 2929.15, which provides that in any jurisdiction which requires convicts to reimburse the costs of confinement, a judge who sentences a person to prison for an offense other than a minor misdemeanor must also hold a hearing to determine whether the person has the ability to pay the reimbursement. Prior to the hearing, there must be an investigation of the person's ability to pay and possible reimbursement schedules and methods. R.C. 2929.15 provides that: "The amount of reimbursement shall be determined at the hearing in light of the sentence of imprisonment given and according to the person's ability to pay. However, the actual amount to be paid shall not exceed the actual cost of the confinement or forty dollars for each day of confinement, whichever is less."

Although R.C. 341.19 specifically mentions reimbursement for expenses relating to the provision of food, clothing, and shelter, the county is not limited, by the express terms of R.C. 341.19, to seeking reimbursement for only these expenses. See generally Craftsman Type, Inc. v. Lindley, 6 Ohio St. 3d 82, 451 N.E.2d 768 (1983); In Re Hartman, 2 Ohio St. 3d 154, 443 N.E.2d 516 (1983). Because the prisoner in question was never convicted, the provisions of R.C. 341.19 and R.C. 2929.15 do not appear to be available to the county in this instance. In an appropriate case, however, R.C. 341.19 and R.C. 2929.15 authorize the county to seek reimbursement in an amount not to exceed forty dollars a day from a person, who has been convicted of an offense other than a minor misdemeanor and confined to the county jail, for the medical expenses the county has incurred in providing treatment to the prisoner.

In conclusion, it is my opinion, and you are advised, that where a person confined in the county jail is in need of medical care, including hospitalization, the county sheriff must provide such care at county expense, even where medical care is necessary as a result of injuries which have been self-inflicted.

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I note that in certain instances, a county also may be able to seek reimbursement from another governmental entity for medical treatment provided to a prisoner. See, e.g., R.C. 341.21 (prisoners of the United States); R.C. 753.02 (prisoners of a municipal corporation).