

Opinion No. 94-08

November 19, 1994

OPINION OF: Tom Udall, Attorney General

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: The Honorable Dianna J. Duran, State Senator, 917 Indigo Loop, Alamogordo, NM 88310

QUESTIONS

1. Can a detention facility or county jail refuse to accept any state prisoner who is lawfully charged with a crime or arrested, or who is lawfully committed to the facility by court order?
2. Can the facility refuse to accept a federal prisoner who is lawfully charged with a federal offense if space is available?
3. If the facility must accept prisoners, what measures can the sheriff take to force acceptance?

CONCLUSIONS

1. & 2. No. County jail administrators have no authority to refuse to accept persons who have been properly committed to their custody by state or federal authorities.
3. There are several types of enforcement actions described in the third part of this opinion to compel the facility to accept persons who have been properly committed. However, the sheriff should consult with the county attorney or District Attorney's office about the legal measures that would be most appropriate in the particular circumstances.

FACTS

Some jail administrators at county detention facilities have reportedly refused prisoners delivered by county sheriffs because of alleged overcrowding at the facilities.

ANALYSIS

1. State Prisoners.

The obligation of a county jail administrator to accept persons for confinement is dictated by state statutes. According to the pertinent provisions, county jails are under the control of "the respective sheriffs, independent contractors or jail administrators

hired by the board of county commissioners." NMSA 1978, § 33-3-1(A) (Repl. Pamp. 1990). Each county jail must be used for the detention of persons charged with any crime or properly committed for trial within the county, for the imprisonment of persons who have been convicted and sentenced, "and for the safekeeping of every person who shall be committed by competent authority, according to law." **Id.** § 33-3-3. Finally, with certain limited exceptions, "[a]ll persons charged with crime [sic] committed in the state, while awaiting indictment or trial on such charge, shall be incarcerated in the county jail of the county wherein such crime is alleged to have been committed." **Id.** § 33-3-13.

There are a few statutory exceptions to the rules described above. Persons charged with a crime committed in the state and awaiting indictment or trial "may be temporarily imprisoned in other places of confinement while being conveyed or awaiting conveyance" to the county jail, or they may be confined in another county's jail if they "have taken a change of venue to such other county." NMSA 1978, § 33-3-13. In addition, a sheriff or jail administrator with custody of a person charged with a crime is authorized "to remove such person to another county jail or any other place of safety when in the opinion of the sheriff or jail administrator the life of such person or others is in imminent danger." **Id.** Finally,

[w]henver the public welfare or the safe custody of a prisoner shall require, any district judge ... in his discretion may order any person charged with the commission of a crime, or any person in the custody of the sheriff of any county in the district ..., to be removed to any other county jail, or to the state penitentiary, or to any other place of safety, when, in the opinion of the said district judge, it is advisable that such person or persons shall be removed for any purpose whatsoever.

Id. § 33-3-15.

Based on the rules described above, county jail administrators have virtually no discretion to refuse to accept persons properly committed to their custody.¹ If a county jail facility was so overcrowded that an administrator reasonably thought it put the life of a prisoner or others "in imminent danger," the administrator could make arrangements to remove the prisoner elsewhere. Otherwise, if there was no "imminent danger," but the jail administrator believed that overcrowding sufficiently affected "the public welfare or the safe custody of a prisoner," the administrator could apply to the district court for an appropriate court order to have a prisoner removed to another facility. **Cf. Adams v. Meloni**, 472 N.E.2d 319 (N.Y. 1984) (hazards associated with an overpopulated prison would permit transfer of prisoners from one facility to another under a statute authorizing such transfers if a county jail becomes "unfit or unsafe" for the confinement of some or all of the inmates.)²

2. Federal Prisoners.

New Mexico statutes similarly require county jail administrators to accept federal prisoners:

It shall be the duty of the sheriff of each county, his deputy, jailer, jail administrator or independent contractor, to whom any person shall be remitted in conformity with a legal process issued by or under the authority of the United States, and he is hereby required, to receive such person or persons into his custody and keep them safely until they shall be placed at liberty according to the laws of the United States....

NMSA 1978, § 33-3-16. The duty to accept federal prisoners is conditioned on payment by the United States of "the fee which shall be established from time to time by the sheriff, jail administrator or independent contractor in charge of the operation of the jail."

Id. In addition, there may be an argument that a county jail would not be required to accept federal prisoners under Section 33-3-16 if, by doing so, the jail could not accommodate properly committed county prisoners. **See** AG Op. No. 57-234 (1957).

3. Action By the Sheriff to Compel Acceptance of Prisoners.

The sheriff should consult with either the attorney representing the county or the appropriate District Attorney's office to determine what measure he or she should take to compel a jail administrator to accept prisoners. We note, however, that mandamus and other legal actions have been brought against jail administrators in other states for refusing to receive prisoners at their facilities. **See, e.g., Maricopa County v. State**, 616 P.2d 27 (Ariz. 1980) (county sheriffs successfully petitioned for mandamus to compel the director of the state corrections department to comply with his statutory duty to take and hold in custody persons sentenced to the state prison); **Henderson v. Dudley**, 574 S.W.2d 658 (Ark. 1978) (sheriff who disobeys or disregards a court order of commitment or confinement is subject to attachment for contempt); **Campbell County v. Kentucky Corrections Cabinet**, 762 S.W.2d 6 (Ky. 1989) (upholding imposition of civil contempt remedy upon state corrections department for refusing to accept delivery of convicted felons as required by state constitution and statute).

ATTORNEY GENERAL

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GENERAL FOOTNOTES

[n1](#) The statutes require transmittal of an order before a county jail is deemed to have custody of a prisoner: "every public officer who has power to order the imprisonment of any person for violation of law shall, on making such order, transmit to the sheriff, jail administrator or independent contractor of his respective county a true copy of the order so that the person imprisoned may be considered under his custody until expiration of the commitment...." NMSA 1978, § 33-3-12(A). Once in custody, a prisoner may not be released until expiration of his or her term of commitment or until an order of release is issued. **Id.** § 33-3-12(B).

[n2](#) Courts in other states with statutory provisions similar to New Mexico's laws regarding jail admissions have concluded that state and local jail administrators cannot

refuse to receive persons properly delivered to their custody despite overcrowding at their facilities. **See, e.g., Maricopa County v. State**, 616 P.2d 37 (Ariz. 1980); **Kanekoa v. Washington State Dep't of Social and Health Svcs.**, 626 P.2d 6 (Wash. 1981). **But see Badgley v. Santacroce**, 800 F.2d 33 (2d Cir. 1986) (under the United States Constitution, judgment of federal court prohibiting intake of inmates at county jail over court-imposed maximum would be a complete defense to any attempt by a state court to hold county officials in contempt for refusing to accept prisoners at the facility).