



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

August 29, 2023

The Honorable Heather Stebbins
Kerr County Attorney
700 Main Street, Suite BA-103
Kerrville, Texas 78028

Opinion No. AC-0004

Re: Questions relating to the respective responsibilities of a county sheriff's office and the Texas Department of Criminal Justice regarding the detention and transportation of offenders to state jail facilities (RQ-0501-KP)

Dear Ms. Stebbins:

You ask for clarification regarding the respective responsibilities of Kerr County ("County") and the Texas Department of Criminal Justice ("TDCJ") relating to the detention and transportation of offenders from county facilities to certain state jail facilities.¹ You explain that the County sheriff's office "has historically transported offenders to the [TDCJ] state jail division, and TDCJ has historically honored invoices for reimbursement" but that TDCJ recently denied a reimbursement request. Request Letter at 1. You tell us TDCJ later clarified that it sent the denial in error due to the County inadvertently directing an invoice to the wrong TDCJ office. *Id.* We understand that the invoice has already been paid.² Despite this, you ask the following five questions:

1. Can TDCJ require a county sheriff to transport inmates to a [substance abuse felony punishment facility] or [intermediate sanction facility]?
2. Can TDCJ refuse to reimburse a county for transporting an inmate to the state jail division?

¹See Letter from Honorable Heather Stebbins, Kerr Cnty. Att'y, to Off. of the Tex. Att'y Gen., Op. Comm. at 1–2 (Mar. 10, 2023), <https://www.texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0501KP.pdf> ("Request Letter").

²TDCJ informs us that in the days following your letter, TDCJ processed and paid the invoice at issue, recalculating the amount reimbursed as a higher figure than requested by using updated mileage rates. See Brief from Kristen Worman, Gen. Couns., Tex. Dep't of Crim. Just., to Austin Kinghorn, Chair, Op. Comm., Off. of the Tex. Att'y Gen. at 1 (Apr. 5, 2023) (on file with Op. Comm.) ("TDCJ Brief").

3. Upon a refusal by TDCJ to lawfully reimburse a county for a transport, what sanctions or remedies does a county have with regard to TDCJ?
4. If TDCJ fails to pick up an inmate for transfer after 45 days as required, what remedies or sanctions are available to the county?
5. Is there another governing rule or statute that would authorize a longer period of detention in a county facility for state prisoners awaiting transport? If so, is TDCJ required to reimburse the local government for the costs of that prisoner's detention?

Id. at 1–2 (renumbered). We address each question in turn.

TDCJ may not require a county sheriff to transport inmates to a substance abuse felony punishment facility or an intermediate sanction facility.

Your first question is whether TDCJ can require a county sheriff to transport inmates to either a substance abuse felony punishment (“SAFP”) facility or an intermediate sanction facility (“ISF”). *Id.* at 1. Government Code subsection 493.009(l) requires TDCJ to identify county inmates awaiting transfer to its institutional division³ who, because of their need for drug or alcohol treatment, require transfer to an SAFP facility. TEX. GOV’T CODE § 493.009(l). The statute expressly provides that TDCJ “shall provide for the transportation of the defendant to such a facility.” *Id.* (referring to an SAFP facility). The phrase “provide for” in the context of a law means to “enable or allow (something to be done).” NEW OXFORD AMERICAN DICTIONARY 1406 (3d ed. 2010). Subsection 493.009(l) thus makes TDCJ ultimately responsible for ensuring that the inmate is transferred to an SAFP facility. Nothing in that statute assigns this duty to a county sheriff or authorizes TDCJ to shift the burden of performing the duty to the county sheriff.

An ISF is a type of community corrections facility operated by a local community supervision and corrections department for persons on community supervision or in a pretrial intervention program or drug court program that provides certain services and programs. *See* TEX. GOV’T CODE § 509.001(1)(F). Government Code subsection 508.281(c) refers to holding certain inmates in a county jail “pending . . . transfer to an [ISF]” under certain circumstances but does not specify the manner of or entity responsible for the transfer.⁴ *Id.* § 508.281(c)(1) (generally concerning persons released on parole or mandatory supervision found to have violated a condition of their release). But nothing in subsection 508.281(c) assigns the county sheriff the duty to transport inmates to an ISF nor authorizes TDCJ to place that duty on the county sheriff.

³TDCJ’s institutional division operates and manages the state prison system. TEX. GOV’T CODE § 493.004.

⁴The quoted text reflects Government Code subsection 508.281(c) as amended by House Bill 710. *See* Act of May 26, 2015, 84th Leg., R.S., ch. 693, § 2, 2015 Tex. Gen. Laws 2169, 2170.

TDCJ may not refuse to reimburse a county for transporting an inmate to a state jail division facility.

Your second question concerns the reimbursement of transportation costs for the transfer of an inmate to TDCJ's state jail division. Request Letter at 2. Chapter 507 of the Government Code governs TDCJ's state jail division. *See generally* TEX. GOV'T CODE §§ 507.001–.034. Section 507.024 requires TDCJ's governing board to “adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities.” *Id.* § 507.024.⁵ While section 507.024 authorizes a sheriff to “transport defendants to a state jail felony facility if the sheriff is able to perform the service as economically as if the service were performed by the [state jail] division,” the section specifies that “[t]he state jail division is responsible for the cost of transportation of defendants to the division.”⁶ *Id.* § 507.024. Based on this language, TDCJ must reimburse a county for transporting an inmate to a state jail division facility.

A county must generally utilize its normal procedures for collecting on a debt owed to the county if TDCJ refuses to reimburse the county for inmate transport.

Your third question asks what sanctions or remedies the county has if TDCJ refuses to reimburse the county for transportation of an inmate. Request Letter at 2. No statutory provision of which we are aware, including Government Code subsections 493.009(l) (SAFP facility transfer), 508.281(c) (ISF transfer), and section 507.024 (state jail division transfer), provides for sanctions or remedies for TDCJ's failure to reimburse a county for inmate transportation. Although TDCJ duties set forth in Government Code chapter 499, subchapter F (“Procedures for Reducing County Jail Backlog”) may be enforced by mandamus action, nothing in subchapter F pertains to the duty of TDCJ to reimburse a county for inmate transfer. *See* TEX. GOV'T CODE § 499.121(d) (“The duties *provided by this subchapter* may be enforced by an action in mandamus.” (emphasis added)). Thus, with regard to statutory remedies, a county must generally utilize its normal procedures for collecting on a debt owed to the county, to the extent such procedures are available as to a state agency.⁷ *See* TEX. LOC. GOV'T CODE § 113.902(a) (providing, with an exception not

⁵*See also* TEX. GOV'T CODE §§ 491.001(a)(1) (defining “board” in Government Code Title 4, subtitle G as the Texas Board of Criminal Justice), 492.001 (providing that the board governs TDCJ). TDCJ informs us that it has adopted rules governing state jail admissions and the designation of state jail regions. *See* TDCJ Brief at 2 (identifying 37 TEX. ADMIN. CODE §§ 152.3 and 152.5). TDCJ also informs us it adopted a formal policy to provide for the reimbursement of transportation expenses to counties, which “expressly acknowledges TDCJ's duties to reimburse counties for expenses associated with the transfer of inmates to: TDCJ catchment areas, SAFP facilities, State Jail facilities, or transfer facilities.” *Id.* (referring to TDCJ Administrative Directive 14.80, Transportation Reimbursement to Counties).

⁶In certain situations, a court determination of a felony backlog in a county jail pursuant to Government Code subsection 499.125(a) will result in inmates being transferred to “an appropriate jail, detention center, work camp, or correctional facility” by the Commission on Jail Standards, in which case the Commission “is liable to counties for payment of the costs of transportation for and maintenance of transferred inmates.” TEX. GOV'T CODE § 499.125(a), (b).

⁷TDCJ's brief states that “since TDCJ has adopted a policy to govern transportation reimbursement to counties, TDCJ would urge counties to contact the TDCJ Inmate Transportation Headquarters Office in Huntsville, TX, to request assistance when seeking reimbursement for inmate transportation expenses.” TDCJ Brief at 4.

relevant here, that “the county treasurer shall direct prosecution for the recovery of any debt owed to the county, as provided by law, and shall supervise the collection of the debt”).

At common law, a writ of mandamus may issue if certain prerequisites are met. *See Tex. Tel. Ass’n v. Pub. Util. Comm’n of Tex.*, 653 S.W.3d 227, 263 (Tex. App.—Austin 2022, no pet.) (listing the prerequisites as a legal duty to perform a nondiscretionary act, a demand for performance of the act, and a refusal to perform). Whether such prerequisites, or any other requirements for a writ of mandamus under the common law, are satisfied in a given instance is a fact inquiry that cannot be made in an Attorney General opinion. *See Tex. Att’y Gen. Op. No. KP-0437 (2023)* at 5 (recognizing that the determination of fact issues is outside the scope of an Attorney General opinion).

The failure of TDCJ to take custody of an inmate within forty-five days as required by law results in statutory compensation to the county by TDCJ for any extended period of detention. However, there is no express authorization for extended periods of detention.

Your last two questions concern the time period for transferring an inmate to TDCJ’s custody. *See Request Letter* at 2. As your questions are related and are both affected by recent legislation, we address them together. The Legislature recently enacted Government Code section 499.1215, which provides in subsection (b) that TDCJ “shall take custody of a person awaiting transfer to [TDCJ] . . . not later than the 45th day following the date on which all documents required by Sections 8(a) and (c), Article 42.09, Code of Criminal Procedure, have been certified as required by Section 8(b) of that article.”⁸ TEX. GOV’T CODE § 499.1215(b); *see also* Act of May 25, 2023, 88th Leg., R.S., ch. 1122, § 2, 2023 Tex. Sess. Law Serv. (House Bill 2620). You ask what remedies or sanctions the county has “[i]f TDCJ fails to pick up an inmate for transfer after 45 days as required[.]” *Request Letter* at 2. The new law expressly provides that if TDCJ “does not take custody of a person within the period prescribed by Subsection (b), [TDCJ] shall compensate the county for the cost of confinement for each day the person remains confined in the county jail following the expiration of that period.”⁹ TEX. GOV’T CODE § 499.1215(c).

Finally, you ask whether “a longer period of detention in a county facility for state prisoners awaiting transport” is authorized by statute or rule and, if so, whether TDCJ must “reimburse the local government for the costs of that prisoner’s detention[.]” *Request Letter* at 2. As previously

⁸Article 42.09, subsections 8(a) and (c), of the Code of Criminal Procedure require a county that transfers a defendant to TDCJ to deliver certain documents to a TDCJ-designated officer. *See* TEX. CODE CRIM. PROC. art. 42.09, § 8(a), (c). TDCJ “shall not take a defendant into custody” until those documents have been received and the receiving officer “determines that the documents do not contain any errors or deficiencies requiring corrective action by the county.” *Id.* § 8(b). If no corrective action is required, the officer must certify the documents under the seal of the TDCJ. *Id.* § 8(b)(1). If the documents require corrective action, the TDCJ officer must notify the county of this fact. *Id.* § 8(b)(2).

⁹The county is not, however, entitled to compensation for any day beyond the expiration of the forty-five-day period that the person remains confined due to a delay on the part of the county. *See* TEX. GOV’T CODE § 499.1215(d)(1). Additionally, House Bill 2620 provides that the new section 499.1215 applies only to costs “related to the confinement of a person that occurs on or after October 1, 2023, regardless of whether the requirements under that section for transfer of the person to [TDCJ] are completed before, on, or after that date.” Act of May 25, 2023, 88th Leg., R.S., ch. 1122, § 6, 2023 Tex. Sess. Law Serv.

noted, if TDCJ does not take custody of a person within the required time period, the law now provides for compensation to the county for each day the person remains confined in county jail. TEX. GOV'T CODE § 499.1215(c). While the new law recognizes that detention beyond the forty-five-day period may occur, there is no express grant of authority to detain inmates beyond the forty-five-day period. *See id.* Similarly, in providing that if the county causes the delay, “the county and [TDCJ] shall arrange to transfer the person to [TDCJ] as soon as practicable after the delay,” the new law recognizes that extended detentions may occur, but it does not expressly authorize them. *Id.* § 499.1215(d)(2).

S U M M A R Y

The Texas Department of Criminal Justice (TDCJ) may not require a county sheriff to transport inmates to a substance abuse felony punishment facility or an intermediate sanction facility, nor may it refuse to reimburse a county for transporting an inmate to a state jail division facility. A county must generally utilize its normal procedures for collecting on a debt owed to the county if TDCJ refuses to reimburse the county for inmate transport.

Pursuant to House Bill 2620 from the Eighty-eighth regular legislative session, the failure of TDCJ to take custody of an inmate within forty-five days as required by law results in statutory compensation to the county by TDCJ for any extended period of detention. Extended periods of detention, however, are not expressly authorized under the law.

Very truly yours,

A handwritten signature in black ink that reads "Angela Colmenero". The signature is written in a cursive style with a large initial 'A'.

ANGELA COLMENERO
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

D. FORREST BRUMBAUGH
Deputy Attorney General for Legal Counsel

AUSTIN KINGHORN
Chair, Opinion Committee

BECKY P. CASARES
Assistant Attorney General, Opinion Committee