

N E B R A S K A

JAIL BULLETIN

MAY/JUNE 1998

NUMBER 141

The *Jail Bulletin* may be used as a supplement to your jail in-service training program. If officers study the material and complete the attached "open book" quiz, they may receive **one hour of credit**. The bulletin and quiz may be reproduced for staff use as necessary. **We welcome any material you would like to contribute to the Jail Bulletin.**

LB 695 AND 695A

HISTORY

LB 695 AND 695A, which deals with state funded reimbursements to counties for holding inmates designated as state prisoners, has its roots in earlier legislation designated for a similar purpose. According to an opinion issued by the State Attorney General's Office in 1997, language of the Nebraska Revised Statutes Sections 47-120 and 47-121 date back to the early days of Nebraska statehood. At that time many Nebraska inmates were confined in county jails and federal facilities due to the lack of state correctional facilities.

The Attorney General's opinion also states the difficulty in ascertaining the intent of this early legislation, especially in attempting to evaluate the validity of claims presented to the state in modern times. As written, the statutes deal with the provision of reimbursements to county governments for holding jail prisoners who were designated as "state prisoners". Although historically, funding had not been appropriated by the Legislature for payment of claims under this legislation, at least in the modern era, the laws still remained on the books up to the present time.

The contents of the *Jail Bulletin* represent the views of the author(s) and do not necessarily reflect official views or policies of the Nebraska Crime Commission or the Nebraska Jail Standards Board

As originally written, counties were eligible for a \$3.50 per day, per inmate reimbursement from state funds for housing jail inmates who were designated as "state prisoners". The definition of what constitutes a "state prisoner" has been clarified by the newer legislation, but in the widest definition of the original statutes, a state prisoner was considered as one who was charged with, or convicted of crimes against state laws or statutes. In rural areas this included most, if not all inmates being held on charges originating from offenses within that jurisdiction, whether felonies or misdemeanors, sentenced or unsentenced. In some urban Nebraska counties, many inmates held for misdemeanor crimes are either charged with or convicted and sentenced for offenses against local ordinances which would definitely not fit the category of "state prisoner".

The fact that the intent of the original statutes were unclear for modern purposes was made evident when, in 1997, a number of Nebraska counties and sheriffs began to submit claims to the state for payment based on the provisions of the existing law (Nebr. Revised Stat. 47-120, 47-121). As officials from the Legislature's Appropriations Committee began to look at the merit and possible ramifications of these claims, State Senator Cadabeck also introduced LB 695 to update the original statutes which governed these payments. Although this bill did not advance beyond committee in the first session of the 1997-98 legislature, there was growing interest and support for the state to assume some of the costs involved with local jails housing of certain prisoners.

In the second session of the 1997-98 legislature, LB 695 was carried over by Senator Cudabeck as his priority bill for that session. With the addition of other senators as co-sponsors, LB 695 gained further support in the unicameral. After some debate on wording, final agreements on the definition for "state" prisoners, requirements and methods for fund disbursement, and the addition of fiscal penalties for non-compliance with Nebraska Jail Standards, LB 695 was passed and enacted into law by the legislature in April 1998. LB 695A which provides the financial appropriation to meet the provisions of this legislation was also approved by the legislature at the same time. County eligibility for reimbursements appears to be set for July 1, 1999. So, just what effects will this new legislation have?

HIGHLIGHTS

What has changed now that LB 695 and 695A have been enacted? Much of the wording in the original legislation was left intact, but other additions were included to change or clarify and expand the content of the original laws. Other clauses and subsections were deleted altogether. Sections 29-1002 and 29-1005 of the Nebraska Revised Statutes were repealed outright. The original sections 47-119, 120, 121, and 83-4, 133 of

the same statutes were repealed with the new wording in their place. So what do the new statutes say?

First, a **“state prisoner” was defined as a person who has been convicted and sentenced as an adult to a Department of Correctional Services adult facility, or placed on probation for their offense.** In other words, a pre-trial offender will not become a state prisoner until s/he is convicted and sentenced. If the sentence does not include probation or incarceration by the Department of Correctional Services, s/he will not be designated as a state prisoner. This means that some inmates with identical charges will be designated as state prisoners and others will not, depending on their sentence.

Does this mean that a county will be ineligible for funding during the time a prisoner spends in their jail facility prior to sentencing? Not necessarily, because Section 2 of this legislation also provides a retroactive clause in determining the amount of funds due. A county will be eligible for reimbursement for each day that an inmate who fits the definition of a state prisoner has spent in their jail from the first day s/he enters the facility until s/he is transferred to the Department of Correctional Services or placed under the terms and conditions of the probation.

In some instances prisoners may be held in jail for multiple charges. Custody authorizations may change on some, or all of the holds, after their initial incarceration date. Under these statutes, only the time spent in jail under the charges(s) which ultimately result in their designation as a state prisoner will qualify for reimbursement. In the case of individuals who are in jail, released prior to sentencing (i.e., post bond) and then sentenced at a later date as a state prisoner, their time spent in jail will count towards reimbursement purposes as long as their previous detention period was for the charges(s) which ultimately classified them as a state prisoner.

Remember, inmates who are not placed on probation *or* not sentenced to incarceration with the Department of Correctional Services will not be designated as state prisoners for the purposes of reimbursement under the new statutes.

Second, economic times have changed! The daily amount for reimbursement will now be \$35.00 per day instead of the original \$3.50. County boards or county boards of corrections are now responsible for submission of reimbursement requests based on the requirements of Section 47-121. This stipulates that these requests must be submitted on a regular basis, not less than quarterly or more often than monthly, to the Director of the Department of Correctional Services.

The Department of Correctional Services is now authorized under

Section 47-119 and 121 to develop rules and regulations for the submission of these reimbursement requests. At this point, these rules are still under development. Requests for reimbursement must be sworn by the Sheriff or a designated representative of the county board, before the clerk of the county and certified under the clerk's seal.

What else changed? Probably the most significant impact regarding the Nebraska Jail Standards Board involves the provision for withholding reimbursement funds to counties whose jails are found to be in non-compliance with the Nebraska Jail Standards. Previously, state law allowed the Jail Standards Board to petition local district courts to order detention facilities to comply with corrective action requirements. The same statutes also allowed for the board to petition the court for closure of the objectionable portion of the facility, or in extreme cases, closure of the entire facility altogether. Although these provisions still remain, Section 83-4, and 133 were changed to also include the withholding of reimbursement funds to counties who have not completed corrective action measures for non-compliance issues within the specified time frame as required by the Jail Standards Board.

If a detention facility fails to initiate corrective action within 6 months after the receipt of their inspection report, fails to correct the disclosed conditions, or fails to close the detention facility or the objectionable portion, the Jail Standards Board is required to notify the Department of Correctional Services that the detention facility does not qualify for reimbursement for state prisoners under provisions of the statutes. Court ordered corrective action or closure of all or parts of the detention facility are still available as options which the Jail Standards Board may choose to pursue.

When do these changes go into effect? Through LB 695A, the legislature has appropriated funding for the fiscal year 1999-2000 out of the General Fund for the prisoner reimbursement provisions of the new statutes. After July 1st, 1999, counties will be eligible to be paid for sentenced state prisoners for each day spent in their facility which qualifies for reimbursement. Prisoners who otherwise would meet the definition of a state prisoner, but are sentenced prior to July 1st, 1999, will not be considered as eligible for reimbursement under the provisions of the newer statutes.

At the present time it is important to remember that the Department of Correctional Services has yet to develop and finalize the specific details regarding rules and regulations for the distribution of funds under this legislation. Input from local and state officials will be utilized, as well as information gathered at public hearings for this purpose. How this will ultimately affect the operation and policy of each local government and detention facility is yet to be determined.

Other sections of this legislation specify the requirements of the Jail Standards Board to notify the Department of Correctional Services Director which facilities are ineligible for reimbursements, and the rights of appeal given to local governing boards. Also included in the legislation, but unrelated to provisions governing jails for prisoner reimbursements, was the creation of the County Property Tax Relief Program. Funding appropriated under LB 695A for the 1998-99 fiscal year deals with the latter portion of the legislation. The legislation as adopted by the Nebraska Unicameral on April 9, 1998 with additions and deletions lined out or underlined, is given in the following section.

Material prepared by Kurt Sandquist, Jail Standards Division, Nebraska Crime Commission.

Special thanks to Kate Morris, Budget and Program Analyst, Legislative Fiscal Office, for information and assistance with this bulletin. If you or your agency wish to contribute to the ***Jail Bulletin*** or have a special subject to be addressed through the bulletin, please contact: Jail Standards Division, P.O. Box 94946, Lincoln, Nebraska 68509-4946, FAX 402-471-2837.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

MAY/JUNE 1998

NUMBER 141

SUBJECT: LB 695

NAME: _____

DATE: _____

1. LB 695 was a bill passed by the Nebraska Legislature that originated out of earlier statutes involving the placement of inmates into state facilities due to the lack of federal and county correctional facilities.
 - a. True
 - b. False

2. One of the key issues at stake for determining county eligibility of reimbursement funds in both the old statutes and the newly adopted legislation is when an inmate is designated as a:
 - a. True
 - b. False

3. LB 695 and 695A were originally introduced in 1997 and carried over into the 1998 session where they were passed by the Legislature and enacted into the Nebraska Revised Statutes with all of the statutory provisions for reimbursement currently in effect.
 - a. True
 - b. False

4. Which sections of the Nebraska Revised Statutes were affected when LB 695 was passed by the Legislature?
 1. _____
 2. _____
 3. _____
 4. _____

5.

6.

7.

5. Under the new statutes, at what point will an inmate be designated as a state prisoner for reimbursement purposes?

6. The retroactive provision of the new statutes will allow counties to receive reimbursement funds for time that an inmate spends in their facility prior to sentencing.

- a. True
- b. False

7. Who will be responsible within local government agencies for the submission of reimbursement requests to the Director of the Nebraska Department of Correctional Services?

8. According to the changes made to the Nebraska Revised Statutes, Sections 84-4 and 133, what possible sanctions will the Nebraska Jail Standards Board be able to seek when a local detention facility does not initiate corrective action within the required time frame?

- 1. _____
- 2. _____
- 3. _____
- 4. _____

9. What is the date when counties will be able to determine whether a sentenced inmate is designated as a state prisoner for the purpose of reimbursement claims under the new statutes?

10. Rules and regulations for eligibility and the submission of reimbursement requests were developed and implemented by the Department of Correctional Services on July 1st, 1998.

- a. True
- b. False

CREDIT: One Hour credit for jail in service training requirement.

QUIZ

Answer Sheet

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

MAY/JUNE 1998

NUMBER 141

SUBJECT: **LB 695**

NAME: _____

DATE: _____

1. LB 695 was a bill passed by the Nebraska Legislature that originated out of earlier statutes involving the placement of inmates into state facilities due to the lack of federal and county correctional facilities.

- a. True
- T b. False**

2. One of the key issues at stake for determining county eligibility of reimbursement funds in both the old statutes and the newly adopted legislation is when an inmate is designated as a:

State Prisoner

3. LB 695 and 695A were originally introduced in 1997 and carried over into the 1998 session where they were passed by the Legislature and enacted into the Nebraska Revised Statutes with all of the statutory provisions for reimbursement currently in effect.

- a. True
- T b. False**

4. Which sections of the Nebraska Revised Statutes were affected when LB 695 was passed by the Legislature?

1. **29-1002**

2. **29-1005**

3. **47-119**

4. **47-120**

5. **47-121**

6. **83-4**

7. **83-133**

5. Under the new statutes, at what point will an inmate be designated as a state prisoner for reimbursement purposes?

At sentencing

6. The retroactive provision of the new statutes will allow counties to receive reimbursement funds for time that an inmate spends in their facility prior to sentencing.

- T a. **True**
b. False

7. Who will be responsible within local government agencies for the submission of reimbursement requests to the Director of the Nebraska Department of Correctional Services?

The County Board of Commissioners OR the County Board of Corrections

8. According to the changes made to the Nebraska Revised Statutes, Sections 84-4 and 133, what possible sanctions will the Nebraska Jail Standards Board be able to seek when a local detention facility does not initiate corrective action within the required time frame?

1. Petition the District Court for an order to require the detention facility to

complete corrective action for the no-compliance issues.

2. Petition the District Court for closure of the objectionable portion of the facility. 3. Petition the District Court for closure of the detention facility altogether.

4. Request to the Director of the Department of Corrections that reimbursement funds be
withheld from the detention facility.

9. What is the date when counties will be able to determine whether a sentenced inmate is designated as a state prisoner for the purpose of reimbursement claims under the new statutes?

After July 1st, 1999

10. Rules and regulations for eligibility and the submission of reimbursement requests were developed and implemented by the Department of Correctional Services on July 1st, 1998.

- a. True
T b. **False**

**CREDIT: One Hour credit for jail in service training requirement.
Answer sheet should be retained by the Jail Administrator.**