

GOVERNOR'S LEGISLATIVE STAFF REVIEW

BILL NUMBER: H.B. 32  
SPONSOR: Walker  
TITLE: County Jail Incarceration  
DATE: January, 1982.  
ANALYST: D. Owen

7033  
There are real fiscal concerns with this bill

ANALYSIS

While bill limits state payment for jail incarceration to people convicted of a felony and are in jail as a condition of probation, corrections original fiscal estimate was \$1,945,800, based upon state payment of incarceration of state offenses. The \$777,800 estimate is based upon payment built solely for those incarcerated as part of probation. It does not anticipate medical costs nor an increase in costs beyond the current \$23 per day. No costs related to construction of new facilities are included. This bill will invite much greater state financial participation since there is no logical reason why the state has an obligation to pay for felons incarcerated as part of probationers and not for parolees/probationers held in jail awaiting revocation hearings or even a new trial date.

In the juvenile detention area, the state shares part of the costs but also has a strong voice on the policies followed in those detention centers. This bill would not give the state any such input into operating standards.

The bill does not address the state's liability for these reimbursed prisoners. Could the state be sued for the negligence of the counties in running their jails?

Finally, the bill could result in a greater increase in the number of probationers sent to jail and the length of time they stay. The state needs to determine whether they wish to increase incarceration time or instead strengthen probation programs which could be utilized instead of incarceration.

DEPARTMENT COMMENTS

Talked to Steve Love, Division of Corrections.

about 83,000 court-ordered days x \$23 =  
\$1,909,000 average of direct costs  
minus 33,919  
15,000 terminated not counted

Meet w Walker

Probationers ✓

in 1980, no authority

1. Equal protection issue
2. Programs, adm control liability issue



## OFFICE OF THE STATE PLANNING COORDINATOR

SCOTT M. MATHESON,  
GOVERNOR

MARTHE F. DYNER,  
STATE PLANNING COORDINATOR

### M E M O R A N D U M

To: DOT

From: Pat Johnson

Date: February 5, 1982

Re: H.B. 32

My inquiries about H.B. 32 gave rise to the following items:

1. Both Allan Moll from Salt Lake County and Brent Gardner of the UAC, claimed authorship responsibility for the measure.
2. Olene Walker is out of town until later this evening or tomorrow (Friday).
3. In talking to Allan and Kerry Steadmen, I alluded to the need for flexibility and the setting of priorities when discussing the respective rolls of the various levels of government. They agreed that both factors were necessary in order to have a successful process.

Steve-

Here is a summary of our experience with data collection related to House Bill 32.

The Sheriffs Association provided the following information:

County

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Beaver	0	0	0	
Box Elder	736	0	50	786.00
Cache	3093	360	178	3,631.00
Carbon	10	10	20	40.00
Daggett	0	59	6	65.00
Davis	0	0	128	128.00
Duchesne				
Emery	123	311	152	586.00
Garfield	280	240	14	534.00
Grand				
Iron				
Juab				
Kane	15	6	0	21.00
Millard	90	359	94	543.00
Morgan	0	0	0	
Piute	0	0	0	
Rich				
Salt Lake	7677	0	1042	8,719.00
San Juan				
Sanpete	0	0	0	
Sevier				
Summit				
Tooele				
Unitah				
Utah	5026	0	3339	8,365.00
Wasatch	21	0	30	51.00
Wayne	0	0	0	
Washington				
Weber	1764	1409	628	3,801.00
Total	18,835	2,754	5,681	27,270

My understanding is that the Sheriff's Data is only for six months. Data is missing for several of the larger jails. Expanding the data to 30,000 days per six months yields 60,000 man days per year. Using the base cost as \$24 per day, the fiscal note attached to the bill would be \$1,440,000.

JANUARY 1, - JUNE 30, 1982

*[Handwritten signature]*  
Days served  
Between Conv/Sent

	Days served Probation	Days served Sentence	Days served Between Conv/Sent
BEAVER	0	0	0
BOX ELDER	736	0	50
CACHE	3,093	360	178
CARBON	10	10	20
DAGGETT	0	59	6
DAVIS	0	0	128
DUCHESNE			
EMERY	123	311	152
GARFIELD	280	240	14
GRAND			
IRON			
JUAB			
KANE	15	6	0
MILLARD	90	359	94
MORGAN	0	0	0
PIUTE	0	0	0
RICH			
SALT LAKE	7,667	0	1,042
SAN JUAN			
SANPETE	0	0	0
SEVIER			
SUMMIT			
TOOELE			
UINTAH			
UTAH	5,026	0	3,339
WASATCH	21	0	30
WAYNE	0	0	0
WASHINGTON			
WEBER	1,764	1,409	628

GOVERNOR'S LEGISLATIVE STAFF REVIEW

BILL NUMBER: H.B. 32

SPONSOR: Olene Walker

TITLE: County Jail Incarceration as Condition of Probation

DATE: February 15, 1982

ANALYST: Owen, D. *DO*

ANALYSIS

Legal Concerns:

H.S. 32 amends section 77-18-1 UCA to require the state to reimburse counties for the "actual costs of incarceration of a convicted felon sentenced to serve in a county jail as a condition of probation." However, the bill conflicts with 17-22-8 UCA which also states that jail expenses "shall be paid out of the county treasury" except for certain civil commitments, the opposing party reimburses the county. Any other exceptions should have been included in this section. The bill also conflicts with 17-15-17 UCA which states that "expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail" are a county expense. Services for which the county receives state reimbursement (i.e., detention centers, criminal jury and witness fees) are not listed as county expenses.

Administrative Concerns:

Many administrative problems can best be analyzed by comparing the proposed state jail reimbursement to the state reimbursement of detention center costs and other state reimbursement programs.

How is Cost Reimbursement Determined?

H.B. 32 provides that the state will pay the "actual costs" of incarceration. However, there is no explanation on how such "actual costs" will be determined. As currently drafted, the bill gives the state an open-ended responsibility to pay whatever costs counties request. In contrast, the statute governing state reimbursement of detention centers provides specific procedures by which reimbursement amounts are determined. Further, such reimbursement is not open-ended, but limited by the budget approved by the legislature. Even within these statutory provisions, the state and the counties have had disagreements over what should be included as part of the "costs." The circuit court also provides an excellent example of the conflicts which occur between localities and the state when vague open-ended cost reimbursement provisions are enacted. The Circuit Court Act was recently amended to more clearly define who and how reimbursement would be determined and to put the legislature in ultimate control of the amount of money appropriated for this purpose. The lack of any definition and procedure to determine cost will result in serious problems, especially since there is a wide variety of jails with a large divergence in costs.

Who is to Administer the Reimbursement Program?

H.B. 32 does not identify any agency as being responsible for administering the reimbursement program. In contrast, the juvenile detention statute specifically gives the responsibility to the Department of Social Services. It has been assumed that the Division of Corrections would administer the monies. However, if program administration is limited to financial reimbursement of costs, the responsibility may more

appropriately be with the Division of Finance. The state's program of reimbursing local government for extradition costs was once housed within the Division of Corrections, but has since moved to Finance. (The courts have also attempted to move the jury and witness reimbursement program to Finance.)

The state agencies responsible for local reimbursement programs have little interest in the tedious conflict-producing task of verifying expenditures, especially when they have no authority over how such services are delivered. Often this task is left to Finance who does not have the ability to visit sites and monitor costs. As a result, the state has little, if any, control over expenditures. Local government has little incentive to keep costs down, but rather, manipulates definition in order to receive the most money.

What input does the state have into services the state pays for?

In H.B. 32, the state has no authority to develop minimum standards for the operation of jails. In contrast, Youth Corrections establishes minimum standards of detention care. Such standards protect the state from liability, provides a means of uniformity between centers, and ensures a basic level of services for which costs are reimbursed. The state of Utah is one of a very few states without authority to determine jail standards. H.B. 32 removes any leverage the state had with counties to establish minimum jail standards by eliminating the need for counties to maintain minimum jail standards in order to qualify for state reimbursement.

What is state's future policy objective?

H.B. 32 sets a precedent for greater future state financial contribution to county jails. A case can then be made to expand state financial responsibility to probationers and parolees awaiting trial/revocation hearings and to all individuals in jail as a result of a conviction of a state statute. The state may wish to take a greater financial role in this area. However, the state is involved in partial funding of a number of programs and is under pressure to assume more of these costs also. For example:

- 1) Juvenile detention centers (legislation was introduced in 1981 budget session).
- 2) District court (legislation was introduced in 1981 budget session).
- 3) Circuit court (legislation was introduced in 1980 general session and was heavily lobbied by League of Cities).
- 4) Medical indigent Program (legislation failed in 1981 budget session).
- 5) Mental health centers (with the decline in federal funds, the state has been picking up a greater proportion of costs).
- 6) Local liquor law enforcement (Some of local governments resisted state efforts to withdraw from this program in the 1982 budget session).

These shared arrangements have resulted in administrative inefficiencies and conflict between government entities. The governor has stated there is a

need for the state and local governments to "sort out" programs to determine which entity is best able to finance and administer a program. State involvement should be determined after a review and prioritization of all programs local government wish the state to assume.

Other Concerns

What liability does the state have on the operation of county jails?

Could the state be sued for a wrongful death action of a felon incarcerated in jail?

Would the state be responsible for equal treatment of county jails inmate and inmates?

Does this mean the state would have to provide the same programs for jail inmates that are now available only to prison inmates?

How much would bill actually cost state?

Division of Corrections feels \$777,800 estimate is low (see memo).



## Social Services

Scott M. Matheson, Governor, State of Utah  
Anthony W. Mitchell, Ph.D., Executive Director

### M E M O R A N D U M

TO: Mimi Charles, Administrative Aide  
Governor Matheson's Office

FROM: Stephen V. Love, Assistant Director  
Division of Corrections

DATE: February 16, 1982

SUBJECT: HOUSE BILL NO. 32

The following information is provided as an overview of House Bill No. 32 in reference to a potential fiscal impact. At the time the Division of Corrections was first asked to attach fiscal note to House Bill 32, a review was made of the past year's experience of Adult Probation and Parole as it relates to man days in county jails. It was determined that 82,855 man days had been ordered by the courts of the state of Utah as condition of probation. It should be noted that this number takes into consideration both felons and misdemeanants. At the present time, the Division of Corrections is paying approximately \$23.00 per day for services in county jails. Thus, the fiscal note of \$1,905,665 was provided to the legislative analyst. We were later informed that the bill itself identified specifically those convicted of felony offenses and serving time in the county jail. A recalculation of this information identified 33,819 felon man days in county jail as a condition of probation. The same procedure was followed calculating these man days against \$23.00 per day for a total cost of \$777,837. It should be noted, however, that there are substantial problems with the figures that have been provided. First of all, it must be taken into consideration that there were an additional 15,000 man days that could not be identified as either felon or misdemeanants. They are individuals who were granted early termination and therefore, the assumption was in all probability they would be misdemeanant. However, there could be a potential impact by this group.

It should also be noted that the information provided relates only to Adult Probation and Parole. There are other agencies within the state of Utah who provide services to individuals incarcerated in county jails and the information may not be available to Adult Probation and Parole. As it relates to felons, this would be a relatively small number. However, if it were expanded into the misdemeanor area, a significantly number of individuals could potentially be housed in county jails and not be under the jurisdiction of Adult Probation and Parole. The section of the code that House Bill 32 modifies

February 16, 1982

Page Two

makes no distinction between felons and misdemeanants and one wonders whether or not the distinction identifies only felons relation to House Bill 32 is appropriate. This certainly is an issue that could potentially be addressed by future sessions of the Legislature in an effort to have some consistency within the code.

The figures that have been provided represent the bare minimum cost to the state if Governor Matheson should sign the Bill. It is imperative that one understands that as the bed space at the Utah State Prison diminishes, there will be a corresponding increase in the number of individuals placed on probation and also a corresponding increase as it relates to those individuals placed in county jails as a condition of probation. It should also be noted that as counties become aware of the potential revenue being generated from individuals placed in the county jail, there is also some possibility that a number of individuals placed in county jails as a condition of probation would increase in an effort to generate such revenue.

One of the other issues that should also be taken into consideration would be the potential of expanding this Bill even further to include misdemeanants and all individuals who are sentenced to the county jail under state statute. This would expand the number of individuals that the state would hold statutory responsibility for dramatically. Numerous individuals are sentenced to the county jails under state statute and for all intensive purposes are state prisoners. It is unusual at the present time that individuals would be in a county jail as a result of an ordinance versus that of state statute. A perfect example of this is the offense of driving under the influence of intoxicants. There is state statute that covers this area as well as a local ordinance. However, very infrequently would a county prosecute on the ordinance and, in fact, prosecute almost totally on the state statute. One of the other potentials of expanding this statute further would be that of all individuals being held in county jails under state statute be they sentenced or pending adjudication. Once again, there is the potential that an extremely large amount of resources would have to be made available if the bill were to be expanded in this direction.

As the Bill stands at the present time, there are several other issues that also need to be considered. First of all, the cost at \$23.00 per day obviously does not take into consideration any type of medical, psychological ~~well~~ psychiatric services that may be necessary. The cost for medical services as well as psychiatric and psychological services could escalate the cost of the Bill substantially. There is simply no way at the present time to predict what that might be. However, it is a situation that would require fiscal resources to be made available.

One of the other areas that needs to be considered is that of liability. The counties are required to operate the county jails and provide incarceration services. However, the state is, through this Bill, providing for total cost of maintaining an individual in that setting. If an inmates were either injured or killed in one of the county jails, what liability would the state have?

February 16, 1982

Page Three

Would the state be liable in a wrongful death action? Does the state have the responsibility for setting standards in county jails based upon the fiscal resources that are being provided for state inmates? What about the issue of treatment? Does the state have the responsibility to provide equal treatment in county jails as it would provide in the state prison? As you are well aware, the county jails are not equipped to provide treatment of almost any kind and should standards be set for treatment, again an obvious massive fiscal responsibility would fall upon the shoulders of the state.

The information that is provided above should not suggest that the Division of Corrections is opposed to House Bill 32. Certainly the state does have some responsibility as it relates to state prisoners. However, there are numerous questions that have not been answered and need to be answered by Representative Walker and others prior to the signing of this Bill. It is also important to Corrections to identify where these funds would come from. Would these funds come from existing correctional budgets and, if so, what type of program would have to be cut in order to assume the responsibility. Further, who is responsible for the administration of the budget as it relates to the billing process? These issues have not been addressed in the legislation and, in all probability, should be addressed to some extent.

If I can provide you with any additional information in reference to this matter, please feel free to contact me.

/lb

Scott M. Matheson  
GOVERNOR



Michael B. Zuhl  
STATE BUDGET DIRECTOR

104 B, STATE CAPITOL  
SALT LAKE CITY, UTAH 84114  
Phone (801) 533-4264

February 19, 1982

M E M O R A N D U M

TO: Governor

SUBJECT: H.B. 32 - County Jail Incarceration as Condition of Probation

On February 19, 1982, Emilie Charles, legislative liaison for the governor, met with Representative Olene Walker, Andrew Gallegos, Director of the Department of Social Services, Steve Love, Deputy Director of Corrections, Michael Zuhl, State Budget Director, Dorothy Owen, Senior Budget Analyst, Jack Tanner, of the Utah Association of Counties, Sheriff Brant Johnson, President of the Utah Sheriffs' Association, and Allan Moll, of the Salt Lake County Attorney's Office to discuss concerns the governor wanted resolved before he decided whether to sign H.B. 32.

At this meeting it was agreed there was a problem with the bill as written and a number of amendments were needed in order to clarify the law and to administer it properly. Since the law does not go into effect until July 1983, it was agreed that amendments to the bill be proposed at the 1983 General Session. It was further agreed that the members attending the meeting would serve as the core of the task force needed to develop these amendments and would act in good faith to resolve the following issues:

1. Clearly define those clients for which the state would be responsible for reimbursement.
- ✓2. Determine how the program will be administered and by whom.
3. Specifically define how cost reimbursement amounts will be determined and to amend the bill to limit state reimbursement to the amount appropriated by the legislature.
- ✓4. Develop an accurate fiscal assessment of costs.
- ✓5. Develop a policy of Minimum Jail Standards.

With this understanding, it is our recommendation that the governor sign H.B. 32 and request the Legislative Management Committee to make the implementation of H.B. 32 a study item of a legislative interim committee. It is also the recommendation of the State Budget Office that any recommendation on the implementation of H.B. 32 be completed in time for counties to take this information into account when preparing their 1983 annual budget.



## Social Services

Scott M. Matheson, Governor, State of Utah

February 19, 1982

The Honorable Scott M. Matheson  
Governor, State of Utah  
Office of the Governor  
State Capitol  
Salt Lake City, UT 84114

Dear Governor Matheson:

SUBJECT H.B. 32 - County Jail Incarceration as Condition of Probation

On February 19, 1982, Mimi Charles, Legislative Liaison for the Governor, met with Representative Olene Walker, Stephen Love, Deputy Director of the Division of Corrections, Michael Zuhl, State Budget Director, Dorothy Owen, Senior Budget Analyst, Jack Tanner, of Utah Association of Counties, Sheriff Brant Johnson, President of Utah Sheriffs' Association, Allan Moll, of Salt Lake County Attorney's office and myself to discuss concerns regarding H.B. 32.

At this meeting, it was agreed that there was a problem with the bill as written and a number of amendments were needed in order to clarify the law and to administer it properly. Since the law does not go into effect until July 1983, it was agreed that changes to the bill be proposed at the January 1983 General Session. It was further agreed that those members attending the meeting would serve as the core of the task force needed to develop these amendments and would act in good faith to resolve the following issues:

1. Clearly define those clients for which the state would be responsible for reimbursement.
2. Determine how the program will be administered and who will be responsible for its administration.
3. Define how cost reimbursement amounts will be determined and to limit the state's reimbursement of costs to the amount appropriated by the legislature.

**Office of Executive Director**  
Andrew L. Gallegos, Executive Director

150 West North Temple, Suite 310  
P.O. Box 2500, Salt Lake City, Utah 84110-2500  
801-533-5331

The Honorable Scott M. Matheson  
February 19, 1982  
Page 2

4. Determine an accurate fiscal assessment of costs.
5. Develop a policy for minimum jail standards.

With this understanding, it is our recommendation that you approve H.B. 32 and request the Legislative Management Committee to make the implementation of H.B. 32 a study item of a legislative interim committee. It is also the recommendation of the State Budget Office that any recommendation on the implementation of H.B. 32 be completed in time for counties to take this information into account when preparing their 1983 annual budget. I will formally establish a committee of appropriate representatives to work with the legislature on clarifying these issues.

Sincerely,

  
Andrew L. Gallegos  
Executive Director

ALG:mj

Scott M. Matheson  
GOVERNOR



Michael B. Zuhl  
STATE BUDGET DIRECTOR

104 B, STATE CAPITOL  
SALT LAKE CITY, UTAH 84114  
Phone (801) 533-4264

June 9, 1982

M E M O R A N D U M

TO: Brant Johnson, Sheriff  
Davis County

FROM: Dorothy Owen, Senior Budget Analyst  
State Budget Office

SUBJECT: H.B. 32 - County Jail Incarceration as Condition of Probation

During the waning hours of the 1982 legislative session, H.B. 32 passed requiring the state, as of July 1, 1983, to reimburse counties for the costs of incarcerating convicted felons sentenced to the county jail as a condition of probation. In reviewing the bill for the governor's signature, a number of questions were raised; however, the governor decided to sign the bill into law with the understanding that amendments would be proposed at the next legislative session (see attached memos).

A task force is being formed to address these problems and to develop any necessary amendments. The task force is scheduled to meet June 22nd at 2:00 p.m. in Room 305 of the State Capitol Building. If you cannot attend or have any questions, please call me at 533-5142. Your participation will be greatly appreciated.

DPO:mh

3075



Scott M. Matheson  
GOVERNOR

Michael B. Zuhl  
STATE BUDGET DIRECTOR

104 B, STATE CAPITOL  
SALT LAKE CITY, UTAH 84114  
Phone (801) 533-4264

July 27, 1982

M E M O R A N D U M

TO: H.B. 32 Task Force  
FROM: Dorothy Owen  
SUBJECT: Options on Decisions

This task force was presented with several issues to decide upon the implementation of H.B. 32. This memo attempts to summarize those issues and the options available.

Definition of Clients

- A. Convicted Felons sentenced to serve in the county jail as a condition of probation (current language). Impact according to Corrections is an estimated 30,474 man-days a year. Sheriff's association estimate is 45,000 man-days a year.
- B. Same as A, plus class A misdemeanants sentenced to jail. Impact is to add an additional 10,00 man-days a year to previous option.
- C. Convicted felon detained or serving time in county jail whether sentenced as felon. Impact according to Corrections estimate is roughly 15,000 man-days a year in addition to option A. Sheriff's association estimate is roughly 10,000 days a year.
- D. Convicted felons, all misdemeanants serving a sentence in county jails. Corrections estimate impact of 74,200 man day a years.

Cost Determination

"Actual cost" as determined by sheriff with no guidelines (current bill)

"Actual cost" as determined by federal marshall costing out approach

A few jails in Utah complete a cost reimbursement form for the federal government to receive reimbursement for federal prisoners. Formula allows counties to include indirect costs and depreciation. In Salt Lake County, such indirect costs account for 22% of the jail's total billable costs.

"Direct cost" as determined by federal marshal reimbursement formula

Direct cost approach would reduce costs per day from \$24 to \$19, according to data from the Salt Lake County jail. Direct cost would provide less incentive for counties to attempt to make money from state "reimbursement," and would be more equitable to smaller counties who do not have the cost-accounting expertise to charge off indirect costs to the state. However, approach does not reflect the total costs of a jail operation.

✓ Allow the Division of Corrections to develop their own reimbursement formula and to contract with jails for services.

This approach provides flexibility and allows details to be worked out later with each individual jail. This approach is similar to that used by the court administrator on court facilities. Detention also uses a contract mechanism to reimburse localities.

Cost Impacts of Options

Limit clients to convicted felons and pay "actual costs" not including large medical expenses. Costs range from \$731,400 to \$ 1,036,300 depending upon the number of estimated days. "Direct" cost would reduce amount by roughly 20%.

Cost for adding class A misdemeanants at actual cost is \$240,000; \$190,000 at direct cost.

NO Cost for adding time served in jail after conviction but prior to sentencing ranges from \$273,600 to \$376,800 depending upon the number of estimated days. (Direct cost method would reduce this cost to \$216,000 to \$298,600.)

Cost for paying for all convicted felons and misdemeanants sentenced to serve time in the county jail according to Corrections' statistics would be at least \$1,988,500.

33616  
letter to  
Werner

July 27, 1982  
Updated October 3, 1982

} 31086

M E M O R A N D U M

TO: H.B. 32 Task Force  
FROM: Dorothy Owen  
SUBJECT: Options on Decisions

This task force was presented with several issues to decide upon the implementation of H.B. 32. This memo attempts to summarize those issues and the options available.

which jail prisoners should the state pay for?

A. Convicted Felons sentenced to serve in the county jail as a condition of probation (current language). Impact according to Corrections is an estimated 30,474 man-days a year. Sheriff's association estimate is 45,000 man-days a year

If we limit reimbursement to this population and pay "actual costs", not including large medical expenses, costs range from \$731,400 to \$ 1,036,300 depending upon the number of estimated days. "Direct" cost with no overhead costs included would reduce amount by roughly 20%.

B. Same as A, plus probationers and parolees under the supervision of Adult Probation and Parole. Impact is to add an additional \$120,000 to the cost of the bill.

C. Same as A, plus class A misdemeanants sentenced to jail. Impact is to add an additional 10,00 man-days a year to previous option.

Cost for adding class A misdemeanants at actual cost is \$240,000; \$190,000 at direct cost.

D. Convicted felon detained or serving time in county jail whether sentenced as felon. Impact according to Corrections estimate is roughly 15,000 man-days a year in addition to option A. Sheriff's association

estimate is roughly 10,000 days a year.

Additional cost ranges from \$273,600 to \$376,800 depending upon the number of estimated days. (Direct cost method would reduce this cost to \$216,000 to \$298,600.)

D. Convicted felons, all misdemeanants serving a sentence in county jails. Corrections estimate impact of 74,200 man day a years.

Cost for paying for all convicted felons and misdemeanants sentenced to serve time in the county jail according to Corrections' statistics would be at least \$1,988,500.

Task Force adopted option B and recommends that the scope of the current bill be amended to include probationers and parolees.

How should cost be determined?

"Actual cost" as determined by sheriff with no guidelines (current bill)

"Actual cost" as determined by federal marshal costing out approach

A few jails in Utah complete a cost reimbursement form for the federal government to receive reimbursement for federal prisoners. Formula allows counties to include indirect costs and depreciation. In Salt Lake County, such indirect costs account for 22% of the jail's total billable costs.

"Direct cost" as determined by federal marshal reimbursement formula

Direct cost approach would reduce costs per day from \$24 to \$19, according to data from the Salt Lake County jail. Direct cost would provide less incentive for counties to attempt to make money from state "reimbursement," and would be more equitable to smaller counties who do not have the cost-accounting expertise to charge off indirect costs to the state. However, approach does not reflect the total costs of a jail operation.

Allow the Division of Corrections to develop their own reimbursement formula and to contract with individual jails

This approach provides flexibility and allows details to be worked out later with each individual jail. It will also require the administering agency to take an active role in determining formulas, developing contracts, and monitoring costs. This approach is similar to that used by the court administrator on court facilities. Detention also uses a contract mechanism to reimburse localities.

The task force adopted the position of allowing the board of corrections to determine the formula with a statutory lid on the appropriation similar to what exists in circuit court and juvenile detention. In other words, the board of corrections would decide the formula but the division could not spend more than appropriated and the formula would have to be adjusted accordingly. Legislation would be needed to make this change.

Who should administer program?

Task force considered both the division of finance and the division of corrections and recommended that the division of corrections administer the program and be given an additional FTE (25,000) to administer the program. Andy and the division concur although they have second thoughts every time they look at the budget increases. Division needs to develop greater fiscal consciousness and better fiscal controls to successfully administer program. Bill needs to be amended to place the responsibility in this division.

What about jail standards?

At the first meeting of the task force the group agreed with Sam Smitn's proposal that language be included that sherriffs voluntarily comply with the jail standards adopted by the Utah Sheriffs Association. However, at the last meeting the task force felt they didn't want to pursue this touchy issue. If the state wants jail standards this is the time to do it. Need direction here.



**THE ATTORNEY GENERAL  
STATE OF UTAH**

December 27, 1982

Mr. Rodney S. Page  
Davis County Attorney  
Davis County Courthouse  
Farmington, UT 84025

**DAVID L. WILKINSON**  
ATTORNEY GENERAL

**PAUL M. TINKER**  
DEPUTY ATTORNEY GENERAL

**RICHARD L. DEWSNUP**  
Solicitor General

**FRANKLYN B. MATHESON**, Chief  
Governmental Affairs Division

**ROBERT R. WALLACE**, Chief  
Litigation Division

**WILLIAM T. EVANS**, Chief  
Human Resources Division

**DONALD S. COLEMAN**, Chief  
Physical Resources Division

**MARK K. BUCHI**, Chief  
Tax & Business Regulation Division

Re: Informal Opinion No. 82-120

Dear Mr. Page:

In response to your opinion request dated December 1, 1982, please be advised that this office concurs in your conclusion that Sections 17-22-2 and 17-22-4, Utah Code Annotated 1953, as amended, relating to the duties of the Sheriff for receiving and safely keeping all persons committed to his custody in the county jail, imposes primary responsibility upon the Sheriff for the well-being of prisoners under his jurisdiction. The broad question of civil liability for injuries or death to such a prisoner would depend upon the facts of each individual case and direct involvement of other prisoners or third persons. See Annotations in 14 A.L.R. 2d 353 and 41 A.L.R. 3d 1021. As to the civil liability of public entities and their officers and employees, you are referred to the Utah Governmental Immunity Act contained in Chapter 30 of Title 63, Utah Code Annotated 1953, as amended, and particularly Section 63-30-10(10), relating to governmental immunity for negligent acts or omissions arising "out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement." As to personal liability of public officers and employees and their indemnification for acts or omissions committed during the performance of their duties, see Chapter 48 of Title 63, Utah Code Annotated 1953, enacted in 1974.

With respect to felony probationers who are sentenced by the court to serve time in the county jail, Section 77-18-1(4), Utah Code Annotated 1953, as amended, authorizes such confinement not to exceed one year and a 1982 amendment thereto added the following proviso:

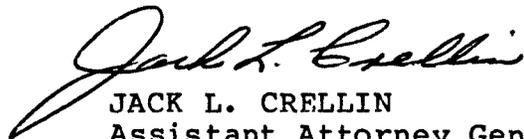
Mr. Rodney S. Page  
December 27, 1982  
Page Two

Informal Opinion No. 82-120

\* \* \*provided, however, that the State of Utah shall reimburse any county for the actual costs of incarceration of a convicted felon sentenced to serve in a county jail as a condition of probation.

In such cases, the actual custody of the prisoner is with the county sheriff, who has the responsibility of safely keeping such prisoner under Section 17-22-2 above noted. Such custody, however, entitles the responsible county to be reimbursed for the "the actual costs of incarceration" by the State of Utah, which may include medical treatment for an injured prisoner in such custody, subject to third person liability or limitations upon the extent of medical treatment to be provided such prisoner. It is extremely doubtful, however, that civil liability for such injuries based upon a claim of custodial negligence would be included within the foregoing statutory provision for reimbursement of "actual costs of incarceration" of such probationer in the county jail.

Very truly yours,



JACK L. CRELLIN  
Assistant Attorney General

JLC/cd

NOTE: This informal opinion does not deal with issues of such broad public import that it would justify detailed scrutiny by the Attorney General himself or official publication in the manner of a formal opinion. Nevertheless, it is authoritative for the purposes of the agency requesting it, and with respect to the specific questions presented, represents the position of the Attorney General as expressed through his assigned staff member.

February 24, 1983

M E M O R A N D U M

TO: Representative Olene Walker  
FROM: Dorothy P. Owen  
SUBJECT: Fiscal Note on H.B. 50

I have computed a fiscal note for administrative costs for H.B. 50 as follows:

One professional FTE to provide technical assistance to jails		
	Grade 25-3	\$23,928
One half-time clerical assistant	Grade 13-1	\$ 5,763
Fringe Benefits for above employees (Retirement computed at level recommended by the Governor)		\$ 8,755
Travel		\$ 1,000
TOTAL		\$39,446

This fiscal note could be reduced by \$ 1,918 by hiring a less experienced person at a grade 25-1. Currently, the jail reimbursement appropriation includes \$33,000 for administrative costs and \$696,500 for county reimbursement.

OPTIONS

1. Have the \$39,500 come out of the existing appropriation. This would be an increase of \$6,500 more in administrative costs than is currently anticipated.