



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

October 25, 2022

Greg Pollan  
Sheriff, Calhoun County Sheriff's Office  
178 South Murphree Street  
Pittsboro, Mississippi 38951

Re: Probationer Release

Dear Sheriff Pollan:

The Office of the Attorney General has received your request for an official opinion.

### Questions Presented

1. If a revocation hearing is not held by a court to address the probation violation within twenty-one days, does the sheriff have the authority to release the subject from the county jail?
2. If the Mississippi Department of Corrections obtains a probation warrant signed by the circuit judge but the subject has not been granted a revocation hearing within the statutorily mandated twenty-one days, is the sheriff authorized to release the subject from the county jail?

### Brief Response

If the twenty-one day period expires without a revocation hearing, the sheriff does not have the authority to keep the offender in the county jail any longer and is required to release the offender from the county jail. We reiterate our guidance in the *Rushing* opinion and urge sheriffs and the Department of Corrections to devise a solution so that every detainee is brought before the court within the twenty-one day period. MS AG Op., *Rushing* at \*3 (Jan. 24, 2019).

### Applicable Law and Discussion

We understand both of your questions to ask whether the sheriff is authorized to release a subject from the county jail who was detained, pursuant to a warrant, for a probation violation but has not been granted a revocation hearing within twenty-one days of being detained.

Section 47-7-37 of the Mississippi Code governs probation violations and revocation of probation. It provides that when an offender is arrested on a warrant for an alleged probation violation, once reasonable cause is determined at a preliminary hearing, “the offender may be confined no more than twenty-one (21) days from the admission to detention until a revocation hearing is held. If the revocation hearing is not held within twenty-one (21) days, the probationer ***shall be released*** from custody and returned to probation status.” Miss. Code Ann. § 47-7-37(3) (emphasis added).

The statute makes release mandatory if a revocation hearing is not held within twenty-one days, but it does not specify who shall release the detainee. Section 47-7-37(5)(c) states that if “the court does not hold a hearing or does not take action on the violation within the twenty-one day period, the offender shall be released from detention,” and while the Department of Corrections may retain custody of the probationer under his sentence, it is the sheriff who is physically detaining said probationer.

Section 19-25-69 further provides that “[t]he sheriff shall have charge of the courthouse and jail of his county, of the premises belonging thereto, and of the prisoners in said jail.” Section 47-5-901(6), which governs the housing of state inmates in county jails, states, in part:

This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, *nor shall it create in the Department of Corrections any administrative authority or responsibility for the . . . administration or operation of county or other local jails* or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. *The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.*

(emphasis added). Additionally, Section 47-5-907, which affords a sheriff a process to petition the Department of Corrections for removal of a state offender housed in a county jail, provides a sheriff with “absolute immunity from liability for any injury resulting from subsequent behavior or from medical consequences regarding such inmate,” should the Department of Corrections deny the petition. This language indicates that liability otherwise rests with the sheriff and implies that the sheriff exercises authority over those physically in his jail. *See also* Section 47-5-903(4) (“The state, the Department of Corrections, and its employees or agents, shall not be liable to any person or entity for an inmate held in a county jail under this section.”); MS AG Op., *Head* at \*1 (Apr. 22, 1992) (opining that once a suspect is arrested for a state violation by a highway patrol officer and placed in the custody of a county jail, such prisoner is a county prisoner to the same extent as a prisoner who was arrested by a deputy sheriff).

Section 47-7-37(3) mandates that the probationer be brought before the court for a revocation hearing within twenty-one days or be released from custody and returned to his previous probation status. “Although the duty is by statute on the court [to cause the probationer to be brought before it for hearing], the practicalities of the situation demonstrate a strong need for MDOC and the

sheriffs to work together and cooperate to ensure that the probationers are provided the [statutory] procedural safeguards . . . and that prisoners that should be incarcerated are not released by default.” MS AG Op., *Rushing* at \*3 (Jan. 24, 2019). We reiterate our guidance in *Rushing* and recommend that the sheriffs and the Department of Corrections devise a solution so that every detainee is brought before the court within the twenty-one day period.

It is the opinion of this office that the sheriff has no authority to continue to hold an offender in the county jail who has not received a revocation hearing within twenty-one days of his or her admission to detention.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abigail C. Overby*

Abigail C. Overby  
Special Assistant Attorney General

OFFICIAL OPINION