

WHEN IS A CITY RESPONSIBLE FOR PAYING MEDICAL BILLS FOR FELONS IN JAIL?

This is a simple question with a simple answer. Unfortunately, Counties and Cities didn't agree on the answer. The Attorney General had recently opined on this issue (AGO 2005 No. 8) and stated, in conclusion, “...*Thus, we reach the opinion that in the absence of an interlocal agreement providing otherwise, the statute places ultimate responsibility for medical care on the agency whose officers have made the arrest leading to the imprisonment of the detainee, whether the medical expenses are incurred before or after the detainee is formally booked into the jail.*”

The cities disagreed. The Cities of Sequim and Forks sued Clallam County. That suit is still pending. This year, the Legislature passed Engrossed Second Substitute Senate Bill 5930, now Chapter 259, Laws of 2007. See section 66. It's on Page 76, line 15. This change is as follows:

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government ~~whose law enforcement officers~~ that initiated the charges on which the person is being held in the jail:...

We think this fixed the problem and makes it clear that the city or county *filing* criminal charges is responsible for reimbursement.

HISTORY

Prison systems and jails pretty much did what they wanted to do with respect to medical care or lack thereof and as to forms of treatment in jails and prisons until federal courts intervened. See, for example, Estelle v. Gamble, 429 U.S. 97 (1976), (deliberate medical neglect of a prisoner violates Eighth Amendment); Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968) (beating prisoner with leather strap violates Amendment). Helling v. McKinney, 509 U.S. 25 (1993) (prisoner who alleged exposure to secondhand "environmental" tobacco smoke stated a cause of action under the Eighth Amendment) and Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971), district court ordered to retain jurisdiction until unconstitutional conditions corrected, 505 F.2d 194 (8th Cir. 1974). The Supreme Court ultimately sustained the decisions of the lower courts in Hutto v. Finney, 437 U.S. 678 (1978).

A recent news item (April 2005) involved a situation where a prison inmate was in dire need of a liver transplant operation, which could cost the State up to \$500,000. (See King5.com “Prison inmate awaits organ transplant.”) ****1**

The Jefferson County jail has recently entered into a Consent Decree with the American Civil Liberties Union regarding their jail/care. Jefferson County paid \$82,500 in attorney's fees and costs to the ACLU as part of the settlement.

The State Jail Act merely echoes what the courts require: "RCW 70.48.130

Emergency or necessary medical and health care for confined persons--Reimbursement procedures--Conditions--Limitations.

It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care..."

WAC 289-02 through 289-30 spell out more detailed jail requirements.

WHO PAYS?

The State of Washington pays for medical care and expenses for persons convicted of felonies from the date of the conviction. However, the costs of medical care for persons *charged* with felonies, but not *convicted* used to be paid under Medicaid. However, Congress determined (in 1999) that people in jail (even those presumed innocent), didn't deserve federal benefits such as Social Security payments or Medicaid payments. After Congress took that position, the State attempted to use unspent Medicaid dollars for this care. That didn't work. The Feds said, "No!" Next, the State passed the costs to the counties and cities. The State Legislature did provide a law and created a fund to pay necessary medical expenses for prisoners. In the recent past, the Legislature has not put any money into the fund [Recently the legislature has put money into such a fund for limited purposes.]

Thus, depending on whether there is or is not money in the special fund, this leaves the counties and the cities holding the bag, and required to determine which entity pays for medical care for what category of jail inmates. This was complicated by an interesting combination of statutes, Attorney General's Opinions, contracts and factual scenarios. Now, the situation is more clear.

CONTRACTS

Many cities contract with counties to provide jail services for misdemeanants. However, some contracts have defined "city prisoner" to include persons charged with a felony by the county prosecuting attorney if such persons have been initially arrested by city police. As set forth herein, there is ample authority (RCW 39.34.180) for cities and counties to contract regarding jail services. MRSC has copies of many city/county contracts. READ THE CONTRACT! It's all in the definitions.

CONTRACT ISSUES

Attached is a contract/interlocal Agreement from King County. **3

Some of the interesting issues in jail contracts for cities involve "hospital-like" billing for "in-house" "medical care." For instance should the city be billed \$2 or more for the administration of an acetaminophen (Tylenol) tablet or an antacid or Band-Aid? Or, is it more appropriate to include such treatment in a daily fee? Another issue is the practical application of the definition of "necessary care." Is the administration of a pregnancy test necessary care? Is a

medication for erectile dysfunction necessary care? Are birth control pills, prophylactics? Is an abortion necessary care? Are dental reconstructions, crowns or other orthodontics necessary medical care?

If your city has a contract for jail services, the rest of this paper isn't relevant unless or until you renegotiate.

THE PROBLEM UNDER THE OLD LAW

There are a number of applicable statutes and WACs. The basic statute at issue being interpreted in this paper is RCW 70.48.130. See Appendix. The portion of that statute of concern was as follows:

... The governing unit [operating the jail, e.g., the county] may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in jail.

Most cities and most counties appear to have interpreted this portion of the statute to mean that when city police write a ticket (See: CrRLJ 2.1) for a misdemeanor or gross misdemeanor and take someone to jail, the city will reimburse the county for any otherwise unreimbursed medical care for such an inmate. But when the city arrests someone on a felony, the county pays. Recently, a letter from an assistant attorney general ****5** and AGO 2005 No. 8 (July 7, 2005) ****6** also signed by the elected Attorney General, have interpreted the above language to seemingly impose the medical reimbursement requirement on whichever unit of government's law enforcement officer made the **arrest**. Obviously this occasionally could have extreme financial consequences for counties and cities in the absence of any state funding for such medical care. "Governmental unit" is defined in RCW Chapter 70.48 as the county or city running the jail, but "unit of government" is not defined.

WHO SHOULD ARREST?

Ima Cott is apprehended by City Police leaving the City Corner Drug Store through the alley delivery entrance at 2:15 AM carrying a bag of various prescription medications (mostly controlled substances). She is arrested by City Police on probable cause to believe that she has committed the felony of burglary, theft in the second degree, and unlawful possession of a controlled substance. She is taken to the County Jail by City Police, and the jail books her in.

The next day, pursuant to Gerstein v. Pugh, 420 US 103 (1975), the county prosecuting attorney presents an affidavit of probable cause for a "prompt determination of probable cause" by the Superior Court judge. The prosecuting attorney also files an Information charging the felony burglary, theft, and VUCSCA. An attorney is appointed. The defendant pleads not guilty and a trial is set for 60 days later. In the meantime, Ima has to have a liver transplant due to her IV drug abuse caused HIV/Hepatitis C medical condition.

Who is ultimately responsible for payment of the medical bills?

The old statute and the amended statute (RCW 70.48.130) provides a hierarchy of "payors."

1. The "governing unit" (Jail) pays.
2. The jail gets reimbursed "pursuant to RCW 74.09 (Medicaid) - Which now, pursuant to federal law, considers jailed persons ineligible.

3. Any remaining amount unreimbursed by Medicaid (i.e. all of it) is divided between the medical provider and the jail as mutually agreed or 50/50 if not agreed.

4. Third party coverage is then applied (the prisoner's own health care insurance)

5. The jail can then go after any money the inmate may have and may sue him or her and may seek reimbursement in the criminal case, if any.

6. If the jail still hasn't been fully reimbursed, any existing contracts or interlocal agreements are applied.

7. Then, under the old law, the "***the unit of government whose law enforcement officers initiated the charges on which the person is being held in jail***" is billed.

7 (New Law). "***the unit of government that initiated the charges on which the person is being held in jail***" is billed.

Does the changed language mean the unit of government, which initiated the criminal charges, or the governmental unit, which initiated the custody?

As stated initially, the Attorney General has recently opined on this issue (AGO 2005 No. 8) and stated, in conclusion, "***...Thus, we reach the opinion that in the absence of an interlocal agreement providing otherwise, the [old] statute places ultimate responsibility for medical care on the agency whose officers have made the arrest leading to the imprisonment of the detainee, whether the medical expenses are incurred before or after the detainee is formally booked into the jail.***" The Attorney General has not yet opined on the law changes.

The issue is important not only because of the potential of immense costs to either cities or counties but also because of the likelihood of "posturing" by city, county and state law enforcement. For instance, the State Patrol Drug Recognition Experts might (and presently do) take the position that they will not perform a DRE examination unless the suspect has already been arrested by a law enforcement agency. It is not hard to imagine, under the old law and old interpretation, a sheriff's deputy requesting "assistance" from city police in a felony arrest situation and asking the city police to arrest and follow through and take the arrested person to jail for booking.

There were also a number of unanswered questions based on different situations, which would apply to both misdemeanors and felonies.

First, it is not disputed by most cities that, absent other financing, the city is required to pay necessary medical expenses for all those persons it has charged with misdemeanors in the city. City officers have authority, of course, to write tickets (citations) charging individuals with misdemeanors or gross misdemeanors. However, if a city officer makes an arrest on a county warrant for a misdemeanor crime charged by a county prosecutor occurring outside the city limits, has the officer "initiated the charges"? If the misdemeanor warrant was issued by another county court through a different county prosecutor, has the city initiated the charges?

With respect to felonies, consider the following: If a misdemeanor or felony crime is committed in the county but the person is arrested in the city by a city officer, and the person is later charged by the county prosecuting attorney with a crime, has the city law enforcement initiated the charges?

If a misdemeanor or felony crime occurs in the county and a warrant has been issued at the request of the county prosecuting attorney but the person is arrested either in or outside the

city by a city police officer after being stopped for speeding, based upon the outstanding warrant, has the city police officer initiated the charges?

If a felony crime occurs in the city and the county prosecuting attorney files felony charges and the person is arrested by a city officer on the felony charges, have the city police initiated the charges?

If a crime occurs in the city and the city police report it to the prosecuting attorney and the prosecuting attorney files felony charges but only requests a summons and the person appears on the summons, has city law enforcement initiated the charges?

In the situation above, if Ima Cott is not charged by the prosecuting attorney by Information but instead the case is referred back to the city for a filing of gross misdemeanor charges of theft and trespass, who pays the medical bills already accrued?

NEW LAW ISSUES

The Attorney General's Opinions through the years related to jails and prisoner costs are attached. They include AGLO 1982 No. 25 (November 10, 1982). **8 That opinion discusses whether or not a jail can refuse to accept prisoners or do "early releases" on other prisoners if the jail is overcrowded according to state jail commission standards. The Attorney General's Opinion points out that there is no authority to turn away prisoners or to release prisons, at least as of 1982.

In 1988, the Attorney General Opinion AGO 1982 No. 9 **9 was issued stating that if a city or town makes misdemeanor or gross misdemeanor arrests for violation of state law rather than municipal code, the city was not responsible for prosecution, booking or jailing of that person. This was "fixed" by RCW 39.34.180, adopted in 1996.

Each county, city and town is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements

However, that statute specifically excludes any applicability to felony offenders.

AGO 1980 No. 21 (November 13, 1980) **10 directly deals with the situation involving felonies. The synopsis of the opinion states the following:

If a city or town police officer arrests a person for committing a felony within the corporate limits of the city or town and turns such person over to the custody of the county sheriff because the arrest was for a violation of a state law and not a city or town ordinance, it is the county, and not the city, which is then responsible for paying the *care*, housing, and board of such prisoner while he is in the county jail — both before and after arraignment.

That AGO construed the very same statute construed by the July 2005 Attorney General

Opinion (RCW 70.48.130). At issue was the language that authorized the jail to obtain reimbursement for medical expenses “from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail.” One of the quotes from that Opinion is the following: “The mere fact that those prisoners are there because they were arrested by a city police officer gives rise to no legal basis, in our judgment, for passing all of the resulting costs of confinement on to the city.” The Opinion goes on to cite the situation if there were an arrest by the Washington State Patrol — would the State of Washington have to pay for the costs of confinement pending trial. The Opinion states, “Clearly not.” The final part of the Opinion states that there is no way to distinguish between before or after arraignment of such person. However, the above Opinion explicitly *did not* deal with “*emergency*” medical care.

A portion of this opinion was reaffirmed in AGO 2004 No. 4 ****11** (written by James K. Pharris) where the Lewis County Prosecuting Attorney asked whether the sheriff (jail) had an obligation to accept Washington State Patrol, Department of Fish and Wildlife, Department of Corrections arrestees. Another question was whether or not the State had to reimburse for booking and housing. The bold answer of the Attorney General is as follows:

A county jail has a duty to accept custody of arrestees presented by booking by any officers possessing the power to arrest and charge crimes alleged to have occurred within the county, no matter what the nature of the crime charged.

The Attorney General also opined that there was no duty on the part of the State to reimburse the county for costs associated with booking and housing the arrestees. [Note: RCW 70.48.020 (7) defines county or city only as “governing units” but the statute does not define at all, “units of government” thus any State agency or the State may be a “governing unit” contrary to the AGO’s interpretation.]

However, in July of 2005, the same senior Attorney General authored Opinion AGO 2005 No. 8 to the Island County prosecuting attorney, answering the following carefully phrased question: “Who is responsible for paying the cost of necessary medical treatment of an arrestee ***during the period after the arrest but before the arrestee is booked*** and confined in jail — the arrestee, the arresting law enforcement agency, or the agency which operates the jail?”

The answer seemingly contradicts two or three previous Attorney General Opinions including one authored by Mr. Pharris himself. The answer is, in part,

Absent interlocal agreement to the contrary, under the relevant statute [RCW 70.48.130], the government unit responsible for operating the jail is entitled to reimbursement for necessary medical treatment from the government unit whose officers made the arrest. ... Thus, in the absence of such a contract, the responsibility ultimately falls on the unit of government whose officers made the arrest.

REMAINING PROBLEM

In the 2005 AGO the Attorney General makes the startling statement: “When a person is detained in jail following a warrantless arrest, ***it seems clear that the agency whose officers made the arrest has ‘initiated the charges’ for purposes of applying the statute.***” The Attorney

General then discusses the situation where the prosecuting attorney files charges and obtains a warrant and asks the question, “Are the charges initiated by the prosecuting attorney, who may be a county or state officer, or by the police officer or sheriff’s deputy who makes the arrest?” The Attorney General makes the assumption that it is *not* the prosecuting attorney who, although having filed the charges and obtained a warrant, “initiates the charges.” Thus, the Attorney General may *still* claim that the amendment makes no difference because he thinks “charges” are initiated by arrest. The fact that the Legislature amended that provision after the AGO to remove any reference to officers initiating charges may make it clear that the AGO’s interpretation was not what the Legislature meant.

The 2005 Opinion does distinguish the 1980 Opinion by pointing out that the 1980 Opinion excluded from its coverage the “limited question of emergency medical care [under RCW 70.48.130].” Although the 2005 opinion was supposedly only answering the very limited question about responsibility for medical costs after arrest but before booking (Rodney King situation?), the opinion seems to go beyond that narrow question. The opinion also references a letter written by an assistant attorney general to the Whatcom Co, Prosecutor on Sept 14, 2000. ****5** That letter does deal with the specific question addressed in this paper.

RCW 70.48.130 is titled Emergency or Necessary Medical and Health Care for Confined Persons — Reimbursement Procedures — Conditions — Statute of Limitations. That statute sets up a complex hierarchy of who is required to pay for emergency or necessary medical care. It starts out with the proposition that, “Payment for emergency or necessary health care shall be by the governing unit [jail], except that the Department of Social and Health Services shall directly reimburse the provider [hospital or doctor] pursuant to Chapter 74.09 [Medicaid if the person is eligible].” The statute then provides that after such payment [if any] the remaining amount is borne by the medical care provider and the governing unit [jail] as may be agreed. In the absence of an agreement, the remaining balance is to be borne equally between the medical care provider and the governing unit. Any amount available under the detainee’s insurance may be obtained by the jail and any amount payable by the inmate from his or her own resources may be obtained as reimbursement by the jail, and the statute allows reimbursement either in a civil suit or in the criminal proceedings for any such medical expenses directly from the inmate. Otherwise, (usually) we are still left with reimbursement under the newly adopted and amended phrase: ***“from the unit of government that initiated the charges on which the person is being held in the jail”***

This leaves the following questions:

- 1) Are charges “initiated” when a person charged by the prosecuting attorney is arrested on a warrant, or are they initiated when the case is filed and/or the warrant issued?
- 2) Are charges “initiated” when a law enforcement officer arrests a suspect based upon probable cause to believe they have committed a felony, or when the county prosecutor files felony charges?

The obvious answers are not obvious to the Attorney General, but the Attorney General’s own opinion may make it impossible for him to claim that the new law applies the same way. The Attorney General opines in the 2005 opinion that a prosecuting authority is never a law

enforcement agency (even though the legislature occasionally defines the prosecuting attorney as a law enforcement agency). See RCW 26.44.020(2), “Law enforcement agency means the police department, the prosecuting attorney, the State Patrol, the director of public safety, or the office of the sheriff.”

Further, it is interesting to note that if a person is arrested by a law enforcement officer because the officer has probable cause to believe that a felony has been committed, there is no requirement on the part of an arrestee to enter any kind of a plea. A plea is only as required by RCW 10.37.010 after an indictment, information, or complaint is filed.

RCW 10.37.015 states “no person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanors or gross misdemeanors before a district or municipal judge or before a courtmartial.”

RCW 39.34.180(1) does make cities and towns responsible for incarceration of misdemeanor and gross misdemeanor offenses. But the statute goes on to state,
Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

Of course, city law enforcement and deputy sheriffs have authority to initiate misdemeanor or gross misdemeanor charges. But this authority is not granted by statute; it is granted by court rule: CrRLJ 2.1(b)(6) “Initiation. When signed by the citing officer and filed with a court of competent jurisdiction, the citation and notice shall be deemed a lawful complaint for the purpose of initiating prosecution of the offense charged therein.”

The question of whether a prosecuting attorney initiates charges or whether the legislature intended the language of the statute in question to mean initiation of charges rather than initiation of custody has been peripherally discussed in many cases. In State v. Jefferson, 79 Wn 2d 345, 485 P2d 77 (1971), the court basically said there were four procedures for the commencement of criminal prosecution. “(1) Filing of an information by the prosecutor in Superior Court (see Washington Constitutional Article I, Section 25, and RCW 10.37.026); (2) grand jury indictment (see RCW 10.28); (3) inquest proceedings (see RCW 36.24); and (4) filing of a criminal complaint before a magistrate (see RCW 10.16).”

It appears that the legislature has recognized that the normal process of the filing of felony charges is when a police department or sheriff’s office provides information to a prosecutor for consideration in preparing a charge and for applying the statutory prosecution standards. RCW 9.94A.411 (2)(a) and (b). For instance, in RCW 10.97.030(8)(b), the legislature has specifically provided as follows, “The furnishing of information by any criminal justice agency [which includes prosecutors] to another for the purpose of processing a matter through the criminal justice system, such as the police department providing information to a prosecutor for use in preparing a charge, is not dissemination.” The legislature appears to know the difference between arrest and charges as set forth in RCW 10.99.030, dealing with domestic violence. Part of that statute (subsection (6)(a)) states the following: “When a peace officer

responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. ..." The statute also adds, in subsection (9), "The law enforcement agency shall forward the offense report to the appropriate prosecutor within 10 days of making such report if there is probable cause to believe that an offense has been committed unless the case is under active investigation."

There are even provisions in the domestic violence statute, RCW 10.99.045(2), for defendants who are not arrested to appear in court pursuant to a summons after the issuance of a complaint or information. Thus, there are situations clearly not contemplated by the Attorney General in the 2005 Opinion where the prosecuting attorney does indeed file charges but no arrest has been made at all, ever.

The legislature also recognizes in the domestic violence statute (RCW 10.99.060) that the prosecuting attorney [public attorney, city or county] makes "the decision whether or not to prosecute." If the decision is not to prosecute, the legislation requires that the victim be notified of that decision and notified of "a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding."

The State Constitution, Article I, Section 22, sets forth some of the rights of the "accused." "In criminal prosecutions, the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and causes of the accusation against him, to have a copy thereof" It is interesting to note that one of the duties of prosecuting attorneys under RCW 36.27.020(6) is to "institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of felonies when the prosecuting attorney has information that any such offense has been committed."

Thus, when a prosecuting attorney "initiates charges" by filing an information and requesting a warrant, they have initiated both the arrest and the charges, but the warrant is directed to any peace officer. According to the 2005 Attorney General's Opinion, that doesn't matter. He opines that whatever unit of government's police officers (State, county or city) makes the arrest, will be responsible for payment of medical bills. Thus, the State Patrol, when making an arrest for a vehicular homicide and taking a very badly injured driver to the hospital, makes the State responsible for all medical expenses if the State can be defined as a unit of government (See 10.93.020 - Mutual aid definitions). Under the AGO theory, the city police, arresting a person charged with a felony in King County, make the city responsible for all the medical expenses in the King County jail for that felon. The Legislature, by removing the language talking about law enforcement officers from the statute, seemingly made it clear that they understand that felonies may only be charged by prosecuting attorneys; not by law enforcement officers. Thus, the hope is that the amendment by the legislature this year will change the Attorney General's mind and his opinion.

POSTURING PROBLEMS

Based upon the 2005 AGO interpretation, cities and counties and state agencies may have "postured" for the proper position in an arrest situation so that their entity would not be

responsible for any medical costs.

For instance, in a vehicular assault or vehicular homicide case, the State Patrol may try to get the city police or county sheriff to perform the arrest, and consequently the properly counseled city police officer or county sheriff's deputy might have refused. This would have created a dangerous situation.

In a mutual aid situation, the "aiding" agency might not have been as helpful — not wanting to get tagged with having performed the arrest and thus making their jurisdiction responsible for medical care for a prisoner.

Similarly, a county sheriff might have referred cases to a prosecuting attorney rather than making an arrest, hoping that a hapless city police officer would make the warrant arrest and thus be responsible for all of the medical care for the prisoner.

It is respectfully submitted that this cannot be what the legislature intended by the clear words that the unit of government whose law enforcement officer initiated the criminal charges would be responsible for the medical care, at least with respect to felonies. But now that is even clearer. We think the legislature fixed the problem.

With the change in the law some previously possible risks to criminal prosecution may be avoided. Under the old law, if an arrest was the initiation of charges, perhaps some clever defense attorney would argue that speedy trial on a felony begins with the "initiation of charges" See CrR 2.1. and that the initiation of charges (arrest) starts the speedy trial clock. See Seattle v. Bonifacio, 127 Wash.2d 482, 900 P.2d 1105, Wash., (1995) where the court said that issuance of the ticket started the speedy trial clock but the court rule upon which this decision was based has since been amended to also require that the ticket must also be filed.

On the other hand, if the ultimate outcome of the debate, especially with the amendment, is resolved by interpreting the words "initiation of charges" to mean just what it says— initiating criminal felony charges — the legislation will be interpreted in a common sense manner. See Marriage of Ambrose, 67 Wn App 103, 834 P2d 101, "Furthermore, common sense suggests that the usual and ordinary meaning of the term [should] be used." See also Yakima First Baptist Homes, Inc. v. Gray, 82 Wn 2d 295, 510 P2d 243 (1973), where the court stated, "Where a common-sense construction of the statute is at hand, it is not the function of this court to reach an extreme and unrealistic conclusion in statutory interpretation" It is extreme and unrealistic to say that city police initiate felony charges. It is also illogical to say that criminal charges have not been initiated by the Prosecutor's filing of a criminal information but will be when there is an arrest on those charges.

SOLUTIONS

The declaratory judgment action in Clallam County will decide, at least in Clallam County, the issue of the proper interpretation of the *old* law. The far better solution was the legislative change accomplished this session. However, the new language is still up for interpretation, but it is much more clear. The real solution, of course, is for the State to put money into the fund it created for this very purpose. Still another solution is for the State to re-define who should pay for the emergency and necessary medical care of felons in custody and what the rates of payment for such medical care by health care providers will be (e.g. the

Medicaid rate). No one wants to have county and city law enforcement officers worrying about these issues and making arrest decisions based upon financial considerations of their department.

Craig A. Ritchie
Ritchie Law Firm
Sequim City Attorney
212 E. 5th Street
Port Angeles, WA 98362
360-452-2391 rslaw@olympus.net

Attachments: