AN INTRODUCTION TO THE COUNTY

Stevens H. Clarke

1999

INSTITUTE *of* GOVERNMENT
The University of North Carolina at Chapel Hill

THE INSTITUTE OF GOVERNMENT of The University of North Carolina at Chapel Hill is devoted to teaching, research, and consultation in state and local government.

Since 1931 the Institute has conducted schools and short courses for city, county, and state officials. Through monographs, guidebooks, bulletins, and periodicals, the research findings of the Institute are made available to public officials throughout the state.

Each day that the General Assembly is in session, the Institute's *Daily Bulletin* reports on the Assembly's activities for members of the legislature and other state and local officials who need to follow the course of legislation.

Over the years the Institute has served as the research agency for numerous study commissions of the state and local governments.

∞ This publication is printed on permanent, acid-free paper
in compliance with the North Carolina General Statutes.

Printed on recycled paper

Printed in the United States of America

04 03 02 01 00 5 4 3 2 1

ISBN 1-56011-363-4

Contents

Preface

I am grateful to my colleagues Michael R. Smith and Thomas H. Thornburg for their excellent outline on jail issues, which was the starting point for this book, and to professors Thornburg and Jill Moore for their helpful comments on an earlier draft.

Stevens H. Clarke

Chapel Hill
Fall 1999

Introduction

This book is an introduction to the subject of county jails in North Carolina. It is meant for local government officials, court officials, and citizens, as well as for sheriffs and jail administrators.

Jails, like most other public service entities, ordinarily function with little public attention and attract the news media only when some problem or crisis occurs. Legal problems in jails can quickly become emergencies, producing high costs for county governments in both a financial and a political sense. Thus it is important for county officials—and for county citizens—to have some basic information about the legal status of jails.

The information provided here is organized into nine chapters. Chapter 1 explains local government authority to establish jails. The second chapter discusses the role of state government in regulating jails. Construction of jails is covered in the third chapter. Chapter 4 discusses the legal grounds and procedures for confinement in jail. Chapter 5 describes some possibilities for prisoner work programs. The sixth chapter covers some aspects of financing jail operations. Chapter 7 addreses judicial review of jail operations, and chapter 8 deals with the law regarding the supervision and protection of inmates as well as living conditions in jails. The final chapter contains concluding remarks.

This book does not go into detail on the question of who may be liable in lawsuits concerning jails. Under certain circumstances, individual jail officers, the jail administrator, the sheriff, county commissioners, or the county itself may be liable. For more detailed information concerning parties potentially liable for improper jail conditions and mistreatment of jail inmates, see *A Practical Guide to the Liability of North Carolina Cities and Counties*, by Anita R. Brown-Graham, forthcoming from the Institute of Government.

Jails, also known as "local confinement facilities" or "detention centers," should not be confused with prisons. In North Carolina a prison is a *state government* institution operated by the North Carolina Department of Correction (DOC) to house convicted offenders serving relatively long sentences. A jail is a *local government* institution used to confine persons who are awaiting trial on criminal charges, are serving short sentences imposed for conviction of a crime, or are being held for a variety of other reasons.

County jails, the subject of this book, are not the only confinement facilities maintained by local governments. Some cities maintain confinement facilities, pursuant to Chapter 160A, Section 287, of the North Carolina General Statutes (hereinafter G.S.) for the temporary detention of prisoners pending their transfer to either a county jail or DOC. These facilities, known as "local lockups" or "city lockups," are subject to state standards and inspection, as are county jails (standards and inspection are explained in a later section). Confinement in a local lockup is limited to twenty-four hours per the state Department of Health and Human Services (DHHS).[1] Other DHHS regulations for lockups are similar to those covering county jails.[2]

---

1. 10 N.C. Administrative Code sec. 3J.3901(21) (hereinafter N.C. ADMIN. CODE).
2. These regulations are in 10 N.C. ADMIN. CODE secs. 3J.3901 through .3955.

1

County Responsibility for Jails

Authority to Establish Jails

G.S. 153A-218 authorizes a county to "establish, acquire, erect, repair, maintain, and operate local confinement facilities. . . ." No law specifically requires a county to provide a jail, but the responsibility is implied from a variety of statutes, G.S. 15-6, for example, which says: "No person shall be imprisoned except in the common jail of the county, unless otherwise provided by law." As a practical matter, not having access to a jail in the county or to a district (multicounty regional) jail would severely interfere with the criminal justice system, and it is in the interest of the county's citizens to have this system working as well as possible.

Roles of the Sheriff and the County Commissioners

The sheriff of the county and the board of county commissioners are jointly responsible for the county jail. The board *pays for construction and operation of* the jail. G.S. 153A-218 authorizes appropriation of funds for these purposes. The sheriff *manages* the jail. G.S. 162-22 provides: "The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof." (Today we would say "administrator" rather than "keeper.") The sheriff usually appoints a deputy or other officer to administer the jail, but the sheriff retains the final responsibility (G.S. 162-24).

The sheriff sets the county's policy with regard to the jail. Therefore in a lawsuit involving the jail's inadequate supervision or protection of inmates the county may be the party who is liable.[1] (These topics are discussed in more detail in chapter 8 of this book.)

Under G.S. 153A-103, the board of county commissioners sets the number of salaried employees in the sheriff's office and must provide at least two deputy sheriffs. The same statute gives the sheriff the exclusive power to "hire, discharge, and supervise the employees in his office," except that the board's approval is necessary to hire "a relative by blood or marriage of nearer kinship than first cousin or . . . a person who has been convicted of a crime involving moral turpitude."

"Privatization" of Jails

In recent years local governments have been investigating the possibility of "privatizing" a variety of government functions, that is, delegating their operation through contracts with private businesses. However, North Carolina's Attorney General has advised that counties may not privatize jails without specific legislative authorization because G.S. 162-22 gives the sheriff the care and custody of the jail.[2]

Regional (Multicounty) Jails

Some counties have found it advantageous to share a jail facility, a practice which is authorized by G.S. 153A-219(a):

> Two or more units of local government may enter into and carry out an agreement to establish, finance, and operate a district confinement facility. The units may construct such a facility or may designate an existing facility as a district confinement facility. In addition, two or more units of local government may enter into and carry out agreements under which one unit may use the local confinement facility owned and operated by another.

Currently, Bertie and Martin counties share the Bertie-Martin Regional Jail, and Camden, Pasquotank, and Perquimans counties share the Albemarle Regional Jail. Burke and Catawba Counties share a regional jail, although each has its own jail as well.

Growth of the Jail Population

Jail operation is a rapidly growing burden for North Carolina's counties. The number of persons confined in *jails* throughout the state increased rapidly during the last two decades, much faster than did the number held in state *prisons*. The average total jail population rose from 2,337 in June 1975 to 11,704 in June 1996, an increase of 401 percent. The state prison population, by comparison, rose 145 percent during the same period. Most of the jail population growth is due to an increase in the number of pretrial detainees. Since 1975 the percentage of the statewide jail population not serving sentences has ranged from 68 to 84 percent; the current figure is about 77 percent.

Jail capacity may be an important factor in continued jail population growth. Starting in 1987, there was a surge in new construction, raising the total capacity of jails from about 6,200 in 1987 to about 12,000 in 1997. To some extent counties were reacting to an increase in arrests and in the courts' caseload. But when the number of arrests per year leveled off after 1990, the expansion of jails continued. The availability of so much new jail space makes it easier to detain some arrested defendants and lessens the incentives to find ways of releasing them before trial. Some counties have dealt with this problem by creating interagency planning committees to avoid filling newly available jail space.

---

1. Dotson v. Chester, 937 F.2d 920 (4th Cir. 1991); Flood v. Hardy, 868 F. Supp. 809 (E.D.N.C. 1994).
2. Letter from deputy attorneys general John McArthur, John Corne, and John Aldridge to sheriffs John Baker and Worth Hill, June 23, 1995.

2

State Responsibility for County Jails

The State's Limited Role

In North Carolina the state government's role is not to control or oversee jails, but instead to assist county government in building and operating them. The state DHHS provides inspection, consultation, and technical assistance to counties in this regard and issues standards (regulations) concerning jail construction and operation.

The limits on state government's responsibility for jails also affect its legal liabilities. Recent decisions by the United States Court of Appeals for the Fourth Circuit have made it clear that DHHS may not be held liable for unconstitutional conditions in county jails because it is not legally compelled to remedy them. If DHHS finds a jail in violation of standards, it has the *discretion* to order corrective action or close the jail, but it does not have a *mandatory duty* to do so.[1]

The state's responsibilities for jails are listed in G.S. 153A-220:

> The Commission [the Social Services Commission within DHHS] has policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. The Department [DHHS] shall:
>
> (1) Consult with and provide technical assistance to units of local government with respect to local confinement facilities.
>
> (2) Develop minimum standards for the construction and operation of local confinement facilities.
>
> (3) Visit and inspect local confinement facilities; advise the sheriff, jailer, governing board, and other appropriate officials as to deficiencies and recommend improvements; and submit written reports on the inspections to appropriate local officials.
>
> (4) Review and approve plans for the construction and major modification of local confinement facilities.
>
> (5) [Repealed.]
>
> (6) Perform any other duties that may be necessary to carry out the State's responsibilities concerning local confinement facilities.

Jail Standards

Before a county builds a new jail or modifies an existing jail, DHHS must review and approve its construction plans. (DHHS standards for construction are discussed in the next chapter.) Under G.S. 153A-221, DHHS also develops minimum standards for jail operation for the purpose of maintaining secure custody of prisoners, protecting their health and welfare, and ensuring their humane treatment. The operational standards must provide for:

(1) Secure and safe physical facilities;

(2) Jail design;

(3) Adequacy of space per prisoner;

(4) Heat, light, and ventilation;

(5) Supervision of prisoners;

(6) Personal hygiene and comfort of prisoners;

(7) Medical care for prisoners, including mental health, mental retardation, and substance abuse services;

(8) Sanitation;

(9) Food allowances, food preparation, and food handling;

(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.[2]

Inspections

DHHS must inspect each jail semiannually as required by G.S. 153A-222,[3] which specifies:

> The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221.

The DHHS inspector submits a written report to the county commissioners and other local officials responsible for the facility within thirty days after an inspection. The commissioners must consider the report at their first regular meeting after receiving the report, and promptly initiate any action necessary to bring the jail into conformity with the
standards.

If the conditions in a jail violate state standards, the specific action taken by the state will depend on whether the conditions jeopardize the health and safety of the inmates. If DHHS determines that jail conditions do jeopardize the health and safety of the inmates, the secretary of health and human services may order corrective action or may close the facility.[4] Before ordering corrective action, the secretary may direct the county to enter into an agreement to correct the improper conditions.[5] The county commissioners may contest the secretary's order by filing an appeal in superior court.

Certain violations are always considered to jeopardize inmate health and safety and therefore call for action by DHHS: violations that involve emergency exits, fire plans, separation of male and female inmates, separation of males under age eighteen, medical care plans, sanitation and food service for public health purposes, and flame requirements for mattresses.[6] DHHS reviews other types of violations on a case-by-case basis to determine whether they jeopardize health and safety.

---

1. Reid v. Kayye, 885 F.2d 129 (4th Cir. 1989); Dotson v. Chester, 937 F.2d 920 (4th Cir. 1991).
2. The DHHS operational standards are published in 10 N.C. ADMIN. CODE secs. 3J.-2301 through .3302.
3. Inspections are covered by 10 N.C. ADMIN. CODE secs. 3J.3501 through .3506.
4. G.S. 153A-223; *Reid*, 885 F.2d 129.
5. 10 N.C. ADMIN. CODE sec. 3J.3504.
6. 10 N.C. ADMIN. CODE secs. 3J.3502(b), .3503.

3

Construction of Jails

Construction Standards

Standards for jail building materials vary with the degree of security required for the area in which they are used. Jails that restrain inmates under lock and key within a building must meet the requirements of the State Building Code for "institutional occupancy–restrained" as well as additional DHHS security standards.[1] These DHHS requirements are:

a. The jail must have a separate entrance for inmates.

b. All entrances to the jail must be controlled and visually and audibly monitored.

c. The jail must have security perimeter walls that are provided with a separate and complete security vestibule, sally port, security window, security door, or other security device at each wall opening.

d. The jail may not have clothing or towel hooks. 10 N.C. Admin. Code, sec. 3J.3420.

Jails that do not restrain inmates within a building by lock and key do not have to meet "institutional occupancy" requirements but instead must meet the requirements of the State Building Code for "residential occupancy."[2]

There are certain minimum space requirements for jails. For example, a cell for a single inmate must have at least 50 square feet of floor space. A multiple occupancy cell may house no more than four inmates and must have at least 50 square feet of floor space for the first inmate and 35 square feet more for each additional inmate.[3]

Satellite Jails

Many counties have established *satellite jails*, which may be new facilities but often involve the conversion of an existing building to a minimum security facility to confine nonviolent inmates. These satellite jails are subject to the same DHHS standards as other jails.

The law on satellite jail standards is somewhat confusing because of legislation that is on the books but has never gone into effect. In 1987, in the hope of diverting prisoners from state prisons, the General Assembly enacted G.S. 153A-230 through 153A-230.5 creating a state grant program for "satellite jail / work release units" that would house prisoners who were sentenced to serve jail terms for misdemeanor crimes and were placed on work release (work release is explained in chapter 6 of this book). State funding for this program has never materialized. G.S. 153A-230.1 defines a "satellite jail / work release unit" as a building or portion of a building that is "primarily designed, staffed, and used for the house of misdemeanants participating in a work release program." It is unclear whether this definition includes a jail unit that the county calls a satellite jail if the jail unit does not receive state funds. In any event, DHHS must issue and enforce standards for satellite jail / work release units—under G.S. 153A-230.4 with respect to units receiving state funds for their work release programs (no such units exist at present) and under G.S. 153A-230.5 in relation to units not receiving such state funds.

DHHS, in its regulations, defines "satellite jail / work release unit" by referring to the statutory definition of the term in G.S. 153A-230.1.[4] However, DHHS standards for satellite jail / work release units, found in Title 10, Sections 3J.3801 through .3807, of the North Carolina Administrative Code, appear to be limited in their application to "state-funded satellite jail / work release units," meaning units funded specifically for their work release programs as provided by G.S. 153A-230.1, mentioned above. In other words, there are currently no units in existence to which the separate DHHS requirements apply, because no units have state-funded satellite jail / work release programs. A reading of these statutes and regulations together leads to the conclusion that, at present, units called satellite jails are subject to the same DHHS standards as are other jails rather than subject to current DHHS regulations governing satellite facilities.

1. 10 N.C. ADMIN. CODE sec. 3J.3404.
2. 10 N.C. ADMIN. CODE sec. 3J.3404.
3. 10 N.C. ADMIN. CODE secs. 3J.3423, .3424.
4. 10 N.C. ADMIN. CODE sec, 3J.2301(34).

4

Financing Jail Construction and Operations

Sources of the County's Contribution

Paying for jail construction and operation is primarily a county responsibility, with state government making a small contribution. G.S. 153A-218 authorizes counties to build and operate jails and to appropriate funds for these purposes. In addition, by statute counties may offset jail expenses by charging certain kinds of fees. For example, G.S. 7A-313 requires that pretrial detainees pay a fee of $5 per day to the county for each day of confinement in jail before trial. It is worth mentioning, however, that this amount is well below the actual cost of confinement. A detainee will not be liable for this fee if he or she is not convicted of the charges brought in the particular case. Pretrial jail fees go into the county general fund but, as a practical matter, in many cases the fees cannot be collected.

G.S. 7A-313 also requires payment of the $5-per-day fee by prisoners "who are ordered to pay jail fees pursuant to a probationary sentence." This language is unclear: It may mean that a court can order a defendant who has been convicted and sentenced to probation to pay a fee for *post-conviction* confinement as a condition of special probation under G.S. 15A-1351(a). On the other hand, it may simply refer to a court ordering a convicted offender to pay the daily fee for *pretrial* confinement.

A county is authorized by statute to collect from a jail inmate's work release earnings an amount of money sufficient to pay for the actual cost of the inmate's keep. The sentencing court determines the amount to be collected.[1]

Medical care costs for jail inmates can be quite high and are difficult to anticipate. Counties must pay for emergency medical services for jail inmates if the inmates lack health insurance. (Medical care, including its funding and fees that may be charged for it, is discussed further in chapter 8 of this book.)

Extent of State Funding

State government plays a limited role in jail financing. DOC must reimburse counties for housing prisoners serving sentences in their jails for terms of thirty days or more, at a rate set by the General Assembly. The current rate, called a *per diem reimbursement*, is $18 per day.[2] (The General Assembly increases this rate every few years.) DOC also must pay counties the same daily rate for housing offenders serving jail terms imposed for criminal contempt of court because of willful violations of any conditions of probation.[3] In addition to the per diem reimbursement for housing such prisoners, DOC must reimburse county jails for most of the cost of their medical care.[4]

Because of prison overcrowding, offenders sentenced to state prison may be temporarily held in jails pending their transfer to state prison. The accumulation of such prisoners in jails is called the "jail backlog." On the day after the sheriff has notified DOC's Division of Prisons that a prisoner is ready to be transferred to state prison and the division has informed the sheriff that no space is available for that prisoner, DOC must begin reimbursing the county for confining the prisoner at a per diem rate set by the General Assembly—currently $40—and must also pay the prisoner's medical costs incurred while in the jail.[5]

These payments made to the counties by DOC do not cover the full cost of housing the inmates. A 1994 survey by the North Carolina Sheriffs' Association estimated the true confinement cost to be $50 per day per inmate, including operation, construction, and equipment costs. DOC reimbursements also do not cover the great majority of jail prisoners who either are awaiting trial or are serving terms of less than thirty days.

---

1. G.S. 148-33.1(f).
2. Chapter 443, Section 19.21(a), of the 1997 N.C. Session Laws (hereinafter SL).
3. G.S. 15A-1344(e1).
4. G.S. 148-32.1(a).
5. G.S. 143-29; SL 1999-237, sec. 18.10.

Legal Basis for Confinement in Jail

In North Carolina most jail inmates are pretrial detainees, and the majority of the others are serving short sentences in jail, primarily for misdemeanors.[1] Inmates also may be confined for contempt of court or in connection with federal government proceedings.

Pretrial Detention

Pretrial detention is the confinement of a person (a defendant) in a jail to await trial on criminal charges. The confined person is known as a "pretrial detainee." Under G.S. 15A-521, a person arrested on a criminal charge must be committed to a local jail if he or she does not satisfy the conditions of pretrial release—for example, an appearance bond—set by a magistrate or other judicial official. These conditions are recorded in a court document referred to in the statute as an "order of commitment" but in practice often called a "release order."

After a valid order of commitment has been issued and the defendant has failed to receive some form of pretrial release, the jail administrator must accept the defendant as a prisoner.[2] The jail must release the defendant as soon as he or she satisfies the conditions of pretrial release specified in the commitment order—for example, as soon as he or she manages to come up with enough cash or arranges for a bondsman to secure the bond set by the judicial official.

Conditions of pretrial release, once set, can be modified. One common type of modification is to reduce or increase the required amount of a secured bond. (A secured bond is a promise to pay a specific amount of money if the defendant fails to appear in court, secured by a deposit of cash, by the promise of another person called a surety or bondsman, or by a mortgage of property.) A magistrate or clerk may modify the initial conditions before the defendant first appears in district court. Thereafter any judge that has jurisdiction of the criminal case may modify the pretrial release conditions.[3]

Sentenced Confinement

Sentenced confinement is the service of a jail or prison sentence imposed for conviction of a crime. Most sentenced jail prisoners have been specifically ordered to serve their terms in county jails. A much smaller number are sentenced to state prisons but are temporarily held in county jails until prison space becomes available.

The length of the sentence given to a person convicted of a particular crime is dictated by the Structured Sentencing Act (SSA), which applies to all criminal offenses committed on or after October 1, 1994,[4] with two exceptions: (1) driving while impaired (DWI)[5] and (2) violation of communicable disease control restrictions,[6] each of which is subject to its own sentencing requirements. The act covers both felonies (serious crimes such as robbery, burglary, and murder) and misdemeanors (less serious crimes such as issuing worthless checks and stealing property worth less than $1,000). Nearly all inmates currently serving sentences in jail are covered by the SSA rather than by prior laws, and most of these sentences are for misdemeanors. For more information on the SSA and related topics, see *Law of Sentencing, Probation, and Parole in North Carolina* (1997), written by this author and published by the Institute of Government.

The SSA involves strict regulation of sentencing by means of guidelines that narrow judges' choices of the type of punishment and the length of active imprisonment, if any, that they may impose. The guidelines are based on the offender's criminal record as well as on his or her current offense.

Before the SSA, most sentences of imprisonment carried the possibility of parole—discretionary release by a panel called the Parole Commission. The SSA abolished parole with regard to sentences for all crimes except DWI. Under the SSA, misdemeanants who receive active imprisonment in a jail or prison for any offense except DWI must serve their entire term of imprisonment, minus no more than four days' credit per month served for earned time or for assignments to work in or around the jail; thus misdemeanants serve at least 88 percent of

their terms. A small number of inmates are serving sentences in county jails—as opposed to state prisons—for felonies (more serious crimes). A felon sentenced under the SSA must serve at least the entire minimum term imposed and may serve up to the maximum term. Earned time credit that the felon receives—for assigned work and participation in prison programs, for example—reduces the maximum term but may not reduce it to less than the minimum term. The secretary of correction issues rules regarding earned time that apply to sentenced inmates in both prison and jail.[7]

A prisoner sentenced for a DWI conviction is eligible for parole. Whether the inmate is serving the sentence in a jail or a prison, the Post-Release Supervision and Parole Commission decides when he or she should be paroled, subject to the provisions of G.S. 15A-1371 and 20-179.

An inmate sentenced to a term of imprisonment of ninety days or less for a misdemeanor under the SSA must be committed to a jail rather than DOC.[8] However, if the sheriff certifies that the jail is full and the term is at least thirty days, a judge may transfer the inmate to DOC or to another jail.[9] An inmate sentenced to more than ninety days for a misdemeanor under the SSA may be committed either to jail or to DOC, in the sentencing judge's discretion.[10] An inmate convicted of a felony must be committed to DOC, except that upon request of the local sheriff or board of county commissioners, the sentencing judge may commit the inmate to the local jail.[11]

Sentencing to work release—temporary release of a sentenced prisoner to work on a paid job outside the jail—is also an option in jail sentencing. It is discussed in the next chapter.

Contempt of Court

Contempt of court may result in jail confinement. There are two kinds of contempt, criminal and civil, both of which are regulated by G.S. Chapter 5A. Criminal contempt includes behavior such as showing disrespect for the court during court proceedings or willfully disobeying a court order. It can be punished by imprisonment for up to thirty days. Civil contempt occurs when a person who is able to comply with a court order fails to do so. If a court finds a person in civil contempt, he or she may be locked up in jail until willing to comply with the court order.

Public Intoxication

Public intoxication may be grounds for a brief period of confinement in a jail in certain circumstances, as provided by G.S. 122C-303. A law enforcement officer may "assist" a person found intoxicated in a public place by directing or transporting the person to a jail if (1) the person is in need of food, clothing, or shelter; (2) the person is not apparently in need of immediate medical care; and (3) no other facility (like a shelter) is readily available to receive the person. In this situation, the intoxicated person must be released when he or she becomes sober or if a relative or other person is willing to be responsible for his or her care, and in any case may not be held for more than twenty-four hours.

If the intoxicated person apparently needs immediate medical care, G.S. 122C-303 and -301 make it clear that the officer must not take him or her to a jail but may take him or her to a hospital, physician's office, or other health care facility.

Federal Judicial Proceedings

Federal judicial proceedings, such as those involving federal criminal or military charges, may lead to confinement in a county jail. Under G.S. 162-34, a jail administrator must accept federal inmates delivered to the county jail if adequate space is available. The federal government must reimburse the county for its expenses. Many jails have contracts with the federal government for this very purpose.

---

1. Misdemeanors are less serious crimes, punishable by probation or active imprisonment from 10 to 150 days, depending on the seriousness of the crime and the offender's prior convictions. G.S. 15A-1340.23. Felonies are more serious crimes, punishable by probation or by prison terms ranging up to life imprisonment. G.S. 15A-1340.17.

2. G.S. 15A-521(c)(2).

3. G.S. 15A-534(e).

4. G.S. 15A-1340.10 through 15A-1340.28, -1368 through -1368.6.
5. G.S. 20-183, 20-179.
6. *See* G.S. 130A-25 and -144(f).
7. G.S. 15A-1340.13(d), -1340.20(d).
8. G.S. 15A-1352(a).
9. G.S. 148-32.1(b).
10. G.S. 15A-1352(a).
11. G.S. 15A-1352(b).

6

Work Programs for Jail Prisoners

Most people would probably agree that it is better for jail inmates to work, if they can do so without undue risk to the community, than to be idle. Research suggests that legitimate employment can reduce criminal recidivism. The law offers several options for inmate work programs.

Work to Benefit Units of Local or State Government

A board of county commissioners, subject to approval by the sheriff, may issue rules concerning work by sentenced prisoners on projects to benefit units of state or local government. This work must be supervised by county employees or by the sheriff.[1] Only the sheriff or jail administrator has the authority to approve the work assignment. Prisoners need not be paid for such work, but the county can pay them if it has funds for this purpose.

The approval of a sentenced prisoner's participation in work to benefit local or state government must be based on the prisoner's history of violence (if any), past criminal convictions, and current sentence. The person having custody of the prisoner may use his or her discretion to revoke the work assignment at any time and return the prisoner to jail.[2]

While prisoners are working, the county remains liable for their emergency medical services under G.S. 153A-224. The county is also liable to third parties for injuries to them due to the negligence of working prisoners to the same extent as the county is liable for the negligence of its employees. Under G.S. 162-61 state laws concerning employment security and workers' compensation (Chapters 96 and 97 of the General Statutes) do not apply to prisoners doing this kind of work.

The law offers an incentive for prisoners to work. They may receive work credit toward their term of imprisonment of up to four days for each thirty days of work faithfully performed. The person having custody of the prisoner is the sole judge of whether the prisoner has faithfully performed the assigned work.[3]

Work Release to Paid Work outside the Jail

Work release is the temporary release of a sentenced prisoner from imprisonment to work on a job in the free community, outside the jail or prison, for which the offender is paid by the outside employer. Under current law, sheriffs and jail administrators have no authority to grant work release to jail inmates. This authority normally comes from the sentencing court.

When sentencing a person convicted of a misdemeanor, the judge may, with the consent of the defendant, *order* that the defendant be granted work release. The judge may also *recommend* work release, which of course does not amount to a binding order.[4] If the judge sentences a person to jail for a misdemeanor with an *order* of work release, the jail must carry out this order. Judges are well advised to plan work release programs jointly with jail administrators before issuing work release orders; jails may not be prepared to carry out orders otherwise. It may be wise to screen offenders before sentencing to select those who are appropriate for the kind of work release opportunities that the jail is able to offer.

If the sentencing judge *recommends* work release or does not mention it, only DOC may authorize work release. In current practice, DOC does not issue approvals of jail prisoner work release. Consequently, work release by judicial order is the only option available at present.

Work release involves some administrative work for both the jail and the court. If a jail prisoner is on work release ordered by a sentencing judge, he or she must give any work release earnings to the jail administrator. The sentencing judge must determine the amount to be taken out of the prisoner's earnings for the costs of jail confinement; for employment expenses such as travel; and for court-ordered payments such as fines, family support, or victim restitution. The clerk of court must disburse the earnings as ordered by the judge.[5]

"Special Probation" to Work at a Paid Job outside the Jail

If the court's goal is to insure that the offender continues to work at a job that he or she held before being charged, "special probation" may be an option preferable to work release. Special probation—sometimes called a "split sentence"— is a sentence wherein a convicted offender is placed on probation and spends a short time in jail or prison during the probation period as a condition of having a longer term of imprisonment suspended. In special probation, the offender may be required to spend some of each week—for example, weekends or week nights—in a jail and may be free at other times under the supervision of a probation officer.[6] Because of this supervision, the court may have more assurance that the offender is in fact working at a legitimate job.

Unpaid Community Service Work

Community service is unpaid work performed by a convicted offender for a governmental agency or nonprofit organization. A sentencing judge may order that a convicted offender perform community service as a condition of probation. Normally such offenders are not serving jail sentences, but there may be cases in which offenders are placed on special probation with time to serve in jail and in addition must perform community service while under probation supervision outside the jail. Also, the Post-Release Supervision and Parole Commission may order community service as a condition of parole or supervised release.[7] In addition to being under probation supervision, the offender is supervised in performing community service by a special officer called a "community service coordinator" working for the Division of Victim and Justice Services of the North Carolina Department of Crime Control and Public Safety.

---

1. G.S. 162-58.
2. G.S. 162-59.
3. G.S. 162-60.
4. G.S. 15A-1351(f), -1352(d).
5. G.S. 148-33.1.
6. G.S. 15A-1351(a).
7. G.S. 15A-1343(b1)(6), -1368.4.

7

Courts' Review of Jail Operations

There are two fairly common misconceptions regarding the legal status of inmates. The first is that inmates forfeit all legal rights while confined for criminal offenses. This view is incorrect. Inmates of course lose certain rights, such as the right to be free outside the jail, as a consequence of their criminal conviction or of the charges filed against them. But they retain certain other rights—for example, the right of access to the courts; the right to send and receive personal mail; and the right to be free of unconstitutionally cruel or unusual punishment. The other misconception is that inmates' legal rights are so broad that courts hear inmate claims while ignoring the arguments of prison and jail administrators. This view, too, is incorrect. Courts routinely consider, and generally defer to, administrative needs, and the tendency to do so has strengthened in recent years. The fact is that the legal status of those confined for crimes is in a kind of rough balance in which the constitutional rights of inmates are recognized but the exercise of these rights is adapted to the necessities of operating jails and prisons.

The United States Supreme Court ruled in 1974 that "a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. . . .[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application."[1] More recently, in 1987 the Supreme Court announced the principle that when a prison or jail regulation—for example, a restriction of the right to send and receive personal mail—impinges on a constitutional right of an inmate, the regulation will be upheld if it is reasonably related to a legitimate governmental interest, such as the interest in maintaining security in the jail or the interest in controlling costs and workload for employees.[2]

Most North Carolina jail prisoners are pretrial detainees. Pretrial detainees are charged with a crime but have not been convicted, and therefore they may not be punished for that crime. Nevertheless the pending charges, backed by a judicial finding of probable cause, are legally sufficient grounds for arrest, for setting conditions of pretrial release (such as an appearance bond), and for keeping defendants in detention if they cannot meet the conditions. While in jail, detainees are subject to the same limitations on their privacy as are sentenced prisoners, such as cell searches and personal searches, where these are related to jail security needs.[3]

A federal law known as "Section 1983"[4] authorizes a remedial lawsuit in federal court by any person—including a jail inmate—who alleges that his or her constitutional rights have been violated. A jail inmate who brings a Section 1983 lawsuit may recover damages from a county or from individual county officials, including the sheriff. A county may be found liable in a Section 1983 lawsuit if a pattern of underfunding its jail is found to have caused a violation of an inmate's constitutional rights. In addition to awarding damages in a Section 1983 lawsuit, a federal court may order a county to spend money to improve jail conditions and may order a jail closed if a county refuses to remedy unconstitutional conditions or practices.

Beginning in the 1970s, there was an explosion in the number of Section 1983 lawsuits brought by jail and prison inmates challenging the conditions of their confinement and various actions of prison and jail authorities. The number of lawsuits increased from 2,793 in 1970 to nearly 20,000 in 1990 and to an all-time high of 41,600 in 1995. In 1996, to reduce the number of lawsuits, especially those considered frivolous, Congress enacted the Prison Litigation Reform Act (PLRA). While PLRA does not change prison and jail inmates' substantive legal rights, it restricts inmate litigation in federal courts in a variety of ways, some of which have been challenged on constitutional grounds. For example, PLRA restricts the kind of relief a federal court can order in an inmate suit; forbids a claim for mental or emotional injury without a showing of physical injury; requires the inmate to exhaust available administrative remedies before going to court; and requires payment of a filing fee from any funds in the inmate's prison or jail account (although an inmate with no funds may still sue).

PLRA seems to be having the intended effect. In 1996 the number of federal inmate suits began to decline, and the total dropped to an estimated 20,500 in 1998 despite the fact that the number of inmates nationwide continued to increase during this period.

1. Wolff v. McDonnell, 418 U.S. 539, 555, 556 (1974).
2. Turner v. Safley, 482 U.S. 78 (1987).
3. Bell v. Wolfish, 441 U.S. 520 (1979).
4. 42 U.S.C. § 1983.

8

Law Regarding Conditions of Confinement

Access to the Courts

Prison inmates have a constitutional right of access to the courts that must be adequate, effective, and meaningful. To exercise this right, they are entitled to some degree of assistance. In a 1977 decision, *Bounds v. Smith*, the United States Supreme Court ruled that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers *by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law*."[1] Recently, in *Lewis v. Casey*, the Supreme Court narrowed the right of legal assistance to claims in which an inmate is (1) appealing a conviction, (2) seeking habeas corpus (release from confinement as a result of a conviction), or (3) filing a civil rights (Section 1983) action challenging the conditions of his or her confinement.[2]

Bounds v. Smith concerned prisoners in *state prisons*. The United States Supreme Court has never specifically declared a right to assistance with legal claims for prisoners in *jails*. However, a number of United States Courts of Appeals, including the Court of Appeals for the Fourth Circuit, which includes North Carolina, have acted on the assumption that the right applies equally to jail inmates.[3]

To win a Section 1983 lawsuit against a prison for violation of the right to legal assistance, the Supreme Court held in *Lewis* that a prisoner must prove he or she has suffered "actual injury" as a result of the inadequate assistance. Some examples of actual injury are (1) having a lawsuit dismissed because the prisoner was not informed about technical filing requirements and (2) not having enough information to file a court action and consequently missing the opportunity to do so. It may be quite difficult to prove this kind of injury, however, and therefore difficult to win this kind of lawsuit.

Supervision and Protection of Inmates: The Eighth Amendment

One source of law on the supervision and protection of inmates is the Eighth Amendment to the United States Constitution, which forbids "cruel and unusual punishment." The requirements of this constitutional provision are quite limited.

Farmer v. Brennan, a 1994 case, involved a trans-sexual prison inmate who was allegedly beaten and raped by another inmate after being transferred to a higher security prison unit with a more troublesome population than the unit he had been in previously. The inmate sued prison officials for damages, arguing that they had violated his right under the Eighth Amendment to be free of cruel and unusual punishment. The United States Supreme Court held that under the Cruel and Unusual Punishment Clause, a prison official is not liable to pay damages for an inmate-on-inmate assault unless the official is "deliberately indifferent" to the victimized inmate's safety or health. "Deliberately indifferent," the court said, means that the official "knows of and disregards an excessive risk to inmate health or safety. . . ." The Court went on to say:

> . . . a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement *only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it*"[4] (emphasis added).

The Supreme Court made it clear that this standard also applies to Eighth Amendment claims regarding medical care as well as other conditions of confinement (medical care is discussed later in this chapter).

Supervision and Protection of Inmates: North Carolina Law

North Carolina law is much more specific than the Eighth Amendment regarding supervision and protection of jail inmates. The following are examples of state law provisions and of regulations.

Round-the-clock supervision. G.S. 153A-224, requires jail officials to "supervise prisoners closely enough to maintain safe custody and control and to be at all times informed of the prisoners' general health and emergency medical needs." DHHS jail standards require officers to "make supervision rounds and directly observe each inmate in person at least twice per hour on an irregular basis." Remote electronic monitoring of inmates may not be substituted for direct visual observation, although it may be used as a supplement. Officers may not be assigned other duties that will interfere with the continuous supervision, control, or custody of the inmates.[5]

Written classification procedure. DHHS jail standards provide that "[e]ach jail shall have a written classification procedure for the placement and housing of inmates."[6]

Female inmates. G.S. 153A-228 requires that male and female inmates "be confined in separate facilities or in separate quarters" in jails. DHHS standards specify that if female inmates are confined in a jail, female officers must be on duty.[7]

Male inmates under age 18. DHHS standards mandate that "[m]ale inmates under 18 years of age shall be confined in separate cells from adult inmates during sleeping hours."[8]

Juvenile inmates (under age 16). DHHS standards provide that "[a]ny juvenile under age 16 who is transferred to superior court for trial as an adult and who is ordered held in the jail pursuant to G.S. 7A-611 shall be confined in a holdover facility where the juvenile cannot converse with, see, or be seen by the adult inmates."[9]

Assaultive, suicidal, intoxicated, and mentally ill inmates. For inmates who are assaultive, suicidal, intoxicated, mentally ill, or who have other special needs or problems, DHHS standards require frequent observation. Officials "shall directly observe [such inmates] at least four times per hour. . . ."[10]

Special attention must be paid to suicidal inmates. The 1994 case of *Smith v. Phillips* established this rule. *Smith* involved a 17-year-old inmate in the Avery County jail who committed suicide. His family sued the sheriff for wrongful death (that is, for causing the inmate's suicide through negligence). Evidence presented at the trial revealed that the inmate, who was confined in an isolation cell, had displayed some of the symptoms of suicide risk that were listed in the jail's own operating manual. His visitors believed he was depressed, and his mother asked the jailer to keep an eye on him. He frequently wept, had difficulty sleeping, and told a visitor he was "going nuts" in a cell by himself. The North Carolina Court of Appeals ruled that this evidence was enough to take the case to the jury on the negligence issue. The court held that:

> A prison officer may be held liable when he knows of, or in the exercise of reasonable care should anticipate, danger to his prisoner and fails to take adequate measures to safeguard the prisoner, Williams v. Adams, 288 N.C. 501, 504, 219 S.E.2d 198, 200 (1975), and a jailer may be held liable for the suicide of a prisoner if he had knowledge, or reason to know, that the prisoner was a danger to himself and failed to take adequate precautions. Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985).[11]

Note that the Court of Appeals' standard of care for jailers is stricter than the Eighth Amendment standard previously described. To prove cruel and unusual punishment under the federal constitution, an inmate must prove that a jail officer *actually knew of* the risk to the prisoner but failed to take reasonable action to protect the prisoner. To prove liability under North Carolina law, however, it is enough to prove that the jailer *had reason to know* the prisoner was in danger and failed to take reasonable precautions.

Medical Care

Medical care for jail inmates is an important enough—and troublesome enough—issue for county government in terms of potential liability to justify covering it in some detail.

Two standards apply to inmate medical care: a federal constitutional standard and a higher standard under North Carolina law that is, in fact, higher than the federal standard. The constitutional standard dictates what will and will not constitute inadequate care (or lack of care) amounting to cruel and unusual punishment under the Eighth Amendment. For inadequate medical care to rise to the level of cruel and unusual punishment, it must amount to *deliberate indifference to* an inmate's medical needs. Under the United States Supreme Court's decision in *Farmer v. Brennan*, discussed above, this means that jail staff must actually know of medical risks to the inmate and fail to take reasonable measures to deal with them.

North Carolina law sets a higher standard for inmate medical care. The following are some specific examples.

Jail medical care plan. Each county must develop a medical care plan for jail inmates. Under G.S. 153A-225(a), the plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

DHHS standards amplify the statutory requirements. Title 10, Section 3J.3201, of the North Carolina Administrative Code provides as follows:

(a) A written medical plan shall be developed in compliance with G.S. 153A-225 and it shall be available for ready reference by jail personnel. The medical plan shall include a description of the health services available to inmates.

(b) The written plan shall include policies and procedures that address the following areas:

(1) Health screening of inmates upon admission;

(2) Handling routine medical care;

(3) The handling of inmates with chronic illnesses or known communicable diseases or conditions;

(4) Administration, dispensing and control of prescription and non-prescription medications;

(5) Handling emergency medical problems, including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health;

(6) Maintenance and confidentiality of medical records; and

(7) Privacy during medical examinations and conferences with qualified medical personnel.

(c) Inmates must be provided an opportunity each day to communicate their health complaints to a health professional or to an officer. Qualified medical personnel shall be available to evaluate the medical needs of inmates. A written record shall be maintained of the request for medical care and the action taken.

(d) Inmates shall not perform any medical functions in the jail.

(e) The medical plan shall be reviewed annually.

G.S. 153A-225(a) requires the jail to develop the medical care plan in consultation with the sheriff, the local or district health director, and the local medical society. The local health director must approve the plan, after consultation with the area mental health authority, if it is adequate to protect the health and welfare of inmates. Note that the DHHS jail standards quoted above require that the plan be reviewed annually.[12]

Awareness and assessment of medical needs. Jail personnel must at all times be informed of inmates' health and emergency needs.[13] DHHS standards require that a jail officer prepare a health screening form upon admission of each inmate, a copy of which must be kept in the inmate's medical file.[14] Furthermore, inmates must have an opportunity each day to communicate their health complaints to a health professional or an officer. Qualified health personnel must be available to evaluate the medical needs of inmates. Jail personnel must keep a written record of inmate requests for medical care and of the actions taken on the requests.[15]

Infectious diseases. Significant numbers of jail inmates have dangerous infectious diseases or conditions such as AIDS and tuberculosis. The standards quoted above require that inmates who must be isolated from other inmates for medical reasons be housed in a separate area of the jail or transferred to another facility.[16]

Emergency medical care. A jail medical plan must provide for emergency medical care to inmates and must designate a physician to provide such care.[17] Unfortunately the North Carolina statutes do not define "emergency medical care," and court decisions offer little guidance in interpreting the term.[18] One section of the DHHS standards defines it as follows:

> [An] Emergency medical problem is a serious medical need, including severe bleeding, unconsciousness, serious breathing difficulties, head injury, severe pain, suicidal behavior or severe burns, that requires immediate medical attention and that cannot be deferred until the next scheduled sick call or clinic.[19]

Another section of the standards defines "emergency medical problems" as "including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health."[20]

When an emergency occurs, jail personnel must secure medical care in accordance with the medical plan. If the physician designated in the plan to provide emergency care is not available, the jail officers must seek medical care from any available licensed physician.[21]

Payment for inmate medical care. With some exceptions, the county must pay for emergency medical care provided to inmates lawfully in its custody, including both sentenced and unsentenced inmates. As was mentioned above, the law is unclear about what constitutes emergency medical care. The county may not avoid its statutory obligation to pay for such care by releasing from its custody an unconscious prisoner in need of emergency care, even if the release is authorized by a judge.[22]

In some situations, the county is *not* itself required to pay for emergency medical care but instead will receive reimbursement for the provision of such care. These situations are as follows:

- If a convicted inmate serving a jail sentence of thirty days or more receives emergency medical care, DOC will reimburse the jail for most medical expenses.[23]
- If an inmate receiving emergency medical care has health insurance (most do not), the medical service provider must bill the insurance company directly. The county must pay whatever is not paid by the insurer, but may recover that amount (if it can) from the insured inmate. Note that recovery from the inmate is not an option if the inmate is uninsured.[24]

Where medical care is provided that does not constitute *emergency* care, the county may bill inmates a fee of up to $10 per incident. However, the county must have a procedure for waiving such fees for inmates who are indigent.[25]

Segregated Confinement to Punish Inmate Misconduct

Certain kinds of changes in the correctional status of an offender—for example, the revocation of parole or probation—cannot be made without satisfying constitutional due process requirements, such as notice and a hearing, because they involve the loss of constitutionally protected liberty. However, these constitutional requirements do not apply to every change in an inmate's status within a jail or prison.

For example, in the case of *Sandin v. Conner*, an inmate challenged a Hawaii prison's placement of him in segregated confinement as punishment for misconduct. The inmate had received notice of the misconduct charge and a hearing by the prison disciplinary committee, but he claimed that the hearing was constitutionally defective because he was not allowed to present witnesses in his defense. The United States Supreme Court, rejecting the inmate's claim, ruled that constitutional due process requirements did not apply to this change in the inmate's confinement and held that a constitutionally protected liberty interest is created only if the interest amounts to "freedom from restraint . . . which imposes atypical and significant hardship on the inmate in relation to prison life."[26] No such interest was found. Later, in *Beverati v. Smith*, a case involving Maryland state prisons, the United States Court of Appeals for the Fourth Circuit (which includes North Carolina) held that conditions in administrative segregation did not involve significant hardship in relation to ordinary incidents of prison life, and therefore constitutional due process standards did not apply. This court also ruled that six months' confinement in administrative segregation was not grossly excessive punishment for possessing escape paraphernalia such as unauthorized clothing that could have been used as an escape disguise.[27]

For jails in North Carolina, the decisions in *Sandin* and *Beverati* indicate that if an inmate is placed in segregated confinement for disciplinary reasons, constitutional due process standards may not necessarily apply to the change in confinement.[28] However, jail administrators would be wise to continue to give notice of the charges and to conduct a hearing before imposing this kind of confinement.

Overcrowded Confinement

Jail inmates have a right to be confined under conditions that do not involve the unnecessary infliction of pain, but jail overcrowding by itself does not necessarily amount to unconstitutionally cruel and unusual punishment. In a 1995 case involving an Alabama county jail, inmates were kept in a cell known as a "bullpen." In this cell inmates were allowed to decide for themselves who slept in a bed and who slept on the floor, sometimes without a mattress or blanket. Fights were common and inmates known to be dangerous were indiscriminately mingled with other inmates. One inmate, injured in such a fight, sued, alleging a violation of his right to be free of cruel and unusual punishment. The United States Court of Appeals for the Eleventh Circuit held that the evidence was sufficient for a jury to find both the sheriff and the county liable for the inmate's injuries.[29] In contrast, in a case involving a South Carolina prison, the United States Court of Appeals for the Fourth Circuit held that the constitutional prohibition against cruel and unusual punishment was *not* violated by the fact that the prisoner was forced to sleep on the floor, due to lack of bed space, pending transfer to a new facility that was under construction. The inmate did not claim to have been injured.[30]

Options when jail becomes overcrowded. Under North Carolina law, a sheriff may not refuse to accept inmates committed to the county jail just because it is severely crowded. However, the sheriff can ask a court to transfer inmates to other facilities, as explained in the next section.

Transfer of Inmates

Under certain circumstances, courts can order inmates transferred from a particular jail to some other facility.

Transfer when jail is overcrowded. G.S. 148-32.1(b) authorizes a judge to transfer any inmate who is serving a sentence of thirty to ninety days to DOC or to another jail if the sheriff certifies that the jail to which the inmate was committed is full. Also, G.S. 162-39 allows a superior or district court judge to order inmates transferred to other jails or to DOC if the population becomes so numerous that jail space is inadequate. The number of inmates transferred to DOC, known as "safekeepers," may not exceed 200 in DOC custody at any given time unless authorized by the secretary of correction. The sheriff is responsible for transporting such inmates. The county must reimburse DOC (the current rate is set at $18 per day) for each day that an inmate is held as a safekeeper as well as for most of the cost of health care the inmate receives while with DOC.[31]

Transfer of inmates who are dangerous, endangered, or in need of special medical treatment. A judge may order an inmate transferred to DOC if the inmate

- Poses a serious escape risk;
- Is too violent for the jail to control;
- Needs protection from other inmates and the jail cannot provide the protection;
- Is female or under age 18 and the jail does not have adequate housing for such persons; or
- Requires medical or mental health treatment that can best be provided by DOC.[32]

In such transfers, as in transfers due to overcrowding, the county must pay for most expenses and the sheriff is responsible for transportation.

Physical Exercise

Inmates have a constitutional right to some form of physical exercise. Depriving them of this generally amounts to constitutionally prohibited cruel and unusual punishment.[33] However, outdoor or out-of-cell exercise is not required if jail inmates have a meaningful opportunity for indoor exercise.[34]

DHHS jail standards require that each inmate receive the opportunity for physical exercise at least three days each week for a period of one hour each day. The exercise may be in the confinement unit (the cell) if it has enough space and if not, then in a separate area of the jail. This requirement applies only after an inmate's fourteenth consecutive day of confinement.[35]

Inmates with Disabilities

In 1998 the United States Supreme Court ruled that the Americans with Disabilities Act of 1990 (ADA)[36] applies to prisoners in state prisons. By extension of the court's principles, the ADA applies to county jail inmates as well. A Pennsylvania state prison inmate named Yeskey sued the Pennsylvania Department of Corrections and several other officials for violating his rights under the ADA by denying him admission to a "boot camp" program. The boot camp program, which excluded him because of a history of hypertension, would have made it possible for him to obtain parole earlier than he otherwise could have. The department argued that the ADA did not apply to prisons and prison inmates. The Supreme Court, ruling in favor of the inmate, noted that Title II of the ADA, which covers any "public entity," defines "public entity" as "any . . . instrumentality of a State . . . or local government." Therefore, the Court held, the act covers state prisons.[37]

Later decisions by the U.S. Supreme Court have held that persons with medically correctable conditions such as hypertension and weak eyesight are not covered by the ADA.[38] Nevertheless, with respect to prison or jail inmates with more severe disabilities, the *Yeskey* decision implies that the ADA forbids the prison or jail to discriminate against them on the basis of disabilities covered by the ADA.

Other Living Conditions

A failure to provide adequate heating, ventilation, and sanitary living conditions may amount to cruel and unusual punishment under the Eighth Amendment. The same is true of failing to provide three wholesome and nutritious meals per day and adequate sanitary food service.[39] DHHS jail standards regulate the areas of sanitation, heating, and ventilation. They also require at least three meals per day for inmates, two of which must be hot, at regular times during each twenty-four-hour period, and specify the nutritional content of the meals.[40]

---

1. Bounds v. Smith, 430 U.S. 817, 828 (1977) (emphasis added).
2. Lewis v. Casey, 518 U.S. 343 (1996).
3. Magee v. Waters, 810 F.2d 451 (4th Cir. 1987); Strickler v. Waters, 989 F.2d 1375 (4th Cir. 1993).
4. Farmer v. Brennan, 511 U.S. 825, 847 (1994).
5. 10 N.C. Admin. Code sec. 3J.2801(a).
6. 10 N.C. ADMIN. CODE sec. 3J.2501.
7. 10 N.C. ADMIN. CODE sec. 3J.2801(f).
8. 10 N.C. ADMIN. CODE sec. 3J.2503.
9. 10 N.C. ADMIN. CODE sec. 3J.2504. The requirement regarding juveniles is based on the statutory definition of "holdover facility," found in former G.S. 7A-517(16) in the recently repealed Juvenile Code, and the identical definition in the new juvenile code, G.S. 7B-1501(11).
10. 10 N.C. ADMIN. CODE sec. 3J.2801(c).
11. Smith v. Phillips, 117 N.C. App. 378, 385, 451 S.E.2d 309, 314 (1994) (emphasis added).
12. 10 N.C. ADMIN. CODE sec. 3J.3201(e).
13. G.S. 153A-224(a).
14. 10 N.C. ADMIN. CODE sec. 3J.3202.
15. 10 N.C. ADMIN. CODE sec. 3J.3201(c).
16. 10 N.C. ADMIN. CODE sec. 3J.3203.
17. G.S. 153A-225(a)(2); 10 N.C. ADMIN. CODE sec. 3J.3201(b)(5).
18. In what is apparently the only appellate decision on the subject, the North Carolina Court of Appeals held (and the state supreme court affirmed) that medical care of an unconscious inmate suffering from spinal meningitis constituted emergency medical care for which the county had to pay, but the court left open the question of whether *all* the treatment that the inmate received for the illness constituted emergency medical care. University of North Carolina v. Hill, 96 N.C. App. 673, *aff'd*, 327 N.C. 465 (1990).
19. 10 N.C. ADMIN. CODE sec. 3J.2301(14).
20. 10 N.C. ADMIN. CODE sec. 3J.3201(b)(5).
21. G.S. 153A-224(b).
22. *Hill*, 96 N.C. App. 673.
23. G.S. 148-32.1(a).
24. G.S. 153A-224(b).
25. G.S. 153A-225(a).
26. Sandin v. Conner, 515 U.S. 472 (1995).
27. Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997).

28. Constitutional due process standards include procedural standards, such as a requirement of notice and a hearing on whether to segregate the inmate, as well as substantive standards, such as a requirement that the prison or jail not impose a change in confinement conditions that amounts to an unauthorized additional criminal punishment.

29. Hale v. Tallapoosa County, 50 F.3d 1579 (11th Cir. 1995).

30. Crowe v. Leeke, 540 F.2d 740 (4th Cir. 1976).

31. G.S. 162-39(d); Chapter 443, Section 19.21, of the 1997 N.C. Session Laws.

32. G.S. 162-39(b), (d).

33. Mitchell v. Rice, 954 F.2d 187 (4th Cir 1992).

34. Shelby County Jail Inmates v. Westlake, 798 F.2d 1085 (7th Cir. 1986).

35. 10 N.C. ADMIN. CODE sec. 3J.3204.

36. 42 U.S.C. § 12131 *et seq*.

37. Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206 (1998).

38. Murphy v. United Parcel Service, __U.S.__, 119 S. Ct. 2133, No. 97-1992, 1999 WL 407472 (U.S. June 22, 1999) (hypertension); Sutton v. United Airlines, __U.S.__, 119 S. Ct. 2139, No. 97-1943, 1999 WL 407488 (U.S. June 22, 1999) (weak eyesight).

39. Bolding v. Holshouser, 575 F.2d 461 (4th Cir. 1978).

40. 10 N.C. ADMIN. CODE secs. 3J.3102, 3J.3103.

9

Conclusion

Jails are a vital part of the criminal justice system. They confine criminal defendants awaiting trial as well as convicted offenders sentenced to imprisonment for their crimes. The state and local governments share responsibility for jails. Law enforcement agencies, primarily local in nature, influence who goes to jail by performing their duty to arrest and charge persons with crimes. The courts, a part of state government, determine how long arrested and convicted persons will stay in jail and the circumstances under which they may be released. The county sheriff manages the jail, and the county commissioners allocate tax funds to pay for it. The state Department of Health and Human Services inspects jails and sets standards for jail construction and operation.

Although county government pays for most jail costs, the state, through the Department of Correction, reimburses the county for some jail expenses. In addition, the law allows certain fees to be imposed on jail inmates to cover a small part of jail costs. The law also provides ways in which inmates can be assigned to work on projects with benefit to the public.

Jails are not supposed to be hotels or country clubs. They exist because some people are charged with crimes and must be held to attend court proceedings or to serve sentences. As a result of legal proceedings, inmates lose their right to remain free but still must be confined under safe and humane conditions. It is a heavy responsibility for counties to protect the public from dangerous inmates, as well as protect inmates from other inmates. An equally heavy responsibility is the provision of adequate health care to inmates, with the often unpredictable expenses that this entails.

Inmates retain certain rights while in confinement—the right of access to the courts, the right to send and receive mail, and the right to be free of cruel or unusual punishment, to name a few. In the last decade, the threat of jail lawsuits has not disappeared, though it has diminished. Courts reviewing conditions in prisons and jails in recent years have made it clear that the inmates' rights must be balanced against the legitimate responsibility of state and local governments to maintain confinement facilities. It appears that courts will sympathetically review jail policies and practices if they are clearly stated, do not unreasonably restrict inmates' exercise of their rights, and have a clear connection to maintaining security and humane living conditions.