51820

Jail Standards

This project was supported by Grant Number 76-ED-99-0011, awarded by the Law Enforcement Assistance Administration, U. S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U. S. Department of Justice.

Technical assistance was provided to various phases of the development of this project by the National Clearinghouse for Criminal Justice Planning and Architecture, Department of Architecture, University of Illinois, under Contract Number J-LEAA-46-24-05-305.

Jail Standards

MINIMUM STANDARDS FOR LOCAL
CRIMINAL DETENTION FACILITIES

AS PROPOSED BY
THE NEBRASKA STATE BAR ASSOCIATION COMMITTEE
ON CORRECTIONAL LAW AND PRACTICE

Robert J. Kutak, Chairman

Geoffrey W. Peters, Vice Chairman

James A. Cada
Hon. John J. Cavanaugh III
Bernard Dobranski
Douglas F. Duchek
Terrence J. Ferguson
Steven E. Gunderson
H. Bruce Hamilton
James D. Livingston
Hon. Roland A. Luedtke
Maurice S. Redmond
Hon. William B. Rist
Bruce Dennis Sales
Alan H. Saltzman
Herbert M. Sampson III
Michael E. Sullivan
Leonard P. Vyhnalek
Marc J. Weinpel
Haven N. B. Pell, Counsel

Submitted February, 1977

Table of Contents

TABLE OF CASES

BIBLIOGRAPHY

PREFACE

INTRODUCTION

REGULATIONS AND COMMENTARY

REGULATION NUMBER	SECTION NUMBER	TITLE	PAGE
1		GENERAL INSTRUCTIONS	1-1
	1-(1)	Statutory Authority	1-1
	1-(2)	Introduction	1-1
	1-(3)	Severability	1-1
	1-(4)	Other Requirements	1-1
	1-(5)	Non-Discriminatory Treatment	1-1
	1-(6)	Equal Protection	1-2
	1-(7)	Administration	1-2
	1-(8)	Definitions	1-3
		Commentary	1-A
2		APPLICATION OF STANDARDS	2-1
	2-(1)	Types of Facilities	2-1
	2-(2)	Variances	2-1
	2-(3)	Emergency Suspensions of Regulations	2-2
		Commentary	2-A
3		FACILITY PLANNING	3-1
	3-(1)	Notification	3-1

REGULATION NUMBER	SECTION NUMBER	TITLE	PAGE
	3-(2)	Planning	3-1
	3-(3)	Program Statement	3-1
	3-(4)	Submission of Plans and Specifications	3-2
	3-(5)	Review and Approval	3-2
	3-(6)	Construction Principles	3-3
	3-(7)	General Conditions	3-3
		Commentary	3-A
4		FACILITY DESIGN	4-1
	4-(1)	New Facilities	4-1
	4-(2)	Existing Facilities	4-1
	4-(3)	Area for Reception and Booking	4-1
	4-(4)	Living Areas	4-2
	4-(5)	Space for Support Functions	4-4
	4-(6)	Support Systems	4-6
		Commentary	4-A
5		PERSONNEL	5-1
	5-(1)	Education Standard	5-1
	5-(2)	Training	5-1
	5-(3)	Waiver of Comparable Training	5-2
	5-(4)	Extracurricular Training	5-2
	5-(5)	First-Aid Training	5-2
	5-(6)	Number of Personnel	5-3
	5-(7)	Matrons	5-3
		Commentary	5-A
6		RECORDS AND STATISTICS	6-1
	6-(1)	Intake Form	6-1
	6-(2)	Denial of Admission	6-2
	6-(3)	Retention of Inmate's Property	6-2
	6-(4)	Account of Expenditures	6-3
	6-(5)	Medical Records	6-3
	6-(6)	Record of Disciplinary Actions	6-3
	6-(7)	Inmate Personal File	6-3
	6-(8)	Access to Inmate Files	6-3
	6-(9)	Inmate Count	6-4
	6-(10)	Log Book	6-4
	6-(11)	Isolation Log	6-5
	6-(12)	Record of Inmate Entry and Exit	6-5
	6-(13)	Inmate Population Report	6-5
	6-(14)	Implementation	6-6
		Commentary	6-A

REGULATION NUMBER	SECTION NUMBER	TITLE	PAGE
7		PUBLIC INFORMATION	7-1
	7-(1)	Public Information Plan	7-1
	7-(2)	Admission for Inspection	7-1
	7-(3)	Citizen Involvement	7-1
		Commentary	7-A
8		CLASSIFICATION	8-1
	8-(1)	Classification Plan	8-1
	8-(2)	Review of Classification	8-2
	8-(3)	Appeal of Classification	8-2
	8-(4)	Separate Housing	8-2
		Commentary	8-A
9		INMATE SERVICES	9-1
	9-(1)	Programs	9-1
	9-(2)	Range of Programs	9-1
	9-(3)	Inmate Participation	9-1
	9-(4)	Other Services	9-1
	9-(5)	Notification of Availability of Programs	9-1
		Commentary	9-A
10		PROGRAMS AND ACTIVITIES	10-1
	10-(1)	Mail	10-1
	10-(2)	Visiting	10-2
	10-(3)	Telephone Privileges	10-4
	10-(4)	Access to Media	10-5
	10-(5)	Access to Legal Counsel and to the Courts	10-5
	10-(6)	Access to Legal Materials	10-6
	10-(7)	Freedom of Expression within the Facility	10-7
	10-(8)	Freedom of Religion	10-7
	10-(9)	Exercise and Recreation	10-8
	10-(10)	General Library	10-9
	10-(11)	Inmate Commissary	10-10
	10-(12)	Locks and Lights	10-10
		Commentary	10-A
11		DISCIPLINE	11-1
	11-(1)	Rules and Disciplinary Penalties	11-1
	11-(2)	Standards for Minor and Major Violations of Rules	11-2
	11-(3)	No Discipline of Inmates by Inmates	11-4

REGULATION NUMBER	SECTION NUMBER	TITLE	PAGE
	11-(4)	Protection Against Personal Abuse	11-4
	11-(5)	Searches	11-4
	11-(6)	Grievance Procedure	11-5
	11-(7)	Records of Disciplinary Actions	11-6
		Commentary	11-A
12		HEALTH SERVICES	12-1
	12-(1)	Right to Medical Services	12-1
	12-(2)	Medical Service Staffing	12-1
	12-(3)	Admission or Referral	12-2
	12-(4)	Physical Examination upon Admission	12-2
	12-(5)	Emergency Care	12-3
	12-(6)	Daily Sick Call	12-3
	12-(7)	Dental Services	12-4
	12-(8)	Administration of Medication	12-4
	12-(9)	Medical Records	12-5
	12-(10)	Extraordinary Events	12-6
	12-(11)	Inmate Participation in Research	12-6
		Commentary	12-A
13		FOOD SERVICES	13-1
	13-(1)	General Requirements	13-1
	13-(2)	Records	13-1
	13-(3)	Frequency of Meals	13-1
	13-(4)	Adequacy of Meals	13-1
	13-(5)	Medically Prescribed Diets	13-3
	13-(6)	Religious Diets	13-3
	13-(7)	Supervision	13-3
	13-(8)	Sanitation	13-3
		Commentary	13-A
14		HYGIENIC STANDARDS	14-1
	14-(1)	Facility Sanitation	14-1
	14-(2)	Staff Practices	14-2
	14-(3)	Personal Hygiene Materials	14-2
	14-(4)	Showering	14-2
	14-(5)	Shaves and Haircuts	14-2
	14-(6)	Poisons	14-2

REGULATION NUMBER	SECTION NUMBER	TITLE	PAGE
	14-(7)	Inmate Clothing	14-2
	14-(8)	Linens and Bedding	14-2
	14-(9)	Training and Education	14-3
		Commentary	14-A

NEBRASKA JAIL SURVEY QUESTIONNAIRE

NEBRASKA JAIL SURVEY COMMENTARY

Table of Cases

NAME OF CASE	PAGE
Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973)	10-K, 10-Q
Aikens v. Jenkins, 534 F.2d 751 (7th Cir. 1976)	10-D
Alberti v. Sheriff of Harris County, Texas, 406 F.Supp. 649 (S.D. Tex. 1975)	8-A, 8-B, 10-X, 10-Y
Almond v. Kent, 459 F.2d 200 (4th Cir. 1972)	10-E
Ambrose v. Malcolm, 414 F.Supp. 485 (S.D.N.Y. 1976)	4-D
Barnes v. Government of the Virgin Islands, 19 Cr. L. Reptr. 2254 (D.C. Virgin Islands, May 20, 1976)	10-E
Barnett v. Rodgers, 410 F.2d 996 (D.C. Cir. 1969)	10-V
Battle v. Anderson, 376 F.Supp. 402 (E.D. Okla. 1974)	12-C, 13-C
Baxter v. Palmigiano, 425 U.S. ___. 47 L.Ed.2d 810 96S.Ct. ___.	11-B, 11-D
Bay County Jail Inmates v. Bay County Board of Commissioners, C.A. 74-10056 (E.D. Mich. Aug. 29, 1974)	4-B
Baynes v. Ossikow, 336 F.Supp. 386 (D.C.N.Y. 1972)	8-D

NAME OF CASE	PAGE
Bel v. Hall, 392 F.Supp. 274 (D. Mass. 1975) (E.D. Mich., Aug. 29, 1974)	14-3
Bell v. Wolff, CV 72-L-227 (1973)	10-E, 10-F, 10-G, 10-L
Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969)	11-E
Black v. Brown, 513 F.2d 652 (7th Cir. 1975)	14-B
Bonner v. Coughlin, 517 F.2d 1311 (7th Cir. 1975)	11-G
Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Cal. 1972)	4-G, 10-C, 10-D, 10-E, 10-M
Burke v. Levi, 391 F.Supp. 186 (E.D. Va. 1975)	10-T
Butler v. Preiser, 380 F.Supp. 612 (S.D.N.Y. 1974)	10-U
Chapman v. Kleindienst, 507 F.2d 1246 (7th Cir. 1974)	13-C
Charles v. United States, 278 F.2d 386 (9th Cir. 1960), cert. denied 365 U.S. 831 (1961)	11-F
Christman v. Skinner, 468 F.2d 723 (2nd Cir. 1972)	10-T
Collins v. Schoonfield, 344 F.Supp. 255 (D. Md. 1972)	10-L, 12-E
Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83, 280 A.2d 110 (1971)	4-E
Conklin V. Hancock, 344 F.Supp. 1119 (D.N.H. ___ 1971)	10-D, 10-X
Cooper v. Pate, 382 F.2d 518 (7th Cir. 1974)	10-W

NAME OF CASE	PAGE
Corby v. Conboy, 457 F.2d 251 (2nd Cir. 1972)	12-D
Costello v. Wainwright, 525 F.2d 1239 (5th Cir. 1976)	12-D
Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969)	11-E
Crump v. United States, 534 F.2d 72 (5th Cir. 1976)	8-B
Cruz v. Beto, 405 U.S. 319 (1972)	10-W
Cruz v. Hauk, 404 U.S. 59 (1971)	10-0
Daniels v. Andersen, 195 Neb. 95, 237 N.W.2d 397 (1975)	5-B, 8-B
Daugherty v. Harris, 476 F.2d 292 (10th Cir. 1973), cert. denied 414 U.S. 872 (1973)	11-F, 11-G
Detainees of the Brooklyn House of Detention v. Malcolm, 520 F.2d 392 (2nd Cir. 1975)	4-E
Dillard v. Pitchess, 399 F.Supp. 1225 (C.D. Cal. 1975)	4-B, 4-C, 10-E, 10-H, 10-M, 10-AA
Edwards v. Duncan, 355 F.2d 993 (4th Cir. 1966)	12-C
Estelle v. Gamble, ___ U.S. ___, 50 L.Ed.2d 251, ___ S.Ct. ___ (U.S. Nov. 30, 1976)	12-C
Farretta v. California, 422 U.S. 806 (1975)	10-P
Finney v. Arkansas Board of Corrections, 505 F.2d 194 (8th Cir. 1974)	10-C, 10-D, 11-D, 12-B, 12-C, 12-G, 13-C

NAME OF CASE	PAGE
Finney v. Hutto, 410 F.Supp. 251 (E.D. Ark. 1976)	10-V
Fisher v. United States, 382 F.Supp. 241 (D. Conn. 1974)	6-E
Fitzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972)	12-D
Fullwood v. Clemmer, 206 F.Supp. 370 (D. Cal. 1962)	8-C
Furman v. Georgia, 408 U.S. 238 (1972)	12-A
Gagnon v. Scarpelli, 411 U.S. 778 (1973)	11-B
Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974)	12-G
Griswold v. Connecticut, 381 U.S. 479 (1965)	6-D
Gustafson v. Florida, 414 U.S. 260 (1973)	11-F
Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972)	4-B, 4-C, 10-X
Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971)	4-D, 10-N
Hodges v. Klein, 412 F.Supp. 896 (D.N.J. 1976)	11-F, 11-G
Hoitt v. Vitek, 361 F.Supp. 1238 (D.N.H. 1973), aff'd 497 F.2d 598 (1st Cir. 1974)	11-F
Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970), aff'd 442 F.2d 304 (8th Cir. 1971)	11-E, 12-C
Houston Chronicle Pub. Co. v. Kleindienst, 364 F.Supp. 719 (S.D. Tex. 1973)	10-O
In re Olson, 37 C.A.3d 783, 112 Cal. Rptr. 579 (1st Div. 1974)	6-E

NAME OF CASE	PAGE
Inmates of Suffolk County Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd 494 F.2d 1196 (1st Cir. 1974)	4-E, 4-G, 10-H, 10-J, 10-Y
Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968)	4-J, 12-B
James v. Wallace, 382 F.Supp. 1177 (M.D. Ala. 1974)	11-F, 12-C, 12-G
Johnson v. Avery, 393 U.S. 483 (1969)	10-O
Jones v. Wittenberg, 323 F.Supp. 93 (N.D. Ohio 1971), aff'd sub nom Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972)	10-H, 10-L
Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Ohio 1971), aff'd sub nom Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972)	4-C, 8-A, 10-C, 10-D, 10-E, 10-M, 10-N
Kahne v. Carlson, 527 F.2d 492 (2nd Cir. 1975)	13-C
Kelley v. Brewer, 525 F.2d 394 (8th Cir. 1975)	8-A, 8-C
Kohlman v. Norton, 380 F.Supp. 1973 (D. Conn. 1974)	6-E
Konigsberg v. Ciccone, 417 F.2d 161 (8th Cir. 1969)	10-N
KQED, Inc. v. Houchins, 546 F.2d 284 (9th Cir. 1976)	10-N
Landman v. Peyton, 370 F.2d 135 (4th Cir. 1966) cert. denied 388 U.S. 920 (1967)	11-J
Lathan v. Oswald, 359 F.Supp. 85 (S.D.N.Y. 1973)	10-Q

NAME OF CASE	PAGE
Marchesani v. McCune, 531 F.2d 459 (10th Cir. 1976)	8-A
Martinez v. Mancusi, 443 F.2d 921 (2nd Cir. 1970)	12-C
Martinez Rodriguez v. Jimenez, 409 F.Supp. 582 (D.C. Puerto Rico 1976)	8-A, 10-X, 10-Y
McCray v. Burrell, 516 F.2d 357 (4th Cir. 1975) cert. granted 423 U.S. 923 (1976), cert. dismissed ___ U.S. ___ 48 L.Ed.2d 788 96 S.Ct. ___ (1976)	11-I
McDonnell v. Wolff, 342 F.Supp. 616 (D. Neb. 1972), aff'd 483 F.2d 1059 (8th Cir. 1973), aff'd 418 U.S. 539 (1974)	10-D, 10-S
Miller v. Carson, 392 F.Supp. 515	4-B, 10-J
and 401 F.Supp. 835 (M.D. Fla. 1975)	4-C, 10-F, 10-Q, 10-AA, 12-C, 13-A, 14-B
Moore v. Janing, Civil No. 72-O-223 (D. Neb., Dec. 29, 1976)	4-I, 4-J, 10-I, 10-L, 10-M, 10-N, 10-X
Morgan v. LaVallee, 536 F.2d 221 (2nd Cir. 1975)	10-T
Morrissey v. Brewer, 408 U.S. 471 (1972)	11-B
Murdock v. Pennsylvania, 319 U.S. 105 (1943)	10-U
National Prisoners' Reform Ass'n. v. Sharkey, 347 F.Supp. 1234 (D.R.I. 1972)	10-U
Noorlander v. Ciccone, 489 F.2d 642 (8th Cir. 1973)	10-P, 10-Q

NAME OF CASE	PAGE
North Carolina Prisoners' Labor Union, Inc. v. Jones, 409 F.Supp. 937 (E.D.N.C. 1976)	10-T
Patterson v. McDougall, 506 F.2d 1 (5th Cir. 1975)	14-A
Pell v. Procunier, 417 U.S. 817 (1974)	10-N, 10-T, 10-V
Prewitt v. State, 8 Cal. 3d 470 (1972)	6-E
Procunier v. Martinez, 416 U.S. 396 (1974)	10-B, 10-K, 10-V, 11-J
Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976)	4-D, 8-A, 8-B, 10-C, 10-E, 10-H, 10-X, 10-Y, 11-D, 12-B, 12-C
Remmers v. Brewer, 494 F.2d 1277 (8th Cir. 1974)	10-U, 10-W
Rhem v. Malcolm, 371 F.Supp. 594 (S.D.N.Y. 1973), aff'd 507 F.2d 333 (2nd Cir. 1974)	4-B, 4-C, 4-D, 10-W
Rhem v. Malcolm, 507 F.2d 333 (2nd Cir. 1974)	4-F, 10-H
Robinson v. United States, 414 U.S. 218 (1973)	11-F
Rochin v. California, 342 U.S. 165 (1952)	11-A
Roe v. Wade, 410 U.S. 113 (1973)	6-D
Ross v. Blackledge, 477 F.2d 616 (4th Cir. 1973)	13-C
Rowland v. Wolff, 336 F.Supp. 257 (D. Neb. 1971)	10-G
Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971) (en banc)	10-T, 11-E

NAME OF CASE	PAGE
Sostre v. Otis, 330 F.Supp. 941 (S.D.N.Y. 1971)	10-B
Souza v. Travisono, 368 F.Supp. 959 (D.R.I. 1973)	10-J, 10-K
State v. Jones, 37 Ohio St.2d 221, 306 N.E.2d 409 (1974)	10-L
State v. Tomka, 183 Neb. 76, 158 N.W.2d 213 (1968)	4-I, 10-BB
Sweet v. South Carolina Department of Corrections, 529 F.2d 854 (4th Cir. 1975)	10-X
Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972) aff'd in part, rev'd in part, 499 F.2d 367 (5th Cir. 1974)	4-D
Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975)	10-V
Thericault v. Carlson, 339 F.Supp. 375 (N.D. Ga. 1972)	10-U
Thomas v. Brierly, 481 F.2d 660 (3rd Cir. 1973)	10-E
Tolbert v. Eyman, 434 F.2d 625 (9th Cir. 1970)	12-D
Trop v. Dulles, 356 U.S. 86 (1958)	11-A, 12-B
Tyler v. Perich, Civil Action No. 74-40C(2) (E.D. Mo. Oct. 15, 1974)	4-E
United States v. Edwards, 415 U.S. 800 (1974)	11-F
United States v. Palmer, 469 F.2d 273 (9th Cir. 1973)	11-F
United States v. Rosen, 343 F.Supp. 804 (S.D.N.Y. 1972)	6-D

NAME OF CASE	PAGE
United States ex rel.Wolfish v. Levi, 406 F.Supp. 1243 (S.D.N.Y. 1976)	10-E
United States ex rel. Wolfish v. United States, 75 Civ. 6000 (S.D.N.Y., Dec. 29, 1976)	4-E, 11-G
Valvano v. Malcolm, 520 F.2d 392 (2nd Cir. 1975)	4-D, 4-E, 4-F
Via v. Cliff, 470 F.2d 271 (3rd Cir. 1972)	10-J
Walker v. Blackwell, 411 F.2d 23 (5th Cir. 1969)	10-V
Washington v. Lee, 263 F.Supp. 327 (M. Ala. 1966)	11-E
Washington Post Co. v. Kleindienst, 494 F.2d 994 (D.C. Cir. 1971)	10-N
Wayne County Board of Commissioners, Civ. Action No. 17 3217 (Cir. Ct. Wayne Co., Mich., July 28, 1972 and May 25, 1971), aff'd and remanded, 391 Mich. 359, 216 N.W.2d 910 (1974)	4-E
Webber v. Andersen, 187 Neb. 9, 187 N.W.2d 290 (1971)	8-B
Webber v. Andersen, 190 Neb. 678, 211 N.W.2d 911 (1972)	8-B
Weems v. United States, 217 U.S. 349 (1910)	12-B
Wolff v. McDonnell, 418 U.S. 539 (1974)	10-O, 11-B, 11-D, 11-J, 11-K
Woodhous v. Commonwealth of Virginia, 487 F.2d 889 (4th Cir. 1973)	11-E
Younger v. Gilmore, 404 U.S. 15 (1971)	10-O

Bibliography

TITLE	PAGE
American Bar Association Commission on Correctional Facilities and Services, Offender Legal Services (1976)	10-K, 10-O
American Bar Association Joint Committee on Legal Status of Prisoners, Standards Relating to the Legal Status of Prisoners, Tentative Draft (1976)	10-I, 11-I
American Correctional Association, Guidelines for Legal Reference Services in Correctional Institutions (1973)	10-S
American Correctional Association, Manual of Standards (1966)	4-F, 10-X
American Correctional Association, Response of the American Correctional Association to Correctional Standards (1976)	5-A, 6-G, 10-A, 10-P, 10-S, 10-U, 10-V, 10-W, 10-Z, 10-AA
Arnot, For Better or Worse (1970)	6-A, 10-M
Building Officials & Code Administrators, International, Inc., BOCA Basic Building Code/1975 (6th ed. 1975)	4-D
California Board of Corrections, Minimum Standards for Local Detention Facilities (1976)	5-A

TITLE	PAGE
California Corrections Systems Study: Institutions	10-A
Ex-High Sheriff of Bedfordshire, State of Prisons (3rd ed. 1777)	14-C
Fried, Privacy, 77 Yale L.J. 475 (1968)	6-D
R. Goldfarb and L. Singer, After Conviction 515-516 (1973)	11-J
Illinois County Jail Standards (1971)	5-A, 6-A, 10-AA, 12-E
International Conference of Building Officials, Uniform Building Code (1973 Edition)	4-E
Krantz et al., Model Rules and Regulations on Prisoners' Rights and Responsibilities (West, 1973)	10-K, 10-M
Library Standards for Adult Correctional Institutions (1976)	10-AA
Materials Selection for Hospital and Institutional Libraries	10-AA
Minimum Standards and Operating Procedures for Pennsylvania County Prisons (1973)	12-F
Minnesota Department of Corrections, Inspection and Enforcement Unit, Local Adult Holding, Lockup, Jail, Workhouse and Corrections Facility Standards, First Draft	10-A
National Academy of Sciences, Recommended Dietary Allowances (8th Edition 1974)	13-C
National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973)	3-B, 4-B, 4-D, 6-G, 7-A, 10-A, 10-D, 10-I, 10-K, 10-S, 10-V, 10-W, 11-C, 11-J

TITLE	PAGE
National Clearinghouse for Criminal Justice Planning and Architecture, Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults (1971)	3-B
National Sheriffs' Association, Food Service in Jails (1974)	11-F, 13-A, 13-B
National Sheriffs' Association, Inmates' Legal Rights (1974)	10-B, 10-F, 10-H, 10-I, 10-K, 10-M, 10-O, 10-Q, 10-S, 10-V, 10-W, 10-X, 11-D, 11-E
National Sheriffs' Association, Jail Administration (1974)	3-B, 5-A, 6-F, 12-E
National Sheriffs' Association, Jail Programs (1974)	7-A, 7-B, 9-A, 10-Y, 10-Z, 10-AA, 12-E, 12-F
National Sheriffs' Association, Jail Architecture (1975)	3-A, 3-B, 3-C, 4-A, 4-D, 4-G, 4-I
National Sheriffs' Association, Jail Security, Classification and Discipline (1974)	6-A, 6-B, 6-E, 6-F, 8-B, 10-A, 11-C, 11-I
National Sheriffs' Association, Sanitation in the Jails (1974)	14-A, 14-C
Note, Concept of Privacy and the Fourth Amendment, 6 Mich. J. L. Ref. 154 (1972)	6-D
Oregon Jail Standards and Guidelines for Operation of Local Correctional Facilities (1973)	12-E

TITLE	PAGE
South Carolina Department of Corrections, Materials Relating to County Jails and Juvenile Detention Facilities in South Carolina (1972)	6-A
United Nations Standard Minimum Rules for the Treatment of Prisoners (1955)	4-F, 10-X
United States Bureau of Prisons, The Jail: Its Operation and Management (1971)	6-B, 12-F
United States Department of Justice, Grievance Mechanisms in Correctional Institutions (1975)	11-H
United States Environmental Protection Agency, Information on the Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety, Document No. 550/9-74-004 (March, 1975)	4-C
Washington State Jail Standards	10-I, 10-M

Preface/Introduction

Preface

In the spring of 1975, the Nebraska Legislature passed LB 417 which directed the Department of Correctional Services to formulate and administer standards for local jails throughout the State. To meet this new requirement, the Department of Correctional Services, with the assistance of the Nebraska State Bar Association Committee on Correctional Law and Practice and the American Bar Association Commission on Correctional Facilities and Services, obtained a grant from the Law Enforcement Assistance Administration to establish an Office of Jail Standards Administration and to develop minimum standards for municipal and county jails throughout the State.

It was the desire of the Department of Correctional Services to draw upon as many resources as possible in developing standards which were not simply to be a restatement of the existing law but rather an accurate measuring device, in the form of guidelines for sound correctional practice, against which to test current conditions.

On July 1, 1976, the Department of Correctional Services arranged to have the Nebraska State Bar Association Committee on Correctional Law and Practice conduct a survey of existing facilities, conditions and procedures currently in effect in Nebraska's jails. The survey was designed to assure that the resultant data would provide an accurate reflection of the existing situation in Nebraska's jails against which the standards could be developed.

The Committee prepared a questionnaire addressing the problems of both urban and rural jails. Although model survey forms from other jurisdictions were studied, local needs dictated many modifications. The questionnaire that was finally developed was computer coded by the National Clearinghouse on Criminal Justice Planning and Architecture to facilitate analysis of the data. The National Clearing-

house also agreed to undertake all of the data processing and analysis. A mailing describing the proposed survey was sent to all lawyers, district judges, county board members, sheriffs, chiefs of police and Jaycee chapter presidents in the State asking them to volunteer to inspect their local jails.

The response was overwhelming. More than four hundred recipients returned postcards indicating their willingness to participate in the survey. Local visitation teams, often consisting of a lawyer, a law enforcement officer, a doctor, a clergyman, an architect, a local businessman and a housewife or member of a local volunteer organization, were promptly formed. Questionnaires were mailed to the team leaders. During the course of the summer, seventy-five jails were visited; the surveys were conducted and the completed questionnaires returned. Sixty percent of the jails in the State were visited, including all of the major facilities.

The completed questionnaires were then forwarded to the National Clearinghouse for data processing and the preparation of the report on the conditions in Nebraska's jails that follows the standards and commentary. The Committee drew heavily upon this empirical information in the preparation of the standards and the commentary discussing each standard, because, without the factual data derived from the survey conducted by the volunteers, the standards would not have been responsive to the existing conditions in Nebraska.

Concurrently with the development of the factual data, a study of the statutory and case law relating to corrections and conditions of incarceration was conducted by the Committee to provide the information necessary to establish a minimum "floor" of law already applicable in Nebraska under which no procedure, condition or course of conduct could legally fall. In effect, the results of this study set the minimum standards for compliance with the requirements of the Constitution of the United States, the Nebraska Constitution and applicable state and federal statutes and judicial decisions. In addition to the development of the necessary factual data and research into the applicable law, organizations such as the National Sheriffs' Association, the American Correctional Association and the American Bar Association were consulted to determine what they viewed to be appropriate aspirational standards for local correctional facilities. Finally, in order to profit from their practical working experience, jail standards from other jurisdictions including California, Illinois and Minnesota were reviewed and drawn upon in the preparation of these jail standards which the Committee on Correctional Law and Practice of the Nebraska

State Bar Association hereby recommends to the Department of Correctional Services of the State of Nebraska for adoption in accordance with the requirements of LB 417.

Throughout this process, which was completed between May, 1976 and February, 1977, the Committee worked closely with Joseph Vitek, Director of the Department of Correctional Services, and Robert Cote, the Jail Standards Administrator, and all drafts were circulated to them for the information of the Department's Jail Standards Advisory Board and for their review and comment. The Jail Standards Advisory Board which was mandated by the LEAA grant and which was designed to provide "front line" input into the standards development process consisted of representatives from the State Crime Commission, the Nebraska Sheriffs Association, the Nebraska Association of County Officials, the State Fire Marshal, the State Department of Health, the Nebraska District Judges Association and the Douglas County Department of Corrections.

Since the problems faced in Nebraska's jails are essentially multi-disciplinary in nature, requiring the best thinking of a broad range of consultants in various related fields, the Committee also circulated several drafts of the standards to be recommended to panels of local and national correctional, legal, medical and architectural experts for their review and comment. These experts responded by focusing their attention upon the specific provisions of the standards they were called upon to critique and they provided valuable guidance.

The Committee gratefully acknowledges the contributions of these "local" commentators from throughout the State of Nebraska: Ms. Marlene Muse, League of Women Voters, Omaha; Mr. Gary Hill, President, CONtact, Inc.; Professor Gaylon L. Kuchel, Department of Criminal Justice, University of Nebraska at Omaha; Professor R. Fred Holbert, Department of Criminal Justice, University of Nebraska at Omaha; Ms. Judy Uphoff and Mr. Harris Owens, Nebraska Commission on Law Enforcement and Criminal Justice; Mrs. James Hunter, President, American Association of University Women; Dr. Claude H. Organ, Professor of Surgery, Creighton Medical School; Ms. Celeste Wiseblood, Commission on the Status of Women, Lincoln; Professor Marie Arnot, Professor of Community and Regional Planning, College of Architecture, University of Nebraska; Dr. Eric Seacrest, Nebraska Association for Mental Health; Ms. Barbara Gaither, Executive Director, Nebraska Civil Liberties Union. Without their participation this project would not have benefited from insights of those interested individuals who, from the outside, have viewed Nebraska's correctional system with concern.

The comments, time, effort and support of the following persons are similarly acknowledged with gratitude: Mr. Hans W. Mattick, Director, The Center for Research in Criminal Justice; Dean Norval Morris, The University of Chicago School of Law; Professor Herman Schwartz, State University at Buffalo, School of Law; Ms. Gail, S. Monkman, Correctional Economics Center; Dean Richard G. Singer, Rutgers University School of Law; Professor Harvey S. Perlman, University of Virginia School of Law; Mr. Melvin T. Axelbund and Mr. Arnold Hopkins, American Bar Association Commission on Correctional Facilities and Services; Dr. Sherman Day, Director, National Institute of Corrections; Mr. Nick Pappas, Director, Special Programs Division, Law Enforcement Assistance Administration; Mr. Frederic D. Moyer, Director, National Clearinghouse for Criminal Justice Planning and Architecture; Dr. Robert H. Fosen, Executive Director, Commission on Accreditation for Corrections; Professor Herbert Miller, Georgetown University Law School; Mr. Roy Latka, Architect, Kaplan and McLaughlin, San Francisco, California; and Ms. Nancy Crisman, The National Prison Project of the American Civil Liberties Union. The Committee is indebted to them all for taking the time to provide their thoughtful comments and assistance in an effort to provide this important service to the State of Nebraska.

The Committee is indebted to those individuals who are experienced in corrections and to judges, lawyers, inmates and others who have struggled with the complex problems that have been resolved in the decisions relied upon in the text.

The Committee also wishes to single out several other groups for their contributions to this effort:

First, the staff of the National Clearinghouse for Criminal Justice Planning and Architecture, and particularly Frederic D. Moyer, its Director, for his advice on facility planning and design, Carl Henckell for providing the graphics in this volume and for its publication; and, also, Ken Bishop and Vasanthy Pithavadian of the Clearinghouse staff for their help in preparing the survey instrument and for coordinating the data processing and tabulation.

Second, the members of the Nebraska State Legislature, and particularly those who served on its Judiciary Committee, who, despite considerable public misunderstanding, passed the legislation necessary to meet an important public need in Nebraska.

Third, Joseph Vitek, Director of the Department of Correctional Services of the State of Nebraska, Robert Cote, Director of the Office of Jail Standards Administration, and the Department's Jail Standards Advisory Board for their comments and cooperation in formulating these recommended standards.

Fourth, a group of three first-year law students--Dennis Holsapple of Pisgah, Iowa and Michigan Law School, Michael McCarthy of Omaha, Nebraska and Columbia Law School and Frank Schepers of Omaha, Nebraska and Creighton Law School--who served as the Committee's staff for the summer. These three young men surveyed jails, coordinated surveys, researched case law, drafted standards and commentary, frequently worked all night, met near-impossible deadlines, kept up with recent developments, re-researched, redrafted, reworked, met more difficult deadlines and kept up with still more recent developments. To suggest that the project could not have been completed without them is to understate their contribution. John Howard would have been proud, the Committee is proud and the legal profession will be proud of their effort and their professionalism.

This massive undertaking has produced what the Committee submits is a unique product of value not only to the State of Nebraska to which it is specifically addressed but also to other states which may wish to consider it in drafting their own jail standards.

The standards are designed to be specific enough to provide clear guidelines and permit conduct to be measured against specific benchmarks yet flexible enough to allow administrators the necessary freedom to develop plans which are best suited to their own situations. They are designed to be directly responsive to Nebraska's needs but still of value, as models, to the unique needs of other jurisdictions.

The Committee on Correctional Law and Practice of the Nebraska State Bar Association urges the adoption of these standards by the Department of Correctional Services of the State of Nebraska. If others can profit from our experience or learn from our mistakes, we offer our assistance.

The Nebraska State Bar
Association Committee on
Correctional Law and Practice

Introduction

The local jail plays a critical role in the American criminal justice system. It houses the innocent and the guilty, the accused and the convicted, the juvenile and the adult. It is a way station for persons convicted of serious crimes enroute to the state penitentiary and for individuals convicted of lesser crimes who will graduate to more serious offenses unless someone intervenes. The local jail is the inevitable last resort for the drunk or the addict unable to obtain alternative treatment and a storage place for the poor unable to raise bail and the juvenile unable to mature. It serves various "last resort" functions, affects many groups of persons most of whom are disproportionately poor, and offers numerous opportunities for society to interrupt lives of violence and to prevent crime. The local jail also represents, symbolically, at least, the level of compassion, humanity and concern for human dignity that prevails in our society.

In most of its manifold tasks, the jail has failed. That is not our conclusion alone but of every thoughtful study--and there have been scores--undertaken of correctional systems in America. The jail is able, in most instances, to confine but does so at great cost. It trains the unskilled in criminal ways, reinforces the prisoners' isolation from supportive and constructive relationships and brutalizes its charges. The best that can be hoped for in jails in most American jurisdictions is that persons will leave no worse than when they entered. This system results in enormous costs to society which condones or ignores the current status of the jail. The costs include continued crime by those who leave the jail more enraged at society and better trained for crime. There are incalculable costs resulting from the lost opportunities to intervene constructively in the lives of persons who could be salvaged. There are also costs measured in increased disregard for the law in deviating from the professed principles of American society, requiring fairness for all human beings.

Nebraska jails are not immune from the neglect that characterizes jails nationally. Nebraska jailers have struggled to overcome the restraints of outmoded or unthoughtful architecture and the absence of meaningful appropriations. Local elected officials have been understandably reluctant to expend substantial tax resources on jails in the face of public apathy.

As a result of pervasive deplorable conditions and reluctance of public officials to act, the courts were the first to respond to the adverse conditions of our nation's jails. Beginning in the 1960's, an ever growing number of courts have measured existing prison conditions against constitutional requirements and found them wanting. In fact the profound involvement of courts in prisons and jails is exemplified by the United States Supreme Court decision of Estelle v. Gamble, ___ U.S. ___, 50 L.Ed.2d 251, ___ S.Ct. ___ (1976), which held that "deliberate indifference" by prison officials to serious medical needs of inmates constituted cruel and unusual punishment barred by the Constitution of the United States. An editorial in the December 5, 1976 issue of the Washington Post analyzed the Estelle decision as follows:

> Hardly an eyebrow was raised the other day when the Supreme Court ruled that "deliberate indifference" by prison officials to the serious medical needs of inmates is cruel and unusual punishment barred by the Constitution. Lower federal courts had marked the way in several cases during the past few years and none of the nine justices dissented from this expansion of the meaning of the Eighth Amendment. Yet just a few years ago, the courts were saying that judges had practically no jurisdiction over how prisoners were treated and that the cruel and unusual punishment clause was brought into play only by physically barbarous methods of punishment.
>
> The change rests on the conclusion by the courts that the Eighth Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity and decency," a phrase the Court adopted from a lower court's opinion. Once having accepted that proposition, it was easy for the justices to conclude, as they did, that the denial of needed medical care inflicts unnecessary pain and suffering that is "inconsistent with contemporary standards of decency." The only dispute

on this issue among the justices was over the way in which judges will decide in the future when the medical treatment provided a prisoner falls below that required by the Constitution. The majority of the Court, in an opinion of Justice Thurgood Marshall, settled on the standard of "deliberate indifference" to a prisoner's needs while Justice John Paul Stevens argued for a somewhat higher standard.

Part of the importance of this decision lies in the willingness of the current Court to continue at least some of the expansion of individual rights that began a few years ago. Even while turning back the clock in several areas in which the Warren Court had ordered major advances, the Burger Court is not backing toward the 19th century in all areas. The rationale it adopted in this case and in the capital punishment cases, which involved the same part of the Bill of Rights, keeps open avenues for exploration into the constitutional standards under which prisons and criminal laws operate.

Perhaps more important, however, is the encouragement this decision gives to what is currently known as the "activism" of federal judges. By stepping into situations from which judges fled a couple of generations ago, the judiciary is now forcing changes in many aspects of government, such as prisons. For some prisons, no doubt, this new judicial concern for the quality and quantity of medical care will create problems. For others, problems have already been created by judicial findings that other conditions of prison life are so bad as to constitute cruel and unusual punishment. In some states, judges have already forced substantial change by threatening to close--or actually closing--particular prisons because of the maltreatment of inmates. The situation is not unlike the "active" role judges have taken in running school systems and drawing election districts--areas the courts refused to touch for many years and then changed dramatically when conditions became intolerable.

It is unfortunate that cases like those involving medical care in the prisons ever reach the federal courts. They do so only when prison officials neglect what ought to be their duty--

> providing reasonable care to inmates--or when legislatures fail to provide the funds necessary for that care. In either event, a part of government has defaulted on its responsibility, and the default is so obvious that it is clear to almost everyone. That is why there was so little reaction to the Court's expansion of the cruel and unusual punishment clause the other day; no one really wants to argue in favor of prisons' neglecting the medical problems of inmates. And that is why, in this and other areas, judges are being given, or are being forced into, or are taking over--whichever phrase you prefer--an increasing role in the way in which this nation is run.

The bases for the constitutional analysis of jails by the courts have been the "due process" and "equal protection" clauses of the Fourteenth Amendment of the United States Constitution and the "cruel and unusual punishment" provision of the Eighth Amendment of the United States Constitution.

Due process of law demands that punishment not be imposed without following fair procedures. As the United States District Court for the District of Nebraska has recognized in Bell v. Wolff, Civil No. 72-L-227 at p. 5 (D. Nebr. 1973), and Moore v. Janing, Civil No. 72-O-223 (D. Neb., Dec. 29, 1976), due process means that pretrial detainees cannot be subjected to hardships other than those which are necessary for their confinement. The reason for this rule is that pretrial detainees, having not yet been convicted of a crime, cannot be subjected to any form of punishment.

The equal protection clause of the Fourteenth Amendment requires that one class of citizens not be discriminated against in favor of another class of citizens by governmental entities or officials without a rational reason for doing so. Courts, in recent years, have held that this principle forbids a state or municipality or their officials from allowing conditions for pretrial detainees in local correctional facilities to be worse than those for convicted felons in state prisons. Moore v. Janing, supra. This principle may also apply to sentenced offenders in local criminal detention facilities, making it unconstitutional for convicted misdemeanants in local jails to live under poorer conditions than convicted felons in the Nebraska Penal Complex.

The Eighth Amendment's prohibition against cruel and unusual punishment sets a floor below which conditions in jails may not fall. What was once, in our past, not cruel and unusual punishment may well be considered unacceptable punishment today because of what the United States Supreme Court has called "the evolving standards of decency that mark

the progress of a maturing society." Trop v. Dulles, 365 U.S. 85 (1958).

A specific application of these constitutional principles of due process and equal protection of the law can be seen in the Nebraska federal district court case of Moore v. Janing, supra. In his Memorandum, Judge Robert V. Denney declared female pretrial detention facilities in Douglas County to be "totally unfit for use as a correctional facility" and described living conditions there as "severely punitive in effect." The Memorandum includes a comprehensive analysis of constitutional law which applies to pretrial detainees throughout the State of Nebraska. Furthermore, the decision carefully describes the aspects of the Douglas County female detention facility which violated constitutional principles. The case stands, therefore, as a fundamental guide by which to assess the constitutionality of every Nebraska pretrial detention facility.

The significance of the decision in Moore v. Janing is twofold. First, it lays out standards of minimal constitutionality for pretrial detainees generally and analyzes certain specific areas of treatment of pretrial detainees. All Nebraska local criminal detention facilities for pretrial detainees will be subject to the same rigorous scrutiny, and if found wanting will be subject to the same remedies. Second, in the future public officials, if sued for damages for a breach of constitutional rights of pretrial detainees may find that traditional governmental immunity will not protect them if they continue to permit the existence of conditions which have been condemned in a federal court decision in their district.

Judge Denney personally visited the Douglas County jails and relied in part on what he saw in concluding that one of the jails was totally unfit for use as a correctional facility for pretrial detainees and ordering the defendants to submit a plan to provide a constitutional facility for women within sixty days. The decision also analyzed the law and facts regarding recreational facilities and programs, visitation, telephone usage and posting of jail rules.

The growing judicial willingness to review the conditions and rules of even the smallest detention facility has been matched by the efforts of public officials and private citizens. The involvement of the organized bar in correctional issues is exemplified by the American Bar Association which, in response to a call from Chief Justice Warren Burger several years ago, formed a blue ribbon Commission on Correctional Facilities and Services and more recently formed a joint committee to develop standards for all prisoners and by the National Conference of Commissioners of Uniform State Laws

which is currently working on a Uniform Corrections Act. Locally, this concern has been reflected in studies done by the Nebraska Crime Commission, regional crime commissions, and groups such as the Nebraska League of Women Voters. In 1975, the Nebraska Legislature responded to these inquiries by the passage of LB 417, Revised Statutes of Nebraska §§83-945 to 953 (1976 Cumulative Supplement). The Department of Correctional Services of the State of Nebraska is required, pursuant to that statute, to develop and implement standards for local criminal detention facilities. That legislation has committed the State of Nebraska to a policy of improving the local jail.

The Nebraska State Bar Association Committee on Correctional Law and Practice became involved in the process of drafting jail standards at the request of the Department of Correctional Services. The Committee considered this project consistent with the responsibility of the organized bar for the system of criminal justice. Lawyers, like courts, have traditionally been reluctant to interfere in issues arising out of the correctional aspects of criminal justice. But it is increasingly clear that the same standards of fair treatment which lawyers have urged for earlier stages of the criminal process must be applied to the jails as well. It is fundamental that lawyers, as officers of the court, should seek justice, and in the process of criminal justice of which jails are a fundamental component, such a goal can be attained only if the concepts of fairness and decency are applied equally at all stages. This objective is consistent with the reason for the existence of jails--the reduction of crime.

The Committee has conducted extensive factual and legal research in the development of these standards. Sixty percent of the local criminal detention facilities in Nebraska have been surveyed. This is a sufficient sample, according to the experts at the National Clearinghouse for Criminal Justice Planning and Architecture who have tabulated the data presented in this report, to give an accurate profile of the State's facilities. This Nebraska Jail Survey has demonstrated that most local criminal detention facilities are inadequate in some respects. While some inmates are held for as long as nine months, the facilities have almost no programs which could be considered "correctional" in nature. The cell space for each inmate is often inadequate. More than one-third of the facilities surveyed could not meet the 60 square feet of living space per inmate required in Alabama prisons by a recent court decision. Visiting rights are often limited, and inmates are only rarely allowed exercise. Medical examinations are normally not required at the time an inmate enters a jail. Only a small percentage of jails routinely

hold disciplinary hearings and only half the facilities post rules of the jail. A majority of facilities have no library and provide no access to basic legal materials.

The Committee staff also researched the applicable law, examined criminal detention standards developed by other states and groups, and consulted with local and national experts in corrections and in allied fields. The proposed standards represent a distillation of the best thinking suggested by these sources and an application of this thinking to the conditions shown to exist in Nebraska by the survey.

Each standard is followed by a Commentary which discusses its basis in law or empirical study. When the law mandates a regulation, the Commentary explains this fact and outlines the meaning of the court decisions. The purpose of such a discussion is to alert the public and the Nebraska Department of Correctional Services to those provisions which must be set out specifically in any compilation of local criminal detention facility standards.

The standards presented in this report are in accordance with the holdings in Bell v. Wolff, Moore v. Janing and numerous other cases in other courts in each of the areas analyzed. By adhering to these well-conceived standards, public officials, who quite logically fear lawsuits, will be assured that they are conforming to judicial trends.

The scope of the problem in this State, while substantial, remains of manageable proportion. The Legislature is already committed to the task. The Department of Correctional Services has involved a wide spectrum of public views, in addition to the Bar, in moving forward with its task.

The standards here proposed offer a mechanism for moving Nebraska jails forward without the disruptions and animosities engendered by litigation. With these standards the Nebraska State Bar Association Committee on Correctional Law and Practice seeks to focus public attention and discussion on the critical issues and available opportunities in jail reform. Moreover, the standards will provide a format for local officials to participate in the process of standard development.

It is not the expectation of the Nebraska State Bar Association Committee on Correctional Law and Practice that these standards will receive unanimous acceptance or adoption verbatim as the law of Nebraska, but the test used to modify these proposals must be consistent with the advancement of crime control and the implementation of justice.

Neither the Constitution nor these standards prohibit local officials from exercising their own discretion. In many areas, such as classification, local officials can continue to follow prior practices if they so desire. On the other hand the proposed standards are not merely broad principles which prove difficult for a local official to implement. Broad general principles only create confusion and ineffectiveness. Vague standards in some cases have led standards enforcement personnel to decry their lack of specificity when attempting to implement them. It is little help to the jailer or the jailed to tell a sheriff that he must provide "adequate" medical care. It is much better to provide specific guidelines which can be relied upon to protect those operating a facility and the elected officials to whom they are responsible, from lawsuits and to insure progress. Adhering to guidelines, corresponding to legal precedent, will serve as a defense in lawsuits by inmates seeking money damages against public officials, even where a court may determine that the law must change and that the guidelines are no longer constitutional in some respect.

Specificity is particularly helpful in those areas where the courts have already prescribed certain specific minimum constitutional standards. In procedural areas relating to discipline, for example, the courts have clearly indicated what is acceptable and unacceptable behavior. Nebraska's correctional facilities have no alternative other than meeting such judicially imposed requirements.

The problems relating to jails and standards for them will not go away. Nor can they be ignored, despite the fact that it may be difficult for small facilities to comply with some of the proposed standards. As the Eighth Circuit Court of Appeals, in quoting the trial court in Holt v. Sarver, 309 F.Supp. 362 at 385 (E.D. Ark. 1970) aff'd 442 F.2d 304, (8th Circuit 1971), has already emphatically stated:

> Let there be no mistake in the matter; the obligation of the respondents to eliminate existing unconstitutionalities does not depend upon what the legislature may do, or upon what the Governor may do, or indeed upon what respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System it is going to have to be a system that is countenanced by the Constitution of the United States. Finney v. Arkansas Board of Corrections, 505 F.2d 194, 199 (8th Cir. 1974).

Omission of legally mandated principles in the standards ultimately promulgated may open the Nebraska Department of Correctional Services and its employees to liability in a cause of action by an inmate suffering damages as a result. An example of this eventuality was forcefully provided in the State of Illinois where on December 29, 1976, the United States of America sued the State of Illinois, the governor and the Acting Director of Corrections, alleging violation of inmates' rights in the Illinois Correctional Center System by failing to provide safe and sanitary living conditions and denying inmates adequate medical care. The interesting part of the Complaint is the allegation that the defendants "have been aware of the conditions, acts and practices . . . for many years but have failed and refused to take appropriate action to bring said acts and practices into compliance with the Constitution of the United States and laws and regulations of the State of Illinois." On the same day a similar suit was filed by the United States in the United States District Court for the Northern District of Illinois naming as defendants Cook County officials and the Acting Director of Corrections. The nature of the "Cook County" suit was similar to the one involving Illinois state prisons.

Local facility administrators and the public should be aware that regulations promulgated in disregard of established or evolving constitutional standards may be relied on by local officials at their peril.

Some facility administrators might protest that they are asked by the regulations to write too many "plans" and they will wonder why written plans are required. A written plan insures that each local official acts on a regular and consistent basis so that all prisoners are treated fairly and that they perceive that they are treated fairly. More important, the written plan allows the public to be informed about the policies in its jails. If an administrator cannot write his criteria down, he probably has none. It is also of considerable evidentiary value to a court and to an administrator to be able to see a written plan when faced with a decision as to whether an inmate's claim is frivolous or meritorious. Needless to say, it is also much easier for the Department of Correctional Services to give assistance to local officials and insure that they have legally valid criteria if the criteria are written.

The preparation of written plans should not be a great burden on sheriffs and police chiefs. If they wish to follow the criteria set out in the regulations, they need only state that wish. Otherwise, they will be required to think through their present practices and write them down unless they find upon reflection that those practices need improvement. If the present practices are sufficiently defined to avoid being

arbitrary and capricious, this should not be a time consuming task. A plan can be flexible, and departures within limitations can be made when needed.

If Nebraska is to avoid judicial intervention it must develop and implement standards which will meet constitutional requirements and develop its jails into constructive institutions meeting today's problems.

These proposed regulations are designed to meet the demonstrated need for constitutional and progressive local criminal detention facility standards. They have been developed with the aid of data from a survey of Nebraska facilities and advice from experts in Nebraska and across the nation. They represent a distillation of the best thinking in the field of corrections refined to meet the conditions presently existing in Nebraska.

These proposed standards are fashioned for adult local criminal detention facilities and do not apply to state institutions, institutions specifically designed to house juveniles who have been petitioned against or adjudicated delinquent or in need of supervision in noncriminal proceedings, persons adjudicated mentally ill and in need of institutionalization, or criminal diversionary program facilities that may be developed.

These proposed standards are only a recommendation, however. The Committee on Correctional Law and Practice does not propose that these standards be immediately adopted verbatim by the Department of Correctional Services. Rather, they should be viewed as a model, to the extent they exceed legal requirements, and as a mandate, to the extent that they articulate presently applicable law. As such, the standards should be debated extensively throughout the state. The input of district judges, sheriffs, police chiefs and county boards, although it is already reflected in the regulations, should again be sought and considered, as should that of other interested citizens and groups.

These regulations are a considered recommendation, by the Nebraska State Bar Association Committee on Correctional Law and Practice, of the standards which should be met by Nebraska's local criminal detention facilities. Hopefully, they will be given careful consideration by every person concerned with the administration of such facilities and the attainment of justice and the control of crime in the State of Nebraska.

Criminal justice professionals are on notice of the current level of judicial activism when conditions in an institution become intolerable. Public officials are on no-

tice that the federal courts will turn a deaf ear on an argument that a constitutionally satisfactory jail is too costly to be supported by their tax base. All who are involved in Nebraska's correctional system are on notice that deliberate indifference will not be tolerated by the courts.

Standards/Commentary

Regulation 1
General Instructions

1-(1) Statutory Authority. The standards and requirements contained in these regulations are based upon Nebraska Revised Statutes §§83-945 to 953 (1976 Cumulative supplement).

1-(2) Introduction. All local criminal detention facilities in the State of Nebraska shall conform to these minimum standards. These regulations shall be known as "Minimum Standards for Local Criminal Detention Facilities" and will be referred to herein as "these regulations."

1-(3) Severability. If any article, section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Department of Correctional Services or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of these regulations.

1-(4) Other Requirements. These regulations do not prohibit a political jurisdiction or a combination of political jurisdictions operating a local criminal detention facility from adopting standards and requirements governing its own employees and facilities if such standards and requirements are not inconsistent with, nor exceed the minimum requirements of these regulations. Local criminal detention facilities shall comply with applicable regulations promulgated by the Nebraska State Fire Marshal and the Department of Health, State of Nebraska.

1-(5) Non-Discriminatory Treatment. Each local criminal detention facility shall ensure that inmates are

not subject to discriminatory treatment based upon race, religion, nationality, sex, sexual orientation, age or political belief.

1-(6) Equal Protection. Each local criminal detention facility shall ensure that all inmates are afforded equal opportunity in work assignment, classification and disciplinary and grievance decisions. All interested inmates shall be equally considered for any available facility program, including, but not limited to, educational, religious, vocational or temporary release programs.

1-(7) Administration. The Director of the Department of Correctional Services, State of Nebraska, is hereby designated as the chief executive officer of the Minimum Standards for Local Criminal Detention Facilities Program. The Director may employ such personnel as he deems necessary to carry out the functions and duties of the chief executive officer as described in these regulations. The Director may delegate any of his functions and duties.

(a) The Director shall have the authority and responsibility:

i To provide consultation and technical assistance to local government officials with respect to local criminal detention facilities;

ii To visit and inspect such facilities;

iii To advise government officials, and the appropriate district judges of any deficiencies in any facility, and make recommendations for the improvement of such facilities;

iv To submit written reports of such inspections to appropriate agencies and officials;

v To review, evaluate, approve or reject plans for the construction and major modification or renovation of such facilities;

vi To develop and/or alter minimum standards for the construction, maintenance and operation of such facilities; and

vii To perform such other duties as may be necessary to carry out the policies of the Department of Correctional Services.

(b) There is hereby created the position of Standards Administrator within the Department for the express purpose of performing such duties and functions as are described in this Rule and as are delegated to the position by the Director.

(c) There are hereby created the positions of Standards Inspectors within the Department for the express purpose of implementing these regulations. The Standards Inspector shall be authorized to visit and inspect any local criminal detention facility without prior notice but upon display of proper identification.

1-(8) Definitions. Except where the context otherwise indicates, the following definitions shall apply:

(a) "Approved rated capacity" means the number of inmate occupants for which any cell, room, unit, building, facility or combination thereof has been approved by the Standards Administrator in conformity with these regulations.

(b) "Average daily population" means the average number of inmates housed daily during each year.

(c) "Censor" means to expunge, change, remove or withhold any reading matter or communication.

(d) "Department of Correctional Services" means the Department of Correctional Services of the State of Nebraska, which acts through its Director or his designee, hereafter referred to as the "Department".

(e) "Designated Physician" means a person licensed to practice medicine with whom a facility enters into a contractual arrangement to provide health services.

(f) "Detainee" means any person confined in a local criminal detention facility not serving a sentence for a criminal offense.

(g) "Emergency" means any significant disruption of normal facility procedure, policies or activities caused by riot, strike, escape, fire, natural disaster or other serious incident.

(h) "Existing facility" means any place in use as a facility or for which bids have been let for construction prior to the effective date of these regulations.

(i) "Facility administrator" means the sheriff, chief of police, administrator, superintendent, director or other individual serving as the chief executive officer of a local criminal detention facility.

(j) "Facility personnel" means the facility administrator and facility staff.

(k) "Facility staff" means those custodial personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of the inmates or service personnel in any local criminal detention facility.

(l) "Holding center" means a place used for the confinement of inmates for not more than twenty-four (24) hours excluding holidays and weekends and inmates serving work release or educational release sentences under Nebraska Revised Statutes §§47-401(2) to (4).

(m) "Inmate" means any detainee or offender.

(n) "Jail" means a place used for the confinement of inmates other than a lockup or holding facility.

(o) "Local criminal detention facility" or "facility" means any holding center, lockup or jail operated by a municipality or county or combination thereof.

(p) "Lockup" means a place used for the confinement of inmates for not more than twenty-four (24) hours excluding official holidays and weekends.

(q) "Mail" means anything that is sent to an inmate through the United States Postal Service or a similar commercial delivery service.

(r) "Media" means any agency, instrumentality or means of communication intended to reach the general public such as newspapers, periodicals, television and radio and the representatives of such agencies.

(s) "Minister" means any person recognized by any organized religion or sect as authorized to conduct religious services or provide religious counseling.

(t) "Offender" means a person confined in a local criminal detention facility serving a sentence for a criminal offense.

(u) "Office of the Standards Administrator" means that office within the Department responsible for assuring compliance with these minimum standards.

(v) "Shall" is mandatory; "may" is permissive. These regulations distinguish between what is required and what is optional by the language used in the text. Where the regulation uses the words "shall" or "must" or "is required to" and similar expressions, a requirement is indicated. Where the words "should" or "may" or "it is recommended that" are used, then the regulation indicates an option, an advisory instruction or an aspirational standard.

(w) "Variance" means the waiver of a specific standard granted by the Standards Administrator in accordance with these regulations.

Commentary

Statutory Authority

The Department of Correctional Services of the State of Nebraska was given the responsibility to set and administer minimum standards for local criminal detention facilities as a result of the passage of LB 417, now Revised Statutes of Nebraska §§83-945 to 953 (1976 Cumulative Supplement), by the State Legislature in the spring of 1975. LB 417 states that:

> It is hereby declared to be the policy of the State of Nebraska that all criminal detention facilities in the state shall conform to certain minimum standards of construction, maintenance, and operation.

The statute also gives the Department the authority to set minimum standards, to visit and inspect local criminal detention facilities, to advise government officials, and the District Judge for the district in which any local criminal detention facility is located, of deficiencies in such facility, and to make recommendations for improvements.

The positions of Standards Administrator and Standards Inspectors have been created within the Department. The Administrator and the Inspectors will carry out the mandate of LB 417 that the Department visit and inspect each local criminal detention facility in the state at least annually to determine the adequacy of the conditions of confinement and the treatment of inmates, and to determine whether such facilities comply with the standards established by the Department.

A written report of each inspection is required to be made within thirty days following such inspection to the appropriate governing body and the District Judge responsible for the local criminal detention facility involved. The report is to specify those areas in which the facility does not comply with the required standards.

If an inspection discloses that a facility does not meet the standards in some area, the Department is to send a notice, together with the inspection report, to the governing body responsible for the facility. A copy of the report is also to be sent to the District Judge. Upon receipt of the report the appropriate governing body and the District Judge are required to promptly meet to consider the inspection report, and the inspection personnel are to appear to advise and consult concerning appropriate corrective action. The governing body must then initiate appropriate corrective action within six months of the receipt of the inspection report, and may voluntarily close the facility or the objectionable portion thereof.

If the governing body fails to initiate corrective action within six months of the receipt of the inspection report, fails to correct the disclosed conditions, or fails to close the facility or the objectionable portion, the Department of Correctional Services is authorized to petition the district court to close the facility. The petition is to include the inspection report regarding the facility.

The local governing body will then have thirty days to respond to the petition, and is to serve a copy of the response on the Department. Thereafter, a hearing will be held on the petition before the district court, and an order rendered either to dismiss the petition of the Department, to direct corrective action, or to close the facility. An appeal from the decision of the district court may be taken to the Supreme Court of Nebraska.

The implementation of these minimum standards will commence at the time of publication in accordance with the Nebraska Administrative Procedures Act. Thereafter, inspections will begin, but no local criminal detention facilities are to be closed within one year of the date of first filing of the standards in the office of the Secretary of State.

After one year from the date of first filing, a facility may be closed for any violation of the standards. Those standards relating to the construction of the facility itself, its plumbing, heating and wiring systems, are not to be enforced so as to require the closing of any facility for a period of two years from the date of the first filing of the standards unless such violations are of immediate danger to the safety of the inmates or facility personnel, in which case the period will be one year.

Other Requirements

All other regulations applicable to local criminal detention facilities such as building codes, and rules promulgated by the State Fire Marshal or the Department of Health, State of Nebraska, are incorporated by reference into these regulations. In addition, local political jurisdictions may adopt standards governing their own employees and facilities which are not inconsistent with or which exceed the minimum requirements of these regulations.

Regulation 2
Application of Standards

2-(1) Types of Facilities. These regulations shall apply to three types of facilities: lockups, holding centers and jails, as defined in §1-(8). The Standards Administrator shall classify each facility as either a lockup, holding center or jail, and shall review and revise such classification when necessary in accordance with these regulations. Each regulation or section thereof shall apply to the types of facilities specified in that regulation or section. If the regulation or section does not state the types of facilities to which it applies, it shall be deemed to apply to all three types.

2-(2) Variances. Variances not exceeding six months in duration may be granted to a local governing body for a facility under the following circumstances:

(a) The Standards Administrator may grant a variance of a specific regulation. Any request for a variance must be in writing and must be addressed to the Standards Administrator. The request must cite the regulation in question, describe the reasons for requesting the variance, indicate the period of time for which the variance is requested, and include a compliance schedule and an expression of how the purpose of the regulation will be substantially served without strict compliance with the regulation. The request must document that compliance would be impossible or would cause an extreme hardship as a result of circumstances which are unique to the facility.

(b) The Standards Administrator may grant a variance if, and only if, he determines that:

i compliance with the regulation would be impossible or would cause an extreme hardship as a result of circumstances which are unique to the facility; and

ii the facility can and will substantially comply with the purpose of the regulation during the time of the variance without complying with the regulation.

(c) The Standards Administrator, upon the granting or denial of all or part of a variance request, shall give written reasons for his decision. He shall also specify in writing the time limitation on the variance and any conditions upon which the variance is based.

(d) The Standards Administrator shall not grant renewal of any variance, unless he finds in addition to the requirements of subsection (a), evidence that a good faith effort has been made to comply with the specific regulation involved within the previously prescribed time limitation.

(e) The Standards Administrator shall not grant variances of regulations promulgated by the Department of Health of the State of Nebraska or the Nebraska State Fire Marshal.

2-(3) Emergency Suspensions of Regulations. The facility administrator shall have the power to temporarily suspend compliance with any of these regulations in the event of an emergency.

(a) Only such standards as are directly affected by the emergency may be suspended.

(b) The suspension shall continue no longer than is required by the emergency.

(c) The facility administrator shall immediately notify the local governing bodies responsible for the facility and the District Judge(s) responsible for the facility of the suspension of the compliance with any regulation.

(d) The facility administrator shall within three (3) days of the initiation of the suspension send to the Standards Administrator written notification of the suspension of the compliance with any regulation setting forth his reasons for the suspension. In no event shall

such a suspension continue more than ten (10) days without the approval of the Standards Administrator, who shall specify a time limitation.

Commentary

Types of Facilities

These regulations are to apply to three types of facilities: lockups, holding centers and jails. Each type is defined in Regulation Number One. Two of these classifications were chosen because, according to the Nebraska Jail Survey, they reflect the actual use of facilities. The classification of holding centers was then added so that a person on work release could be housed in his home town or close to his employment in a place that requires only a few improvements from what is now used as a lockup (primarily city jails).

The Standards Administrator is to designate each facility as one of the above types. He is also to change a facility's classification if it is either upgraded by those responsible for it or allowed to fall into a state where it cannot meet the applicable standards for its classification.

The standards are not meant to be applied to state institutions or specialized institutions for handling juveniles, housing persons adjudicated mentally ill or holding persons in any criminal diversionary program which may be developed.

Variances

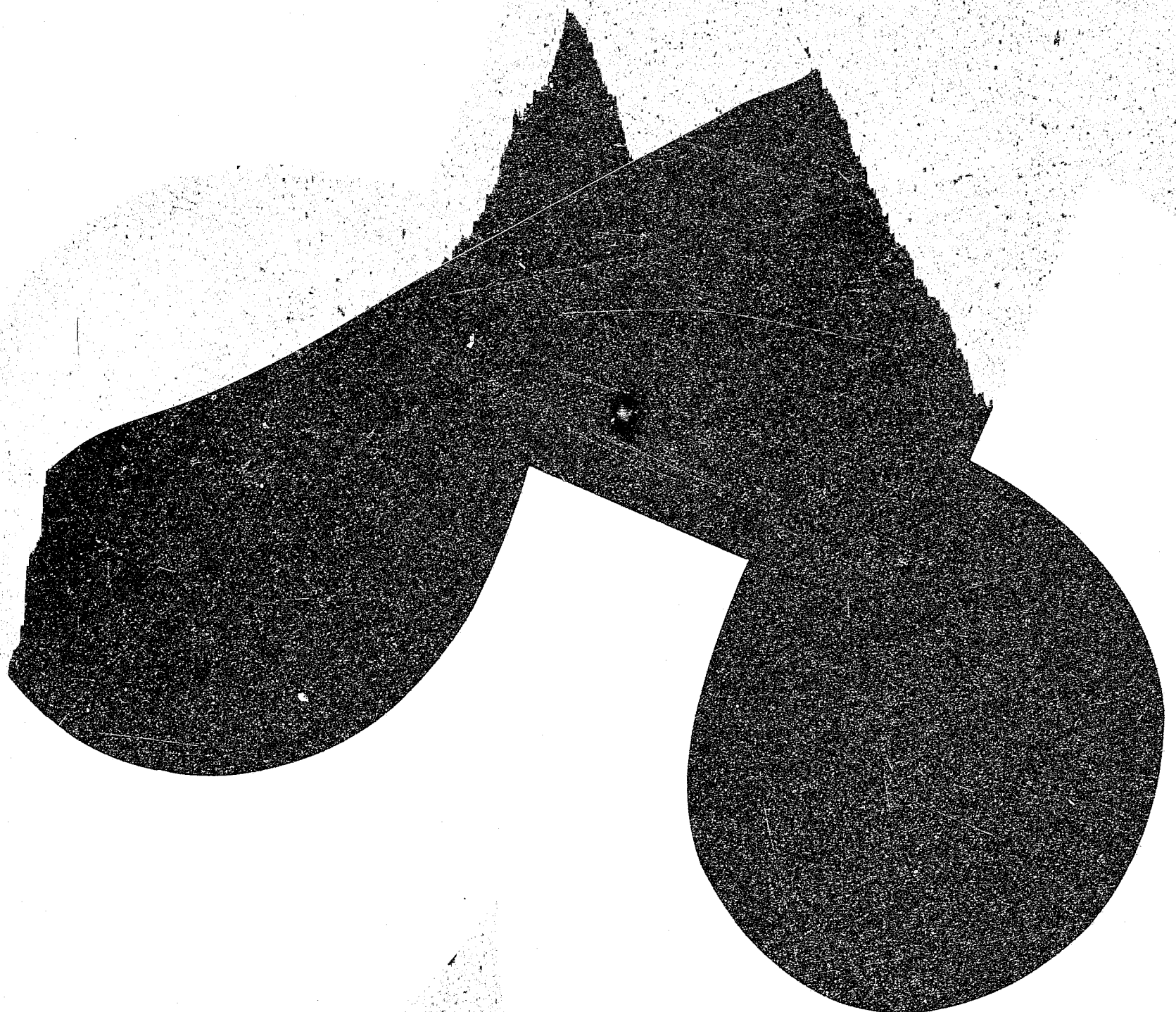
The variance procedure set forth in §2-(2) is designed to provide for the situation where because of a facility's unique circumstances a certain standard cannot be met immediately but the intent of the standard can be substantially met while local officials work to bring their facility into compliance. In such a situation no undue harm will be caused by allowing hard pressed local officials extra time to comply. The maximum six months time limitation parallels the period prescribed by the statute for initially bringing the facilities into compliance with the promulgated standards.

It should be emphasized that conditions which will allow a variance must be unique to the facility and the purpose of the regulation varied must be substantially met even during the time of the variance. This provision is not meant to provide a way around the regulations. It is designed rather to ease the burden of those responsible for a facility under unique and unforeseeable circumstances.

Emergency Suspensions of Regulations

The regulations also set out a procedure to be followed when compliance with a particular regulation must be suspended because of an emergency. Only the facility administrator may do this and he must report the suspension to the Standards Administrator and the District Judge and the local governing body responsible for the facility. The Standards Administrator must authorize any suspension of compliance in excess of ten days.

These regulations recognize that, during emergencies, compliance with certain regulations must be suspended. For example, if an unusual number of arrests is made on a certain night, the facility's capacity may have to be temporarily exceeded. If there is a natural disaster, the facility may not be able to provide more than emergency lighting. However, the suspension of compliance must concern as few regulations as possible and must be as short in duration as possible. This provision is not to be used to avoid general compliance with the regulations.



Regulation 3
Facility Planning

3-(1) Notification. A letter of intent to construct, remodel or renovate any local criminal detention facility will be submitted to the Standards Administrator by the governing body responsible for the facility prior to the initiation of any planning actions. The notification shall specify the proposed action to be taken and the period of construction.

Upon receipt of the notification, the Standards Administrator may furnish technical assistance throughout the planning process to assure that such planning will result in compliance with these regulations.

3-(2) Planning. In the case of new construction or renovation costing in excess of $5,000, a program statement shall be developed by the facility administrator and the architect prior to the development of preliminary plans. The Standards Administrator may be included in any preliminary planning meetings.

In the case of new construction or renovation costing less than $5,000, the Standards Administrator shall be kept informed by the facility administrator of the status of planning.

3-(3) Program Statement. The facility administrator and the architect shall develop a facility program statement as a part of the preliminary planning phase. Such a program statement shall include, but not be limited to, a description of plans for the following:

(a) Type of facility needed and evaluation of alternatives to confinement;

(b) Maximum estimated capacity of facility based on projected needs;

(c) Types of inmates to be housed;

(d) Methods of entry and exit from the facility;

(e) Living units;

(f) Food preparation and serving facilities;

(g) Intake and booking area;

(h) Visiting and attorney interview areas;

(i) Telephone access for inmates;

(j) Library facilities;

(k) Medical examination areas;

(l) Activities areas for exercise and rehabilitation programs;

(m) Cleaning and/or laundering;

(n) Security arrangements and physical relationships among components;

(o) All other plans for compliance with these regulations.

3-(4) Submission of Plans and Specifications. All plans and specifications submitted to the Standards Administrator shall be in duplicate at the preliminary plan stage, when sixty (60) percent of working drawings are completed and when final working plans and specifications are developed. A copy of all plans shall be submitted to the Nebraska State Fire Marshal and to the Department of Health of the State of Nebraska.

3-(5) Review and Approval. The Standards Administrator shall review and, either approve or disapprove, all plans for the remodeling or repair of existing buildings where it is anticipated that such work will cost $5,000 or more; and the construction of new facilities. The Standards Administrator shall not approve plans until they are approved by the State Fire Marshal and the Department of Health of the State of Nebraska. Contracts shall not be let until approval of final documents is received by the facility administrator in writing from the Standards Administrator.

3-(6) Construction Principles. All facility construction shall comply with the regulations required by State and local building codes. Should a conflict exist between these regulations and those of any other standard setting agency, the conflicting Department regulation shall not be effective until such conflict has been resolved by the Standards Administrator.

3-(7) General Conditions. The following requirements apply to all areas of the facility with equal importance and shall be considered in the planning process:

(a) Staff work stations and control rooms shall be situated to provide the greatest degree of observation of traffic flow and supervised internal activities possible.

(b) Exit and entry control stations shall be separated from the public and inmates by security barriers, and shall be protected from direct observation from the outside of the facility. Program and custodial staff shall be dispersed within resident areas for supervisory and programmatic activities.

(c) The design shall provide for the secure confinement of inmates and for adequate separation of inmates of one classification from innates of another.

(d) Consistent with security requirements of the facility, living units shall be located and designed to assure privacy of inmates.

(e) Jails shall provide sufficient space for programs that can include the public in areas other than the living areas of the facility without compromising the security and control of the facility's operation.

(f) Storage areas for personal property of inmates shall be sufficient to accommodate all necessary materials and provide for their respective separation and security.

(g) The design shall allow for service deliveries without interference with the security of the facility.

(h) A two-way communication system shall be provided between control stations and living areas of the facility.

(i) Provisions for the security of keys, weapons, drugs and medications, tools, valuables, records and other materials and supplies shall be made. Additional secure depositories for weapons shall be provided outside the areas accessible to the inmates.

(j) Padlocks shall not be used in place of, nor in addition to, a security lock on any door, window or cabinet within the facility.

(k) No traffic corridor shall be less than four (4) feet in width.

(l) Illumination levels shall provide at least thirty (30) foot candles of illumination in all living areas and one hundred (100) foot candles in all work or study areas of the facility.

(m) Visiting areas shall be designed for contact visiting with a range in the degree of supervision provided. Where necessary, a facility for not more than one noncontact visit may be provided. Individual visiting rooms shall be provided.

(n) Each entrance to a secure area shall be constructed to permit observation and identification of the person seeking admission thereto.

(o) Eating areas shall be sufficiently separate from toilet and shower facilities to avoid offensive or unsanitary conditions.

(p) Sufficient and secure storage areas shall be provided for evidence, supplies, equipment and inmates' property and records.

Commentary

> Most of this country's jails are inadequate, obsolete, and generally lacking in basic necessities. They were constructed along traditional jail plans which have changed very little since the beginning of the 17th century. More recently constructed jails are also based on obsolete concepts. They have been designed primarily for dangerous or violent offenders who make up only a small portion of the jail population. For the most part, their outmoded design reflects a punitive philosophy which emphasizes only the concepts of security and control. Predominantly, their physical shells are warehouses for incarceration rather than effective tools for resolving social problems. Unqualified incarceration has generally resulted only in further social alienation and anti-social behavior. National Sheriffs' Association, Jail Architecture (1975), p. 1.

The predesign considerations and the planning procedure outlined in the regulations borrow heavily from the National Sheriffs' Association handbook on Jail Architecture. As stated there, building the wrong type of facility or deciding to erect a facility when there are other alternatives may prove costly. The typical conventional facility with its standard security hardware costs about 16% more than a courthouse, 40% more than a new high school and 10% more than a modern hospital. Jail Architecture, p. 11. Thus, determination of the true extent of a community's need becomes extremely important.

The section of the regulations covering Facility Planning is designed to create a mechanism for providing communities with technical assistance throughout the planning process. In approaching the need for replacing or remodeling the facility, the administrator must enlist the cooperation of

others in the criminal justice system and also community resources such as schools, courts and hospitals in a total planning effort. National Sheriffs' Association, Jail Administration, p. 66.

Nebraska Revised Statutes §§83-945 et seq. (Supp. 1976), give the Standards Administrator the responsibility of providing consultation and technical assistance to local government officials with respect to local criminal detention facilities. The section of the regulations covering Facility Planning is designed to create a mechanism for providing communities with technical assistance throughout the planning process. The Standards Administrator must be involved from the very beginning in the design and planning of local facilities if he is to fulfill his statutory mandate and if local governments are to be aware of their obligations in preparing for construction. In approaching the need for replacing or remodeling a facility, local government officials and the Standards Administrator must enlist the cooperation of others in the criminal justice system and also community resources such as schools, courts and hospitals. National Sheriffs' Association, Jail Administration, p. 66. The Standards Administrator, in carrying out his consultation and technical assistance duties, should utilize publication and backup resources such as the following:

1. National Clearinghouse for Criminal Justice Planning and Architecture, Guidelines For the Planning and Design of Regional and Community Correctional Centers for Adults (1971). It is probable that grants from the Nebraska State Crime Commission for the construction or renovation of local criminal detention facilities will be contingent upon certification of design and planning by the National Clearinghouse.

2. National Sheriffs' Association, Jail Architecture (1975).

3. National Advisory Committee on Criminal Justice Standards and Goals, Corrections (1973).

Planning must start by producing a statement of the facility's objectives and purposes, a plan for operating the facility and a plan for inmate activities and programs, such as school, library, training, visits and recreation.

The National Advisory Commission on Criminal Justice Standards and Goals has identified some of the elements to be considered in planning for the facility. Corrections (1973), p. 357. Location, size and space for all facility activities are among the most important considerations.

In outlining the facility space requirements, the proposed regulations largely reflect the architectural components stressed in Jail Architecture, pp. 48-81.

Intake
- Sally Port
- Booking
- Temporary Holding
- Medical Examination
- Assessment

Administration
- Control
- Visiting
- Staff Support Areas

Residential
- Detention Rooms
- Dayrooms
- Residential Support Areas

Program and Program Support
- Library
- Office
- Program Delivery
- Recreation

Operation Support
- Dining
- Food Preparation
- Laundry
- Commissary
- Barber
- Mechanical Equipment

Exterior
- Recreation
- Parking
- Access

Regulation 4
Facility Design

4-(1) New Facilities. Each new facility shall have the space and equipment required for that type of facility by these regulations. All living units in new facilities shall be single occupancy units.

4-(2) Existing Facilities. Each existing facility shall have the space and equipment required for that type of facility within a period of three (3) years from the effective date of these regulations.

4-(3) Area for Reception and Booking. Facilities shall have the following

(a) ...floor area as the minimum size:

i A room for the confinement of inmates during their initial processing. Such holding room shall provide adequate seating for its rated capacity and toilets and wash basins. Access to a telephone shall be provided. Such holding room may also be used for the movement of inmates to and from the court. Single occupancy holding rooms shall have seventy (70) square feet of floor area. Multiple occupancy holding rooms (two (2) to eight (8) persons) shall provide twenty (20) square feet of floor area per person with one hundred (100) square feet of floor area as the minimum size.

ii A sufficient number of weapons lockers outside of the security area. Weapons lockers shall be equipped with individual compartments, each with an individual lock and key.

(b) In addition have:

i A sufficient number of individual interviewing rooms for use in determining eligibility for diversion or other release programs and in assessing classification and housing assignment for individuals processed into residency.

ii A shower and parasitic control room. All parasitic control equipment, chemical preparations and techniques shall be approved by the Standards Administrator prior to their use.

iii A secure vault or storage space for inmate property.

iv Telephones sufficient to provide inmates with all telephone calls permitted by §10-(3).

4-(4) Living Areas. The following types of living areas are authorized. In existing facilities, the Standards Administrator shall assign each living unit a rated capacity based on the criteria in this section. No living unit shall house more inmates than its rated capacity allows. In new facilities, no multiple occupancy or dormitories are permitted and each living unit shall be single unit occupancy and shall be on an exterior wall and be provided with a security window allowing light and view. All new living units shall have flush panel type doors.

(a) Single Occupancy Rooms. A room rated for single occupancy shall house only one inmate. Single rooms shall be made available to all inmates detained in close custody status. Rooms shall not be less than seventy (70) square feet in area with a minimum dimension of seven (7) feet and no less than eight (8) feet in height. Each such room shall contain a bunk capable of accommodating a standard 30 x 76 inch mattress. Bunks shall be securely anchored or otherwise integrally constructed.

(b) Multiple Occupancy Rooms. A multiple occupancy room is a living unit with a rated capacity of from two (2) to eight (8) inmates. A minimum of sixty (60) square feet of floor space per inmate in the sleeping area and sufficient bunks to serve all inmates at its maximum rated capacity shall be provided. Bunks

shall be capable of accommodating a standard 30 x 76 inch mattress. Where double bunks are used, a minimum ceiling height of nine (9) feet is required, and safety rails shall be provided for the upper bunk. Adequate space for storage shall be provided.

(c) Isolation Cells. An isolation cell shall have a maximum rated capacity of one inmate and have a minimum area of seventy (70) square feet.

(d) Dormitories. Dormitories are living units with a minimum rated capacity of nine (9) inmates. Dormitories shall provide a minimum of sixty (60) square feet of floor space per inmate in the sleeping area. Where double bunks are used, a minimum ceiling height of nine (9) feet is required, and safety rails should be provided for the upper bunk. Dormitories shall be used only for inmates assigned to work release, education release or other partial custody status. Adequate space for lockers shall be provided.

(e) Dayrooms. In all jails there shall be dayroom areas containing thirty-five (35) square feet of floor space per inmate at facility capacity. The dayroom area shall be separate and distinct from the sleeping area, but immediately adjacent and accessible therefrom. Dayrooms shall be located in each housing area and shall serve individual groups of eight (8) to sixteen (16) inmates. Exterior light and view shall be provided.

(f) Toilet and Shower Areas. Toilet and shower areas shall be so constructed to provide maximum privacy and dignity.

i There shall be at least one toilet in every single or multiple occupancy cell or dormitory. In the dayroom and indoor exercise area, toilets shall be available on a ratio of one toilet to every eight (8) inmates or fraction thereof. Toilets shall be flushable from inside the room or dormitory.

ii There shall be one wash basin required for every single or multiple occupancy room or dormitory. In dayrooms or indoor exercise areas, there shall be one (1) wash basin required for every eight (8) inmates or fraction thereof.

iii There shall be at least one (1) shower available for every eight (8) inmates in every housing area and accessible to inmates without the necessity of leaving the immediate housing area.

(g) Drinking Fountains. Drinking fountains shall be located in areas of the facility to insure that drinking water will be available. In existing facilities, if water from the wash basin faucet is drinkable, drinking fountains need not be provided.

(h) Lighting. Lighting in living units, dayrooms and indoor exercise areas shall be sufficient to permit easy reading by a person with normal vision. Illumination levels shall provide at least thirty (30) foot candles of illumination in all living areas and one hundred (100) candles in all work or study areas of the facility. Window area within the living area shall be eight percent (8%) of the floor area. Night lighting in these areas shall be sufficient to give good visibility for purposes of supervision, but not so bright that sleep is hindered. Generally, lighting may be supplied by ordinary lighting fixtures and, in isolation areas, light fixtures shall be of the recessed type protected by laminated, tempered glass or a break resistant plastic lens.

(i) Heating and Cooling. Provision shall be made for the maintenance of a comfortable and well ventilated living environment. A mean temperature of between 65° and 85° shall be maintained.

(j) Noise. Provision shall be made for the maintenance of a noise level averaging no higher than 65-70 decibles in the daytime and 40-45 decibels at night for the residential area.

4-(5) Space for Support Functions. Other space as specified below shall be designated for various necessary support functions.

(a) Exercise Area. Every jail shall contain indoor and outdoor exercise areas. The number of square feet of surface for an outdoor exercise area shall be computed as follows:

$$\frac{\text{(80\% of maximum rated client population)}}{\text{Number of one hour exercise periods per day}} \times 50 \text{ sq. ft.} = \text{Required Exercise Area}$$

56

except that the outdoor exercise area shall not be less than nine hundred (900) square feet. The indoor exercise area may be coupled with any other multipurpose room. It shall have sufficient space to allow a moderate amount of physical activity.

(b) Correctional Program Space. Sufficient area for correctional programming shall be provided in every jail. Such program area and furnishings shall be designed to meet facility needs and should include space for the following:

i Religious services;

ii Group counseling;

iii Interviews;

iv Classroom and study; and

v Meetings.

Such space and furnishings may be in the form of a multipurpose room or rooms with movable partitions and storage area for seating equipment and writing tables.

(c) Medical Examination Rooms. There shall be a minimum of one fully equipped medical examination room in every facility with a daily rated capacity of more than thirty (30) inmates. Such a medical examination room shall be designed for the privacy of inmates and provide sufficient lockable storage space for medical supplies and drugs. The examination room shall be designed in consultation with the designated physician for his use in conducting intake medical examinations prior to assignment to housing and in diagnosing serious illness or in treating minor illness.

(d) Space for Hair Cutting. Space in a multipurpose room and suitable equipment shall be provided in all jails for hair cutting and hair dressing.

(e) Inmate Commissary. In all facilities there shall be provision made for inmates to purchase items such as food, tobacco products, toilet articles, stationery supplies and reading matter. In jails an area shall be pro-

vided for the secure storage of the stock for such commissary items. The cost of these items shall not be more than the cost to the facility.

(f) Dining Facilities. In all jails dining areas shall be designed so that inmates will be able to eat together in small groups. The dayroom or other multipurpose area may be used for dining. Such dining areas shall not contain toilets, wash basins or showers in the same room or in the view of inmates dining.

(g) Visiting and Attorney Interviews. Sufficient space shall be provided in all facilities for visiting. Visiting areas shall be designed for contact visiting with supervision provided. Where necessary a facility for not more than one noncontact visit may be provided. All facilities shall include interview areas which provide for confidential consultation with visitors, attorneys, counselors, ministers and parole or probation officers.

(h) Janitor Closet. A secure janitor closet containing a mop sink and sufficient area for the storage of cleaning implements shall be provided within the security area of every facility.

(i) Storage Rooms. One or more sufficient and secure storage rooms for the storage of evidence, supplies, the personal clothing of inmates, personal property and records, and institutional clothing and bedding shall be provided.

4-(6) Support Systems. The following support systems shall be provided to assure the safety of facility staff and inmates:

(a) Fire Alarm System. In addition to any regulations promulgated by the Nebraska State Fire Marshal, there shall be an automatic fire alarm system approved by the State Fire Marshal in all facilities. Such an alarm system shall be capable of alerting personnel at a central control point to the presence of fire and smoke in the facility.

(b) Audio or Video Monitoring System. In all inmate living areas there shall be an operable two way audio or video or combination audio-video communication system which shall be capable of

alerting personnel stationed at a central control station so that they may respond to emergencies such as assaults, calls for assistance and attempted suicides.

(c) Emergency Power. In all facilities there shall be a source of emergency power capable of providing minimal lighting in housing units, activities areas, corridors, stairs and central control points, to operate security overrides for housing doors and electrical systems and to maintain communications and alarm systems.

Commentary

The facility design standards relate to both new construction and to modification or extensions of existing facilities. With regard to the latter, compliance is dependent on the specific characteristics of a facility and the category into which the facility is placed. The Standards have also been structured to meet the "Part E" requirements for federal funding under the Law Enforcement Assistance Administration ("LEAA"). A city or county which is building or remodeling a facility should therefore be eligible to receive an LEAA grant for the construction or remodeling. This means that the city or county will probably pay less for a facility that meets these standards than it will for one that does not.

Area for Reception and Booking

When required the area for reception and booking must provide the necessary spaces for processing: booking, temporary holding, search, identification and weapons control. Of course, one area may sometimes have multiple uses. General administration space must be provided which will vary with the size of the facility and scope of operation.

Living Areas

Living areas should be organized to provide for classification of inmates into separate living units. Effective design of the residential components of a correctional facility is one of the most important considerations in terms of attitudes and opportunities for the residents. "Since a major portion of time is spent in these areas, they should be designed to minimize confinement and to maximize individual opportunities for a choice of activities and the pursuit of rehabilitation programs." Jail Architecture, p. 62.

Windows

Transparent windows are not a mere luxury, but rather serve as a means by which inmates maintain vital links with the outside world. The regulations therefore require a specified number of square feet of window space in existing facilities and windows in each living unit of new facilities. At least five district courts have recognized the right of pretrial detainees to have transparent windows. Rhem v. Malcolm, 371 F.Supp. 594 (S.D.N.Y. 1973) aff'd 507 F.2d 333 (2nd Cir. 1974); Hamilton v. Landrieu, 351 F. Supp. 549 (E.D. La. 1972); Bay County Jail Inmates v. Bay County Board of Commissioners, C.A. 74-10056 (E.D. Mich., August 29, 1974); Dillard v. Pitchess, 399 F. Supp. 1225 (C.D. Cal. 1975); Miller v. Carson, 392 F.Supp. 515, and 401 F.Supp. 835 (M.D. Fla. 1975).

Noise

Noise is unwanted sound and the regulation on noise establishes levels which are acceptable. Because of the hard nonabsorbent nature of most correctional facility structures, noise levels are abnormally high. Constant background noise is often significantly higher than the level considered acceptable for a residence. During peak noise hours, the levels may be potentially hazardous to hearing. During their confinement, inmates have a right to be free from physical harm caused by an excessive noise level. At least two courts have ordered officials to take appropriate steps to reduce noise levels in jails. Rhem v. Malcolm, supra, 371 F.Supp. 594; Miller v. Carson, supra, 392 F.Supp. 515. In Rhem v. Malcolm, supra, 371 F.Supp. at 608, the Court referred to an Environmental Protection Agency finding that decibel levels greater than 65-70 are unsafe and that constant exposure to decibel readings averaging 80dB not only cause irritability but constitute a real danger of hearing loss. In existing facilities noise should be minimized by eliminating sources, placing sound barriers between activity spaces, decreasing size of spaces, and using noise-absorbing materials. Noise levels should be low enough not to interfere with normal human activities--sleeping, dining, thinking, conversing and reading. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 11.1, Commentary, p. 358 (1973).

Two methods of measurement support the daytime and nighttime noise levels standards. Daytime standards are based upon speech interference noise levels. The level of 70 decibels or less allows normal conversation between individuals at normal speaker-listener distances. Nighttime standards are

based upon sleep interference noise levels. The level of 45 decibels or less allow normal sleep. These standards are supported by data and research prepared by the United States Environmental Protection Agency, Information on the Levels of Environmental Noise Requisite to Protect Public Health and Welfare With an Adequate Margin of Safety, Document No. 550/9-74-004 (March, 1975). This document specifies that an average day and night equivalent decibel level of 45 is adequate to prevent hearing loss and annoyance. The regulation is somewhat less demanding, but at the same time assures a relative quiet which will assure inmates of safety from the ill effects of sustained loud noises.

Cells, Lighting and Heating and Cooling

Most correctional facilities lack any accommodations which offer privacy or basic comfort. Most cells are of the "maximum security" type. These are barred, open front, interior cells, constructed of hard and coarse materials. Ability to control this living environment even minimally is usually impossible: furniture is immovable; lights cannot be turned on or off; adequate space for personal belongings is not provided. Personal privacy is nonexistent since unwanted intrusions--both visual and aural--are unavoidable and commonplace at all times, even during what are normally one's most private moments.

Court decisions recognize that the imposition upon pretrial detainees of living conditions more onerous than necessary to insure their presence at trial constitutes substantial punishment in violation of their constitutional rights. Dillard v. Pitchess, supra. To remedy such abuses imposed by the living environment, courts have not hesitated to order extensive and sometimes very expensive physical improvements. In addition to the cases cited above with regard to the issues of noise and transparent windows, courts have required installation of improved lighting, provision of adequate heating and ventilation systems, installation and maintenance of adequate plumbing and painting of cell and noncell areas. Rhem v. Malcolm, supra, 371 F.Supp. 594; Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Ohio 1971), aff'd. 456 F2d 854 (6th Cir. 1972); Hamilton v. Landrieu, supra; Miller v. Carson, supra, 401 F.Supp. 835. The regulations reflect these cases.

Living Space

Overcrowding of inmates in a penal institution is an unconstitutional deprivation of due process of law. Ambrose v. Malcolm, 414 F.Supp. 485, 487 (S.D.N.Y. 1976). This principle has also been applied to pretrial detainees in Valvano v. Malcolm, 520 F.2d 392 (2nd Cir. 1975) where the court held that the crowding of two men in a cell of 40 square feet of floor space was unconstitutional. See Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972) aff'd in part, rev'd in part, 499 F.2d 367 (5th Cir. 1974), and Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971).

One criterion by which to determine whether inmate housing is impermissible is shown in Ambrose v. Malcolm, supra, where the court relied on the concept of the "rated capacity" of a cell or dormitory. In doing so the court relied on the evidence of expert witnesses and space standards recommended by various penal agencies. The court embraced the recommendation of the American Correctional Association Manual of Correctional Standards 49 (1966)--75 square feet of space per person. The Manual relied upon by the court was recognized as having been prepared by experts in the field of criminal justice and noted to have served as a guideline for the architectural planning of correctional institutions. Ambrose v. Malcolm, supra, 414 F.Supp. at 489. The Ambrose court also took judicial notice of space standards established by other penal agencies. 414 F.Supp. at 492.

The recent decision in Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976), set a standard of 60 square feet of living space per person in Alabama prisons.

The minimum floor space of a single cell in these regulations is set at 70 square feet. This was in response to the judicial opinions discussed above and the strong recommendation of the National Clearinghouse for Criminal Justice Planning and Architecture. Other standards either agree with this regulation or have set the square footage as high as ninety. For example, the Building Officials & Code Administrators International, Inc., BOCA Basic Building Code/1975, §201.3, p. 36 (6th ed. 1975), defines "habitable space, minimum size" as a space with a minimum dimension of 7 feet and a minimum area of 70 square feet, between enclosed walls, exclusive of closet and storage spaces; Jail Architecture, p. 63, requires that single occupancy detention rooms average 70 to 80 square feet; the National Advisory Commission for Criminal Justice Standards and Goals, Corrections, Standard 11.1, p. 358 (1973), encourages single occupancy rooms and urges that they have a floor area of at least 80 square feet per person and a clear floor-to-ceiling height of 8 feet;

the International Conference of Building Officials, Uniform Building Code, §1307B, p. 83 (1973 Edition), specifies 90 square feet of space as minimum habitable space for an individual.

Double celling of inmates has been specifically condemned by several decisions. Inmates of Suffolk County Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd 494 F.2d 1196 (1st Cir. 1974) (cell size 8 x 11 feet), Tyler v. Perich, Civil Action No. 74-40C(2) (E.D. Mo., filed Oct. 15, 1974) (cell size 8 by 5 feet), and also by state courts in Wayne County Board of Commissioners, Civ. Action No. 173217 (Civ. Ct. Wayne Co., Mich., July 28, 1972 and May 25, 1971), aff'd and remanded, 391 Mich. 359, 216 N.W.2d 910 (1974) (cell size 6 by 7 feet); Commonwealth ex rel. Bryant v. Hendrick, 444 Pa. 83, 280 A.2d 110 (1971). See also Detainees of Brooklyn House of Detention v. Malcolm, 520 F.2d 392 (2nd Cir. 1975) and Valvano v. Malcolm, supra. Overcrowding in pretrial detention facilities above rated capacities has also been held to create a restrictive and deplorable living environment constituting an intolerable violation of detainees' constitutional rights. Taylor v. Sterrett, supra; Hamilton v. Love, supra.

Judge Marvin E. Frankel, in a partial decree, enjoined officials at the modern Federal Municipal Corrections Center in New York from double celling convicted and pretrial inmates in rooms originally designed and designated for single occupancy. United States of America ex rel. Wolfish v. United States of America, 75 Civ. 6000 (S.D.N.Y., Dec. 29, 1976). This order was issued despite the 1975 construction date and otherwise decent aspects of the Center. The point of this opinion is that cells designed for a specific number of occupants cannot be overloaded. Additionally, the designation of the number of occupants by such an agency as the Nebraska Department of Correctional Services cannot be ignored without the risk of court intervention. It should be noted that the detention facility in the Wolfish case was designed to have individual rooms with 70 to 75 square feet of floor space.

Valvano v. Malcolm, supra, placed great emphasis on the importance of housing inmates in single cells. Correctional experts testified that confinement of two detainees together not only deprives a detainee of privacy but also is psychologically destructive and increases homosexual impulses, tensions and aggressive tendencies. Donald H. Goff, Director of the United States Commission on Civil Rights, Prisoners' Rights Project, testified that:

> One of the reasons why we have this emphasis upon one man to a cell and not having individuals in a very tight situation is to reduce problems of administrators.
>
> You reduce your tensions, reduce the administrative problems, reduce the fights, sodomy, the anxieties simply by this technique [single celling]. It is a way of reducing and calming down a population which is normally under pressure anyway. Valvano v. Malcolm, supra, 520 F.2d at 396, n. 4.

The Valvano court also noted that in 1965 the United Nations' Congress on the Prevention of Crime and the Treatment of Offenders adopted a set of Standard Minimum Rules for the Treatment of Prisoners, which recommended that each inmate have an individual cell. The American Correctional Association Manual of Correctional Standards, p. 49 (1966), recommended that "all cells should be designed for the use of one prisoner." Valvano v. Malcolm, supra, 520 F.2d at 396.

The statistics of the Nebraska Jail Survey indicate that no lockups or holding centers and only 28% of the jails surveyed approach the space requirements required by courts and suggested by knowledgeable authorities. However, the survey also suggested that there did not seem to be a problem of overcrowding in Nebraska facilities. Thus, the living unit size requirement may be approximated by "rating" each cell or room upon initial inspection by the Standards Administrator for inmate capacity. For example, a cell which now has two beds may, if it is too small according to the new standard, be rated as a one man living unit. To comply, one bed (e.g., an upper bunk) would be removed. All living units would be rated for capacity in this manner. As the National Clearinghouse stated in their Commentary to the Nebraska Jail Survey: "the psychological benefits of a larger living space may be reflected in an increased receptivity to attempts to treat and rehabilitate offenders" (p. 14).

Recent cases have not only stressed the importance of adequate cell size, but have also pointed up the excessively restrictive aspects of confinement when no dayroom areas are provided or inmates are limited to a narrow corridor.

In Rhem v. Malcolm, supra, 371 F.Supp. at 621, the court invalidated excessive confinement policies for detainees:

> The imposition of maximum security con-- finement (including lock-ins in cells of 16 hours per day) . . . violates their rights to due process by punishing them although they are unconvicted and violates their rights to equal protection of the laws by unnecessarily treating them more harshly than convicts or bailees.

In Brenneman v. Madigan, 343 F.Supp. 128 at 140 (N.D. Cal. 1972), the court invalidated a similar policy of close confinement:

> Unquestionably, pre-trial detainees who are accused of serious crimes must be confined in secure facilities. Holding them continuously in cells is unquestionably an expedient method of insuring security, but such oppressive confinement is not the least restrictive alternative available to defendants for maintaining jail security. What is required are large secured areas, both indoors and out, which substitute close supervision for close confinement. (Emphasis added.)

Similarly, in Inmates of Suffolk County Jail v. Eisenstadt, supra, 360 F.Supp. at 687-688, the court ordered correctional authorities to provide detainees with additional time outside the cell. The court observed:

> Although we recognize that more free time places heavier burdens on staff, and may require hiring of additional staff, it is in no way inherently inconsistent with security, given adequate staff and planning. More important, it is consistent with the due process requirement that a presumptively innocent man's right to personal mobility be curtailed only to the extent warranted by the state's interest in confining him.

Suits by inmates regarding general confinement are normally brought on Eighth Amendment cruel and unusual punishment grounds. These cases are becoming increasingly successful.

Program Support Areas

Program support areas for conducting correctional programs, recreation, dining and visiting are required by the regulations. These areas will again vary according to the facility's overall size. Generally, the consideration of program spaces should be to provide maximum flexibility and ready accessibility by inmates and staff. This space should generally be located within the security zone. Access by the public, however, should be as direct and immediate as possible to facilitate the use of community resources and volunteers. Program spaces should include the following: a library; a multi-purpose area for educational, vocational, counseling or religious programs; recreation and small game activities.

Finally, several other areas are necessary to support the operation of any correctional facility: dining areas, food preparation areas, commissary, storage rooms, and visiting and attorney interview areas.

> Dining has value as a resocialization activity. Good design of these facilities reinforces offender opportunities for positive behavior. The areas should be planned in small-scale settings, with informal seating arrangements. Large, centralized halls with straight-line fixed seating arrangements are to be avoided. Jail Architecture, p. 76.
>
> The areas for food preparation should be located to facilitate efficient service, and large enough to accommodate the equipment and personnel necessary to prepare and serve the population satisfactorily. Ibid., p. 78.
>
> A small area for the purchase of personal items should be provided. It should be conveniently located to residential areas and operated during normal working hours. Ibid., pp. 78-79.
>
> In the Interim jail, facilities for private attorney-client visits do not exist. Consultation usually takes place in the hallway. The warden's office may be available occasionally if he chooses to relinquish it for attorney-client meetings. However, there is no physical facility specifically set aside

> for this purpose in which the pretrial detainees have a right to consult privately with attorneys and witnesses. Such conditions impede the detainee's ability to prepare for trial, jeopardize the confidentiality of their attorney-client communications and invade their right of privacy. Apparently a similar lack of privacy for such consultations prevails in the Courthouse jail. The Court shall therefore order that within sixty (60) days of the date hereof the defendants shall submit a plan by which private facilities for attorney-client visits in both jails may be obtained. Moore v. Janing, Civ. No. 72-0-223, slip opinion, p. 11 (D. Neb., Dec. 29, 1976).

The Nebraska Supreme Court, in State v. Tomka, 183 Neb. 76, 158 N.W.2d 213 (1968), held that a sheriff must make provision for the reasonable or necessary wants of his inmates. The court stated that a commissary was a permissible method of providing for such wants.

> Visiting areas should be provided for all correctional facilities. The primary areas should be small open rooms allowing for face-to-face interaction for families, attorneys, counselors, and others. The area should be visually open for staff observation. In most cases a very small number of visiting units to separate visitors from residents will be required. These should be used only for high security residents. Ibid., p. 59.

Exterior Area

The amount of exterior area required for any facility will vary considerably. The site and surrounding environs will influence the exterior planning. The Standards require an area for outdoor exercise. Exercise and recreation have recently become important considerations in litigation. (For a fuller discussion of this, see the section on Inmate Programs and Activities.) Again, the National Sheriffs' Association handbook on Jail Architecture, p. 80, stresses:

> Exterior space for recreation is necessary in any correctional facility, with the exception of a temporary holding unit. Size, orientation, and location of such areas will be dependent upon climatic conditions, site configuration, and architectural requirements. Generally, the space should be within the security zone and readily accessible to inmates. Ideally, it should be incorporated into the design so that the exterior is a natural extension of interior activity, program or residential areas. Visual and functional continuity of exterior and interior areas offers the best physical arrangement for support of treatment objectives within a normalized environmental setting.

Expense of Modifications

The most frequent argument raised with regard to facility design and standards is that such standards will require expensive renovations or the utilization of more staff, both of which will require the expenditure of great amounts of money. However, courts have faced this argument head on and have been firm in upholding the principle laid down by then Circuit Judge Blackmun that "[h]umane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations . . . ." Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968).

The following language from Moore v. Janing, supra, at p. 4, sets out the rule in Nebraska:

> The state may not "justify the denial of other unrelated rights for budgetary reasons." Rhem v. Malcolm, 527 F.2d 1041, 1044 (2nd Cir. 1975). "Lack of adequate economic resources does not excuse, nor does it lessen, the obligation of states and local governments to provide jail facilities which are constitutionally adequate." Alberti v. Sheriff of Harris County, Texas, 406 F.Supp. 649, 669 (S.D. Tex. 1975), citing Finney v. Ark. Board of Corrections, 505 F.2d 194 (8th Cir. 1974). "If the

state cannot obtain the resources to detain persons awaiting trial in accordance with minimum constitutional standards, then the state simply will not be permitted to detain such persons." Hamilton v. Love, 328 F.Supp. 1182, 1194 (E.D. Ark. 1971); Brenneman v. Madigan, 343 F.Supp. 128, 139 (N.D. Cal. 1972).

CONTINUED

1 OF 4

Regulation 5
Personnel

5-(1) Education Standard. Each facility staff member initially employed after the effective date of these regulations shall have earned a high school diploma or its equivalent.

5-(2) Training. Each facility administrator of a holding center or a jail shall develop and implement a written plan subject to the approval of the Standards Administrator for the training of personnel. Within two (2) years of the effective date of these regulations or within the first year of employment, whichever is later, all holding center or jail facility personnel who work with inmates shall undergo eighty (80) hours of initial training. All such personnel who work with inmates shall undergo twenty (20) hours of training every year thereafter. Such training shall include instruction in:

(a) Administration of local criminal detention facilities:

i Correctional history and philosophy;

ii Correctional program development;

iii Facility planning;

iv Facility and personnel management;

v Administrative and logistical support management; and

vi Recent developments in penology and corrections.

(b) Health and safety:

i Good health and hygiene practices;

ii Recognition of mentally ill and suicidally inclined inmates; and

iii Fire prevention and safety.

(c) Human relations:

i Inmate attitudes and behavior;

ii Minority group relations; and

iii Community relations.

(d) Legal rights and responsibilities:

i Legal rights of inmates;

ii These regulations; and

iii Legal problems in facility administration.

(e) Security and supervision:

i Security equipment;

ii Security and emergency procedures; and

iii Supervision of inmates.

5-(3) Waiver of Comparable Training. The Standards Administrator may waive the initial eighty (80) hour training period upon acceptable proof of comparable training. The requirement of twenty (20) hours in-service training annually shall not be waived.

5-(4) Extracurricular Training. The Standards Administrator and each facility administrator may grant an employee the opportunity to substitute college courses, university courses, seminars, correspondence courses or other training programs in lieu of the yearly in-service training, if such training is of a nature that will increase the employee's value to the facility in accordance with these regulations.

5-(5) First-Aid Training. All facility personnel who work with inmates shall, within one (1) year of the effective date of these regulations or within one (1) year of employment, complete a course of first-aid training approved by the Standards Administrator. Training in health, safety, hygiene and sanitation shall be provided as prescribed in §14-(9).

5-(6) Number of Personnel. A sufficient number of personnel shall be employed in each facility to allow twenty-four (24) hour supervision of all inmates. Inmates shall be personally viewed by facility personnel at least hourly on a twenty-four (24) hour basis. Some personnel shall be close enough to the inmate living units to hear calls for help, smell smoke and detect any other emergency.

5-(7) Matrons. Whenever a facility houses a female inmate, twenty-four (24) hour supervision shall be provided by female facility personnel. No male facility personnel shall enter the female inmate's living area, except in an emergency, without female facility personnel present.

Commentary

High School Education for Facility Staff

The only employment standard these regulations set is that new facility staff must have at least a high school education. The Nebraska Jail Survey shows that almost half of all Nebraska facilities already require this. Two-thirds require a high school education for chief jailors, and three-fourths impose that standard on deputies. The reason for the regulation is simply to insure that high quality staff are employed. For additional guidelines, consult the National Sheriffs' Association handbook, Jail Administration, pp. 28-32.

Training

The recommended regulations also require an initial course of training and yearly in-service training for all holding center and jail personnel. The courses of training prescribed must be certified by the Standards Administrator. In fact, it is contemplated that the Department of Correctional Services will actually provide most of the training, although the standard does allow the use of other resources, such as those provided by local facilities or by other agencies. The regulations provide for taking advantage of such resources as Nebraska colleges and universities and the U. S. Bureau of Prisons' correspondence courses on jail operations and jail management.

The need for adequate training of facility personnel is almost universally recognized. See, for example, the National Sheriffs' Association handbook, Jail Administration, p. 34; Illinois County Jail Standards, Ch. IV, Guideline 11; California Board of Corrections, Minimum Standards for Local Detention Facilities, §§1020-1022; The American Correctional Association, Response of the American Correctional Association to Correctional Standards §9.6(5). Even the Nebraska Law

Enforcement Training Center, which was not set up for this purpose, provides six hours of jail operations training in its course for sheriffs, realizing that some training, even if it is inadequate in length, must be given. The reasons are obvious. No standards are of any use if the staff does not know how to carry them out.

The prescribed areas of training are similar to those found in many other jail training programs, such as those used or being developed in New Jersey, Minnesota, California and in the U. S. Bureau of Prisons correspondence courses on jail operations and jail management. The only addition to the standard curriculum is a review of these regulations. The review is required because facility personnel are responsible for carrying out these regulations and must, therefore, be familiar with them. The lengths of the training programs (eighty hours for initial training, twenty for in-service) are dictated by LEAA Part E requirements.

First-aid training is also required by the personnel regulations so that facility staff can handle emergencies and minor inmate and staff injuries. It should be noted that, according to the Nebraska Jail Survey, 95% of our facilities encourage such training and 32% provide it themselves.

Number of Personnel and Provision for Female Facility Personnel

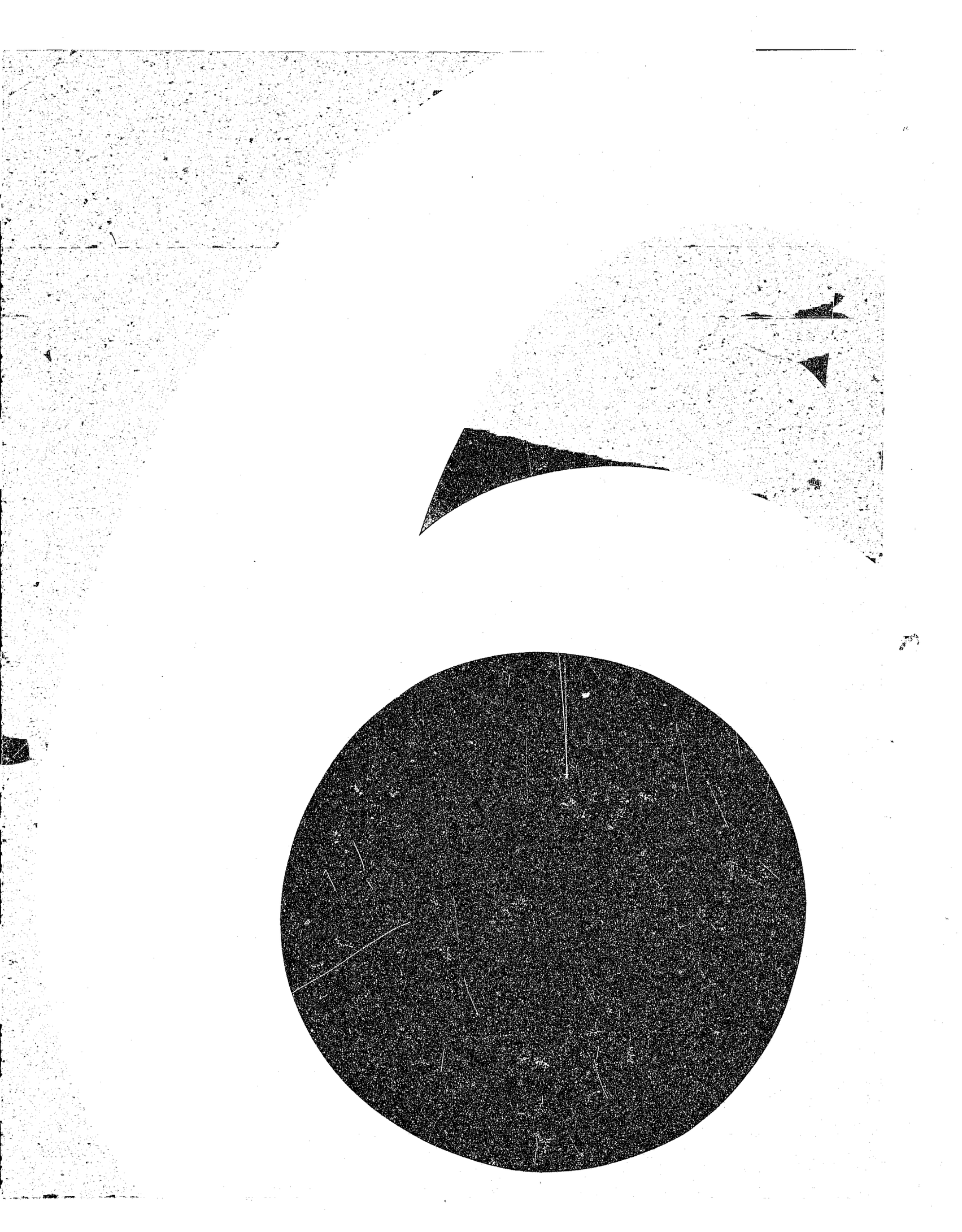
The last two personnel regulations are largely required by existing statutes and administrative regulations. The section on number of personnel requires a facility to provide twenty-four hour supervision of the facility when inmates are housed within it and to employ enough personnel to allow this. This merely restates an existing regulation enforced by the State Fire Marshal and requires adequate personnel to follow it.

The purpose of this regulation is to ensure the safety of inmates should there be a fire or other emergency. It should be noted that if an inmate were to be injured or killed in an emergency and there was no one on duty, there would probably be a significant chance of a lawsuit against the facility administrator. The facility's governing body would probably have to pay the damages. See §28-844 R.R.S. Neb. 1943. One striking example of such negligence and resulting liability is Daniels v. Andersen, 195 Neb. 95, 237 N.W.2d 397 (1975). In that case the Supreme Court of Nebraska affirmed a $200,000 jury verdict against the City of Omaha, its police chief and several jailers. An intoxicated plaintiff was placed in a drunk tank with another man who proceeded to beat

the plaintiff severely despite his cries for help. The Court held that the plaintiff's helpless inebriated state imposed upon his jailer a higher than normal duty to protect him. The Court noted that there was a failure to conduct a sufficient number of physical inspections and that, although the drunk tank was constructed with audio-visual monitors, they were either inoperable or ineffective. Rules of the jail required constant observation of audio-visual monitors and hourly inspection of cells. Physical checks more frequently than one each hour were compelled where the mechanical devices were ineffective, the Court held, because helpless persons being attacked in drunk tanks should be anticipated. A verdict of $200,000 was not unreasonable due to the injuries plaintiff suffered and the chief of police, who was not even present in the jail nor aware of what was occurring, was liable along with those jailers directly responsible and the City of Omaha.

The regulation also requires hourly viewing of inmates by facility personnel so that security and order will be maintained. Recent incidents discovered through interviews with sheriffs illustrate this. In one poorly constructed facility, two juveniles were able to pull the bars out of a window and escape. In another, male inmates dug a hole in a wall one evening and dragged a female inmate into their living area. This was not discovered until the next morning. Personal viewing would have prevented these incidents or at least ensured that they were discovered quickly.

The section on provision for a matron requires that, whenever female inmates are housed in a facility, a matron must be on duty. This merely restates existing law in Nebraska for county jails. Revised Statutes of Nebraska §47-111 (1976 Cumulative Supplement). Of course the matron may also hold other positions, such as radio dispatcher. The matron must also be present when any male enters the female inmates' quarters when females are residing there. The National Sheriffs' Association handbooks emphasize both these provisions about matrons. Their purpose is to protect female inmates' privacy and prevent allegations by inmates of improper conduct by facility personnel of the opposite sex.



Regulation 6
Records and Statistics

6-(1) Intake Form. When an inmate initially enters a facility, an intake form approved by the Standards Administrator shall be completed containing at least the following information. If the inmate is transferred to another facility, a copy of this record shall be sent to that facility:

(a) Name of inmate;

(b) Address of inmate;

(c) Time and date of admission;

(d) Names and signatures of receiving and (if applicable) arresting officers;

(e) Charge, with statute number;

(f) Description of inmate:

i Sex;

ii Age and date of birth;

iii Color of hair and eyes;

iv Race;

v Physical build;

vi Height (approximate); and

vii Weight (approximate).

(g) Place of inmate's birth;

(h) Names and addresses of family members and persons to be notified in case of emergency;

(i) Fingerprint and other identifying information;

(j) Disposition of vehicle, if any;

(k) Court and bail (if pretrial detainee);

(l) Court and sentence (if sentenced inmate);

(m) Current employment history;

(n) Current medical condition;

(o) Educational level;

(p) History of confinement; and

(q) Space for remarks.

6-(2) Denial of Admission. If a person is denied admission because he is unconscious or appears to have a serious injury, a record of the denial and referral to the nearest hospital shall be made and retained.

6-(3) Retention of Inmate's Property. Whenever cash or other personal property is taken from an inmate the following actions shall be taken:

(a) A list of the property taken, with a description of each item, shall be made and signed by both the inmate and the person who takes the property from the inmate. A copy of this list shall be given to the inmate as a receipt. If a person refuses to sign, the reasons why shall be noted on the form he was asked to sign.

(b) The property taken and the list shall be kept under lock and key.

(c) When cash or other property is returned to an inmate he shall be asked to sign a statement saying that the property has been returned to him; however, no inmate shall be denied the return of his property because he refuses to sign this statement. If an inmate refuses to sign, the reasons why shall be noted on the form he was asked to sign.

(d) If an inmate is intoxicated or for some other reason unable to sign the document described in subsection (a) above, he shall be asked to sign as soon as he becomes able. At least two

facility personnel shall if possible be present when the property is taken and the list made, and both shall sign the list. An unsigned receipt shall be given to the inmate.

6-(4) Account of Expenditures. An itemized account of each inmate's expenditures and receipts of money while in a facility shall be kept. Each person depositing money in an inmate's account shall receive a receipt. No money shall be withdrawn from an inmate's account except on the inmate's written authorization.

6-(5) Medical Records. Medical records shall be maintained for inmates as prescribed in §12-(9).

6-(6) Record of Disciplinary Actions. A record shall be maintained for all disciplinary actions against inmates as prescribed in §11-(7).

6-(7) Inmate Personal File. A personal file shall be maintained for each inmate. This file shall include, but need not be limited to, the following:

(a) A copy of each initial intake form for the inmate;

(b) Records developed as a result of classification;

(c) A record of all medical attention given to the inmate, as prescribed in §12-(9);

(d) A record of all disciplinary actions taken against the inmate, as prescribed in §11-(7);

(e) Copies of the inmate's property records required by this regulation; and

(f) Copies of grievance procedure reports and responses prepared pursuant to §11-(6).

6-(8) Access to Inmate Files. Directory information regarding an inmate should be available to the public, without the inmate's consent. All other information concerning an inmate shall be disclosed only upon the inmate's written consent, executed for each specific disclosure, unless:

(a) The disclosure is to an agency involved with investigation, prosecution, disposition or custody of criminal offenders, and the head of the agency specifies in writing the particular portion desired and the specific current law enforcement investigation or activity for which the record is required; or

(b) The material is sought for statistical research or reporting purposes only and is not in a form containing the inmate's name, number, symbol or other identifying particular; or

(c) The disclosure is made pursuant to a valid court order.

Inmates and former inmates shall be entitled to examine and copy information in their files, challenge its accuracy and request its amendment. Upon notice to the inmate, facility administrators may withhold information that might endanger others or jeopardize facility security. Information given by an inmate to any employee of the correctional authority in a counseling relationship should be privileged, except where the information concerns a contemplated crime or disclosure is required by court order. The personal file of an inmate shall be kept by the facility for a period of five (5) years.

6-(9) Inmate Count. Whenever there are five (5) or more inmates in a facility, a count of the inmates shall be made two (2) times daily, once in the morning and once in the evening. The number of inmates shall be recorded in the log book required by this regulation after each count.

6-(10) Log Book. In each facility the facility administrator or his designee shall keep one or more log books. In the log book or books shall be recorded the following:

(a) personnel on duty;

(b) the count provided for in this regulation;

(c) entry and exit of physicians, attorneys, ministers, visitors and other entries to and exits from the facility by nonfacility personnel;

(d) entries and releases of inmates; and

(e) any unusual occurrences within the facility, such as reports of allegations of

i suicide or alleged attempted suicide of an inmate;

ii homicide or attempted homicide by an inmate;

iii death (other than homicide or suicide);

iv escapes or attempted escapes;

v assaults by inmates or staff;

vi any other crimes or serious misconduct committed by inmates or staff in the facility;

vii serious injury or illness of inmates or staff;

viii any alleged serious infraction of facility rules;

ix fire; or

x riot.

6-(11) Isolation Log. The facility administrator shall keep a log of all admissions, releases, visits, medical care, disciplinary actions and any unusual events concerning an inmate subject to disciplinary action.

6-(12) Record of Inmate Entry and Exit. If inmates enter or exit a facility for any reason, including work release, a record shall be kept of the name of the inmate, the time the inmate leaves and enters the facility, why he left the facility and who authorized him to leave the facility.

6-(13) Inmate Population Report. Each facility administrator shall keep and each year submit to the Standards Administrator a report on a form approved by him on the following:

(a) The number of inmates held each year:

i All inmates;

ii Pretrial detainees;

iii Sentenced inmates.

(b) The types of charges for which pretrial detainees are held and the number held under each charge;

(c) The types of crimes for which sentenced inmates are held and the number held for each crime;

(d) The daily average population of the facility:

i All inmates;

ii Pretrial detainees by age and sex; and

iii Sentenced offenders by age and sex.

(e) The average length of stay of inmates:

i All inmates;

ii Pretrial detainees by those who obtained bail and those who did not obtain bail;

iii Sentenced inmates.

(f) Any other information required by the Standards Administrator.

6-(14) Implementation. All provisions of this regulation shall be implemented within one (1) year of the effective date of these regulations.

Commentary

Intake Form

Section 6-(1) prescribes the information that must appear on an initial intake or booking record to be filled out for each inmate. There is general agreement that each of the required items of information should be recorded. See, for example, the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, pp. 12-18, the Illinois County Jail Standards, p. 77, and the South Carolina Department of Corrections, Materials Relating to County Jails and Juvenile Detention Facilities in South Carolina, p. 13.

According to a study by Marie Arnot of Nebraska local criminal detention facilities, For Better or Worse (1970), p. 28, virtually all facilities do keep records of inmates' names, dates of entrance and release and the cause of their commitment. More than this must be required, however. It is particularly important that an inmate be charged correctly and by statute number. If this procedure is not followed, the inmate may be able to file suit alleging that he was held illegally. The names of the arresting and booking officers (who may be the same person) should be recorded because, in the event of a subsequent problem, a court will be more easily persuaded by a written record of the identity of the responsible person than by an oral statement based upon fading memory. Even if facility personnel know the inmate, his description should be taken down because a copy of the record may be requested by law enforcement officials in other areas and they will want the description. Also, facility personnel can change over time and later personnel may not know the inmate. The same remarks apply to recording the other sections of the Intake Form.

Retention of Inmates' Property

The regulations under §6-(2) require that a list of property taken from an inmate be made with a description of each item. The list is to be signed by both officer and inmate and a copy given to the inmate as a receipt. In situations where the inmate refuses to sign the list, the regulations provide that a record be kept of the reasons stated by the inmate for refusal to sign. If an inmate watches as property is taken and listed, signs the list and retains a copy of the list for reference, he will be less likely to make a false claim that property was stolen or lost because he can compare his list with what is actually returned. If a false claim is made, these precautions will help to persuade a court that, far from being negligent or dishonest, facility personnel were very careful in their handling of inmate property. A simple description of items of property must be recorded as well so that an inmate may not later allege that lower quality items were substituted for some of the items on his property list.

According to the Nebraska Jail Survey, virtually all Nebraska facilities already do make a list of inmate valuables taken. In most, the officer signs the list but the inmate does not. Forty-two percent of the facilities include a description of each item in their inmate property lists. Ten percent report complaints regarding the handling of inmate property, which indicates that a problem does exist.

It should be noted that these procedures are recommended by various authorities. See, for example, the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 13, and the U. S. Bureau of Prisons manual, The Jail: Its Operation and Management, pp. 17-18.

Property taken from inmates must be kept under lock and key. The Nebraska Jail Survey shows that 78% of Nebraska facilities already do this. The reason, of course, is to prevent theft or loss. In a suit against a facility administrator for negligently allowing property to be stolen or lost, it will also doubtless be of great weight to the court that this procedure is followed.

When property is returned to an inmate, he is to be asked to sign a statement saying that all property has been returned to him. This, of course, is for the protection of facility personnel. An inmate's allegation that property was stolen or lost by facility personnel will be less credible if he has previously admitted in writing that it was all returned to him. Interviews with sheriffs show that this pro-

cedure is widely followed. If an inmate refuses to sign, the property must still be returned to him, however, because it still belongs to him and facility personnel have no legal right to keep it. The reason for his refusal to sign is to be noted in case further action should be taken.

If an inmate is unable to sign a property form because of intoxication or some other reason, he should be asked to sign the form when he becomes able. If possible two facility personnel should be present when his property list is made. The object of these provisions is simply to provide the best protection to facility personnel possible when an inmate cannot verify what property was taken from him.

Account of Inmate Expenditures

An accurate account of inmate funds must also be kept. If no one knows the amount of money which should be in an inmate's account, money can be taken or lost without anyone's knowledge. If accurate records are kept, however, facility personnel will always know how much money an inmate has and what disposition was made of funds no longer in his account. Loss or theft will therefore be less likely. The record need not be complex. It can be kept in any manner the facility administrator wishes, so long as it is accurate. Also, a receipt should be given when money is deposited. An inmate should sign a slip when he requests that money be spent for him so he will not be able to later allege that the expenditure was unauthorized. It should be noted that 86% of Nebraska facilities, according to the Nebraska Jail Survey, already do keep an account of inmate expenditures.

Inmate Records

The regulations require that a personal file with certain minimum records in it be kept on each inmate. The minimum records consist of the intake forms, classification data, records of all medical attention and disciplinary action, copies of inmate property records and grievance reports and responses.

The intake forms must be kept so that a history of each inmate will be maintained. A history is needed so that such decisions as inmate classification may be made.

As the Commentary to Regulation 12 explains, records of medical attention should be kept for the protection of the facility administrator and for use during later times when the inmate may again be incarcerated.

As the Commentary to Regulation 11 explains, records of all disciplinary action should be kept so that they may be reviewed by a court in the event suit is brought and to aid in later disciplinary proceedings and in classification. Even in a small facility, it is better to have such matters permanently recorded rather than to rely on memory, especially since facility personnel do change over time. They are also needed so that the Standards Administrator may ensure that proper procedures are being followed. The same considerations apply to the other material required as part of the Inmate Personal File.

Copies of inmate property records must be retained as well. The purpose of maintaining these records is to protect facility personnel, as explained above.

Access to Inmate Files

Inmates should be allowed access to all files kept concerning them. The information in facility files can have a significant impact on an inmate's life. He should, therefore, have the opportunity to inspect them so he can point out any inaccuracies. Access to personal records of inmates by persons other than the inmate should be restricted. Privacy is protected by the United States Constitution, under both the Bill of Rights and the Ninth Amendments. Cf. Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973). One aspect of privacy is control over information concerning oneself, and dissemination of information concerning a prisoner without his consent is an invasion of privacy which the state must justify by a compelling state interest. See Griswold v. Connecticut, supra; Roe v. Wade, supra; Fried, Privacy, 77 Yale L.J. 475, 482 (1968); Note, Concept of Privacy and the Fourth Amendment, 6 U. of Mich. J.L.Ref. 154, 169 (1972). One area of compelling state interest is in the pursuit of criminal perpetrators. See, e.g., United States v. Rosen, 343 F.Supp. 804 (S.D.N.Y. 1972). The regulations permit access by criminal investigators to all information relevant to the criminal investigation. In all other situations access depends upon consent of the inmate.

Access to data--directory information--concerning the inmates is permitted. Such information includes name, address, telephone, date and place of birth and other items designed primarily to locate the person involved.

Allowing inmate access to personal files is required by recent court decisions. Kohlman v. Norton, 380 F.Supp. 1973 (D. Conn. 1974); Fisher v. United States, 382 F.Supp. 241 (D. Conn. 1974); Prewitt v. State, 8 Cal.3d 470 (1972); and In re Olson, 37 C.A.3d 783, 112 Cal. Rptr. 579 (1st Div., 1974). Certain information which might endanger others or jeopardize facility security should not be available to inmates. The practice which allows review of personal records even where immediate harm is not resulting is not new and is provided in the consumer area by the Fair Credit Reporting Act of 1970, 15 U.S.C. §§1681 et seq. (1970).

In many situations the need to foster confidentiality, to encourage divulgence of information, is more important than most (but not all) state interests. In few situations is this more true than in the inmate-social worker relationship. The general need for confidentiality and trust in such relationships is magnified by the fact that the state has removed, for all practical purposes, all other persons to whom the inmate might turn to confide. Attorneys, spouses and others are not always around; indeed, visits are rare. The social worker, however, is often present and readily available for private discussions. To deprive an inmate of other confidential discussions, and then require full disclosure by the social worker would not only jeopardize the social worker-inmate relationship, but would seriously undermine the prisoner's belief in the fairness of the facility as well.

Inmate Count

Security requires that, whenever there are five or more inmates in a facility, a formal count of them be made and recorded two (2) times daily. The exception for less than five (5) inmates reflects the fact that these regulations do not place burdens on smaller facilities that logically apply only to larger ones. At the same time two (2) counts each day where required are appropriate. This provision essentially follows the recommendation of the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 48. The count is required by security because it will disclose the absence of any inmate who has escaped or made his way into an unauthorized portion of the facility. It may be dispensed with when there are fewer than five inmates in the facility because facility personnel will then be able to count inmates at a glance during the hourly check required by §5-(6).

Log Book

Each facility should keep a log book in which is recorded at least the personnel on duty, the count, entry and exit of nonfacility personnel, time of entry and release of inmates, and unusual occurrences. If there are any unusual occurrences it can be vital to a later investigation that a written record be promptly made of the occurrence which took place and that there be a record of occurrences which preceded the incident and may help explain it. The log is also useful as a record of who was responsible for any actions taken which are later questioned in court or by the public. It should be noted that the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 27, also recommends that a log be kept.

Record of Inmate Entry and Exit

Security also requires that any time an inmate enters or exits the facility a record, including the time he leaves and returns and who authorized the release, is to be kept. This record is needed because facility personnel are accountable to the public for any improper release. Even in small facilities the record is needed because it is always possible to forget the time an event occurred. This record should also be useful for security purposes, because, if an inmate is to return to the facility after a specified period of time, it will disclose whether or not he did.

Inmate Population Report

Certain types of inmate population records should also be kept by a facility and reported to the state. This includes such information as average daily inmate population and the types of crimes with which the inmates in the facility have been charged or convicted. This type of information is essential to enable an administrator to plan and justify his own budget. It is also crucial if the administrator or governing body is planning to build a new facility or seek state or federal funds for any purpose. The National Sheriffs' Association, Jail Administration (1974), pp. 56, 65. Such information should be collected on a statewide basis so that these

regulations may be changed when needed, so that crime statistics may be gathered and so that the Legislature or any other state agency dealing with the local facilities will have an accurate picture of their size and the types of inmates they hold. National Advisory Committee on Criminal Justice Standards and Goals, Corrections, Standard 15.1, Commentary, pp. 519-520 (1973). See also American Correctional Association, Response of the American Correctional Association to Correctional Standards, pp. 45-47 (1976).

Regulation 7
Public Information

7-(1) Public Information Plan. The facility administrator of each jail should develop and implement within six (6) months of the effective date of these regulations a plan for the dissemination of information about the facility to the public, to other government agencies and to the media. The public as well as inmates shall have ready access to the following printed material:

(a) These regulations;

(b) Specific facility rules and procedures affecting inmates as developed in accordance with these regulations.

7-(2) Admission for Inspection. The facility administrator shall admit to the facility or any part of any facility at any time:

(a) Members of the Board of Pardons;

(b) Members of the Legislature;

(c) Any judge; or

(d) Members of the local governing body.

7-(3) Citizen Involvement. Each facility has a responsibility for encouraging citizen interest and involvement.

(a) The facility administrator or his designee should be responsible for securing citizen involvement in advisory capacities within the facility.

(b) The facility administrator or his designee should seek to diversify facility programs by

obtaining needed resources from the community that can be used in the facility. He should also re-evaluate any procedures and regulations which inhibit the participation of inmates in any community program.

(c) The facility administrator or his designee should provide for public inspection of the facility at reasonable times in a manner designed to preserve the dignity and privacy of inmates and the security of the facility.

Commentary

> Historically, the main purpose of the jail has been to isolate defendants and offenders from society. Unfortunately, the isolation of prisoners resulted in the isolation of the jail and its programs from the community it served. The National Sheriffs' Association, Jail Programs (1974), p. 7.

Negative attitudes and apathy within the community have often fostered and reinforced the local detention facility's isolation. However, many individuals and groups in local communities, if given the opportunity, will become interested in local detention facilities and their inmates. This is exemplified by the high rate of volunteer response to the invitation to visit a local facility to administer the Nebraska Jail Survey. Public interest can be translated into support for improved services at and for the facility.

The public must first be informed about the nature of local criminal detention facilities if there is to be widespread support for the corrections efforts of facility personnel and the provision of needed service programs. Opening the doors for public inspection and granting ready access to specified public officials will serve this informational need. The National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 7.4, Commentary, p. 245 (1973), strongly encourages an open-door policy which is consistent with the need for privacy of inmates and security of the facility.

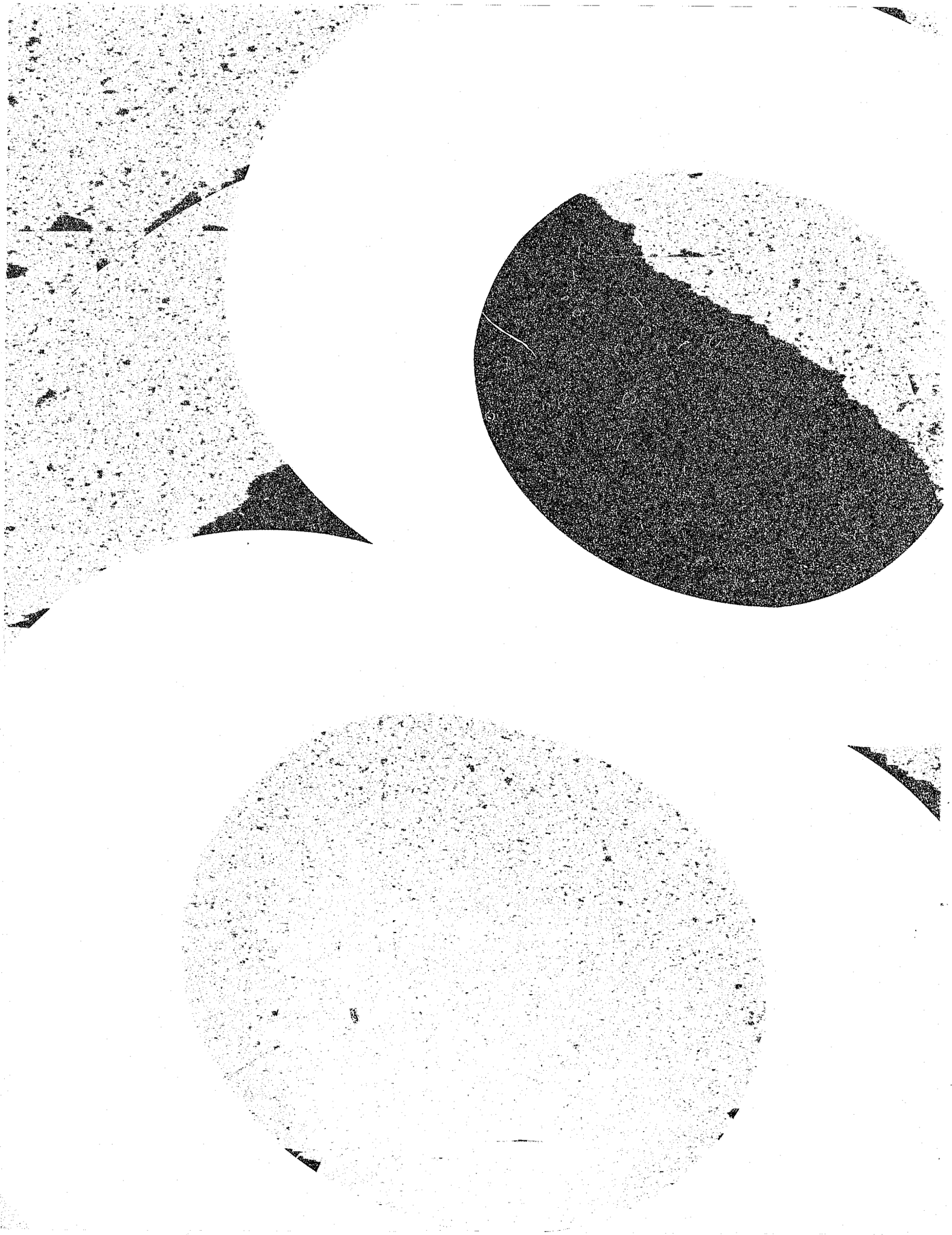
This regulation is aspirational. It is a goal rather than a standard. It encourages the facility administrator to be open to citizen involvement. In addition, it encourages interaction with other public and private agencies to stimulate them to provide inmates with some of the needed services that are provided people in the community.

> Today, many enterprising and imaginative jail administrators have been able to persuade heads of agencies delivering health, social, mental health, education, manpower, and other services in their communities to perceive the jail as a service center. Arrest and confinement are frequently accompanied by other problems, either for the prisoner or his family. Thus, the jail is an excellent point for delivery of crisis intervention services and identification of situations in which there is a need for services not only to the prisoner but to his dependents. Receiving help from a concerned staff member at this point can have a strong impact upon a prisoner and set the stage for positive prisoner-staff relationships. Jail Programs, p. 8.

The National Sheriffs' Association has referred to the facility staff as "brokers" for services; that is, they identify persons or situations that indicate a need for a particular service and contact a representative of an appropriate agency for follow-up. In reality, the "service brokerage" function is much more practical for facility staff than an attempt to provide a wide range of services, many of which require specialized knowledge and training.

It is, however, necessary that responsibility for planning and coordination of these services be fixed, preferably by a senior staff person or the facility administrator, to minimize overlapping and duplication of effort.

The major asset in achieving the aspirational goal of development of such programs is the imagination and persuasiveness of the facility administrator who knows community services and their executives.



Regulation 8
Classification

8-(1) Classification Plan. Each facility administrator shall develop and implement within nine (9) months of the effective date of these regulations a written classification plan and reclassification plan for assignment of inmates to programs, activities and living units. The plan which must be approved by the Standards Administrator shall include the criteria used in making such assignments. In the classification and assignment of inmates to living units, the following criteria shall be met:

(a) Female inmates shall be housed separately from male inmates;

(b) Persons under the age of fourteen (14) years shall not be admitted to any facility. Applicable statutes regarding the housing of minor children petitioned against as juvenile delinquents or in need of supervision shall be adhered to; all inmates under the age of eighteen (18) shall be housed separately from inmates the age of eighteen (18) or over;

(c) Inmates who, because of their criminal record, nature of charges pending against them or their actions within the facility, are determined to be a threat to the safety of other inmates or whose safety is threatened by other inmates shall be housed separately from other inmates;

(d) Provisions shall be made for separate housing of inmates who appear to be a threat to their own safety. Such provisions shall include half-hourly personal viewing of the inmate by facility personnel. Inmates who are a threat to their own safety shall be within the constant view of either facility personnel or other inmates.

(e) Provisions, if any, employed to establish levels of security shall be stated.

8-(2) Review of Classification. Each inmate's classification shall be reviewed by the facility administrator at least once each thirty (30) days, except that inmates classified under §§8-(1)(c) and (d) shall have their classification reviewed at least every five (5) days.

8-(3) Appeal of Classification. Each facility administrator shall accord a right to appeal to an inmate who is classified under §§8-(1)(c) and (d).

(a) Such appeal shall include:

i A hearing identical to the one required for major disciplinary violations;

ii Notice and a statement of reasons for the contemplated classification at least twenty-four (24) hours before the hearing; and

iii Written reasons for the decision reached at the hearing forwarded to the inmate.

(b) Appeal proceedings shall not be used to impose disciplinary sanctions or otherwise punish inmates for violations of facility rules or other misconduct;

(c) Where such actions must be made on an emergency basis, these procedures shall be followed subsequent to the action.

8-(4) Separate Housing. Conditions of separate housing shall meet the following standards:

(a) The living unit shall be as large as others in the facility. It shall be clean, well lighted and have adequate heat and ventilation. It shall be equipped with a toilet, bedding and water for drinking and washing. The inmate may be moved to an unequipped room if it is necessary to prevent suicide or other self-destructive acts or damage to the room or equipment.

(b) Inmates shall receive the same meals as those provided to the rest of the facility population.

(c) Under no circumstances shall an inmate be deprived of normal clothing except for his own protection. If such deprivation is temporarily necessary, he shall be provided with a one-piece garment and bedding adequate to protect his health.

(d) Inmates shall be permitted to maintain the same level of personal hygiene as inmates in the general population. They shall be provided with the same toilet articles and have the same bathing and shaving schedule as the rest of the facility population unless such articles or schedule are determined by the facility administrator or his designee to present a danger to the inmate. Supervision shall be required when shaving articles have been provided for an inmate.

(e) Inmates shall be given the same opportunity for exercise as other inmates.

(f) When an inmate suspected of being mentally ill is placed in separate housing, the designated physician shall be notified immediately. Such isolated inmates shall be examined by the designated physician upon being placed in isolation or within eight (8) hours thereafter and also upon discharge from isolation. Regular visits by medical personnel every twenty-four (24) hours shall be provided unless the inmate can see such personnel at sick call.

(g) The length of detention in separate housing shall not be longer than required by the reason for such classification and the inmate's behavior while isolated.

(h) Visiting, mail and access to legal materials, legal counsel and the courts may not be denied or curtailed. Access to media and reading material, freedom of expression within the facility, freedom of religion and telephone privileges may be limited only to prevent a substantial threat to facility security as provided in §10.

Commentary

Classification Plan

Every facility administrator follows some sort of plan in classifying and assigning inmates to living units and (if they exist) programs. For example, the Nebraska Jail Survey shows that an overwhelming number of facilities separate males from females and juveniles from adults. The proposed regulations ask facility administrators to institutionalize the plan. The purpose of this requirement is to motivate facility administrators to devote some thought to classification and to allow the Standards Administrator to offer specific technical assistance on classification systems. A number of courts have ordered local detention facilities to develop and implement formal classification plans. See Alberti v. Sheriff of Harris County, Texas, 406 F.Supp. 649 (S.D. Tex. 1975); Jones v. Wittenberg, supra, 330 F.Supp. 707; and Martinez Rodriguez v. Jimenez, 409 F.Supp. 582 (D.C. Puerto Rico 1976).

Classification criteria must be rational and reasonable rather than arbitrary and capricious. Kelley v. Brewer, 525 F.2d 394 (8th Cir. 1975); Pugh v. Locke, supra; Marchesani v. McCune, 531 F.2d 459 (10th Cir. 1976). A classification plan that takes into account the existing situation in the facility and which is available for review will be of great evidentiary value in the event a facility's classification plan is challenged, for it will show that the facility does have classification criteria and that they are rational.

The plan must contain certain minimum provisions. First, it must provide for the separation of juveniles under age sixteen (16) from the sight and hearing of other inmates and the housing, outside of jails, of all juveniles age fourteen (14) or under as required by 1943 Nebraska Revised Statutes §43-212 R.R.S. Neb. 1943.

Second, males must be separated from females. Propriety and the safety of female inmates require this. It is also recommended by the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 3.

Third, provision must be made for the separation of inmates who, because of the charges against them, their criminal record or their actions, present a threat to the safety of other inmates or whose safety is threatened by other inmates. Several recent cases have held such separation needed in order to protect inmates from punishment which is either cruel and unusual or without due process of law. Crump v. United States, 534 F.2d 72 (5th Cir. 1976); Pugh v. Locke, supra; and Alberti v. Sheriff of Harris County, Texas, supra. This regulation is designed to protect the safety of inmates. Separation will also help to protect facility administrators and governing bodies from suits for negligence. See, for example, Webber v. Andersen, 187 Neb. 9, 187 N.W.2d 290 (1971); Webber v. City of Omaha, 190 Neb. 678, 211 N.W.2d 911 (1972); and Daniels v. Andersen, supra, all involving negligent supervision of inmates.

Finally, provision must be made for the separation from others, and close supervision, of inmates who appear to be mentally ill, suicidal, intoxicated or under the influence of a controlled substance or who are committed to the facility during a mental health commitment hearing and actually constitute threats to themselves or others. This provision has been recommended by the Nebraska Society for Mental Health and by the National Sheriff's Association handbook on Jail Security, Classification and Discipline, p. 32. As the handbook points out, these inmates must be closely supervised to prevent suicide attempts or attacks on others. Again, this is also a wise precaution to protect administrators and governing bodies from possible liability. See Daniels v. Andersen, supra.

Review of Classification

If an inmate spends thirty days in a facility, §8-(2) requires that his classification and assignment to housing unit and programs be reviewed. If he is separated because of §§8-(1)(c) or (d), a more frequent review is required, since the length of stay in separate housing is contingent upon the behavior of the inmate. Normally, separate housing status must be reviewed at least once a month. Whether it is an abbreviated or monthly review, it need not be long or formal. It need only involve the examination of the inmate's record and a decision whether, in view of his behavior since his last review or original classification, he should be continued in

his present classification, housing unit and programs. Fairness to the inmate dictates this regulation. His behavior may change over time and his classification should reflect this. Since the average post-trial stay of an inmate in a Nebraska facility is only seventeen days according to the Nebraska Jail Survey, this requirement will add little burden to facility administrators. This standard is also supported by the Eighth Circuit's decision in Kelley v. Brewer, supra. There, the court held that if an inmate is held in segregation for a long period of time, due process requires that his status be periodically reviewed in a meaningful way by the application of relevant standards.

Appeal of Classification

An appeal of a classification under §§8-(1)(d) and (c) is required to assure fairness and to prevent injury to inmates. An arbitrary classification which wrongly places an inmate in separate housing should be subject to immediate review through a procedure analogous to that required for disciplinary violations. The same deprivations result from disciplinary violations and it is reasonable that the protection which is provided to the subject there be accorded to inmates suffering similar adverse consequences as a result of their classification.

Separate Housing

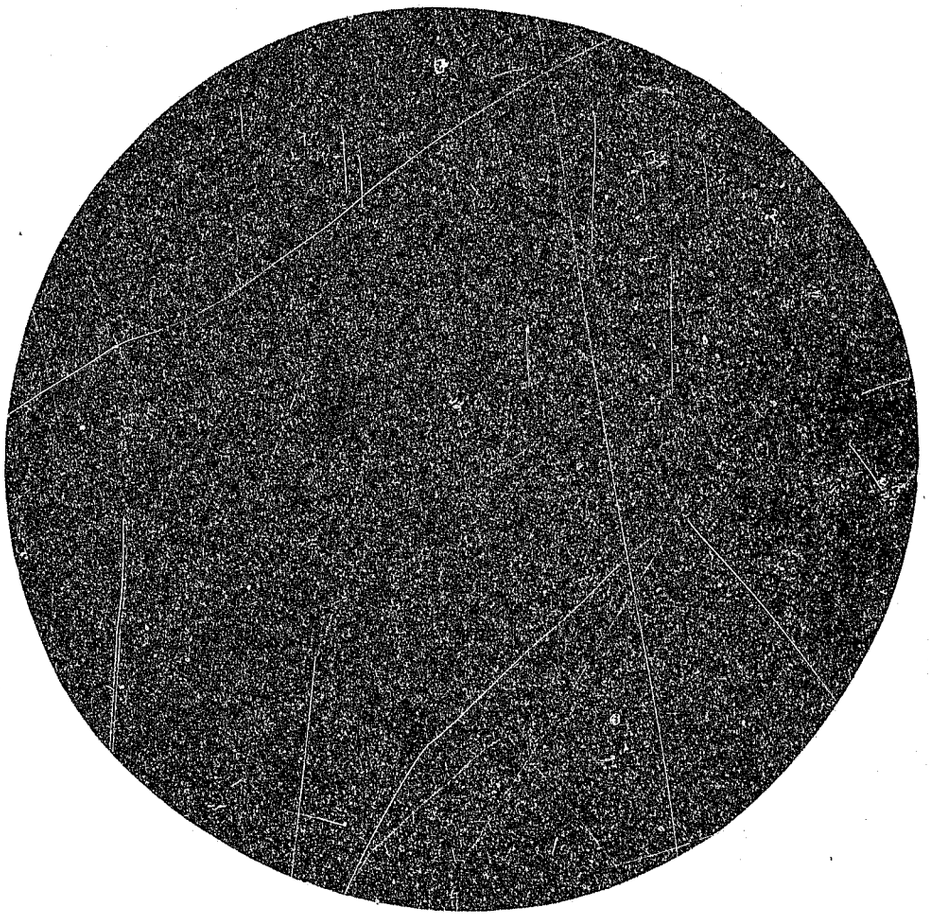
Separate housing is a generic term used to describe any mode of incarceration, whether imposed for punitive or administrative reasons, which to a great extent isolates the inmate from contact with members of the general facility population. Examples include solitary confinement as such, and many forms of maximum security confinement. Perhaps the majority of cases considered have involved inmates confined in isolation and the debasing conditions under which an inmate is forced to live while isolated, or the abusive treatment to which the inmate is subjected, which conditions may support a claim of cruel and unusual punishment, regardless of whether the human isolation incident to such confinement is in itself objectionable.

Moreover, the very fact that an inmate has been placed or kept in isolated confinement may be cruel and unusual if such a penalty is disproportionate to the offense for which it was imposed, or thereafter becomes disproportionate in view of its excessive length. Fulwood v. Clemmer, 206 F.Supp. 370 (D. Col. 1962).

Although separate housing does not in itself violate the Eighth Amendment, a warden who imposes it as a punishment for discriminatory or other improper reasons may be held liable. The court in Baynes v. Ossakow, 336 F.Supp. 386 (D.C. N.Y. 1972) refused to dismiss a complaint for monetary damages under the Civil Rights Act, 42 U.S.C.A. 1983. In spite of the fact that he was beginning to comply with his warden's order to strip for a search, the plaintiff state prisoner alleged that he was severely beaten by numerous prison guards and then segregated for a 15-day period within a "strip" cell devoid of all equipment except a sink and toilet. He alleged that such confinement was arbitrary and, therefore, cruel and unusual, and thus constituted a claim which a federal court must review.

Because the use of isolation is so frequently linked with other harsh measures, the regulations require that the conditions of separate housing meet standards similar to that of assignment to an individual cell, that the inmate receive the same meals as others and that he not be deprived of normal clothing except for his own protection. Similarly, provisions for personal hygiene, exercise and other rights and privileges are safeguarded. The regulations also require that the length of stay in separate housing must depend on the seriousness of the underlying cause and the inmate's behavior during separation.

The regulations do not require segregation of pretrial and post-trial inmates or the segregation of inmates on the basis of the crimes they allegedly committed. Such segregation plans were considered but were rejected for the more basic housing classification procedure provided by these regulations. The regulations provide an intelligent classification based upon safety of individuals. The appeal and review procedures assure protection of individual rights. The basic assumption advanced by proponents of segregation of inmates is the need to protect the pretrial detainee from exposure to convicted offenders. This section of the regulations deals solely with classification for the purpose of housing, and, in this context, the regulations are as specific as necessary to protect the security of inmates. In small local facilities the requirement of segregation beyond that spelled out in the regulations makes little sense. In larger institutions the facility administrator is allowed more flexibility in classifying inmates.



Regulation 9
Inmate Services

9-(1) Programs. The facility administrator of each jail shall develop a written plan for access to inmate services. The plan shall provide for procedures to determine eligibility for inmate services and to select among applicants for programs or services.

9-(2) Range of Programs. The plan of each jail shall utilize the resources of the community to provide a variety of educational, vocational, counseling and other services and available work opportunities appropriate to inmate desires.

9-(3) Inmate Participation. Offenders may be required to perform services for the operation of the facility. All inmates may be required to maintain their own living quarters. Inmates shall not be required to participate in any other programs or accept any inmate services.

9-(4) Other Services. Each jail administrator shall if possible provide opportunities for access to available religious, mental health, alcoholism and addiction counseling for inmates desirous of such counseling.

9-(5) Notification of Availability of Programs. The facility administrator shall advise courts, sentencing judges and the Office of the Standards Administrator of the extent and availability of services within that court's jurisdiction.

Commentary

The National Sheriffs' Association handbook on Jail Programs (1974), states that the most serious problem in jail administration and the most difficult to deal with is inmate idleness. Archaic physical plants, lack of space, lack of personnel and lack of funds all contribute to the problem. The handbook encourages an imaginative use of community resources as the solution to this dilemma.

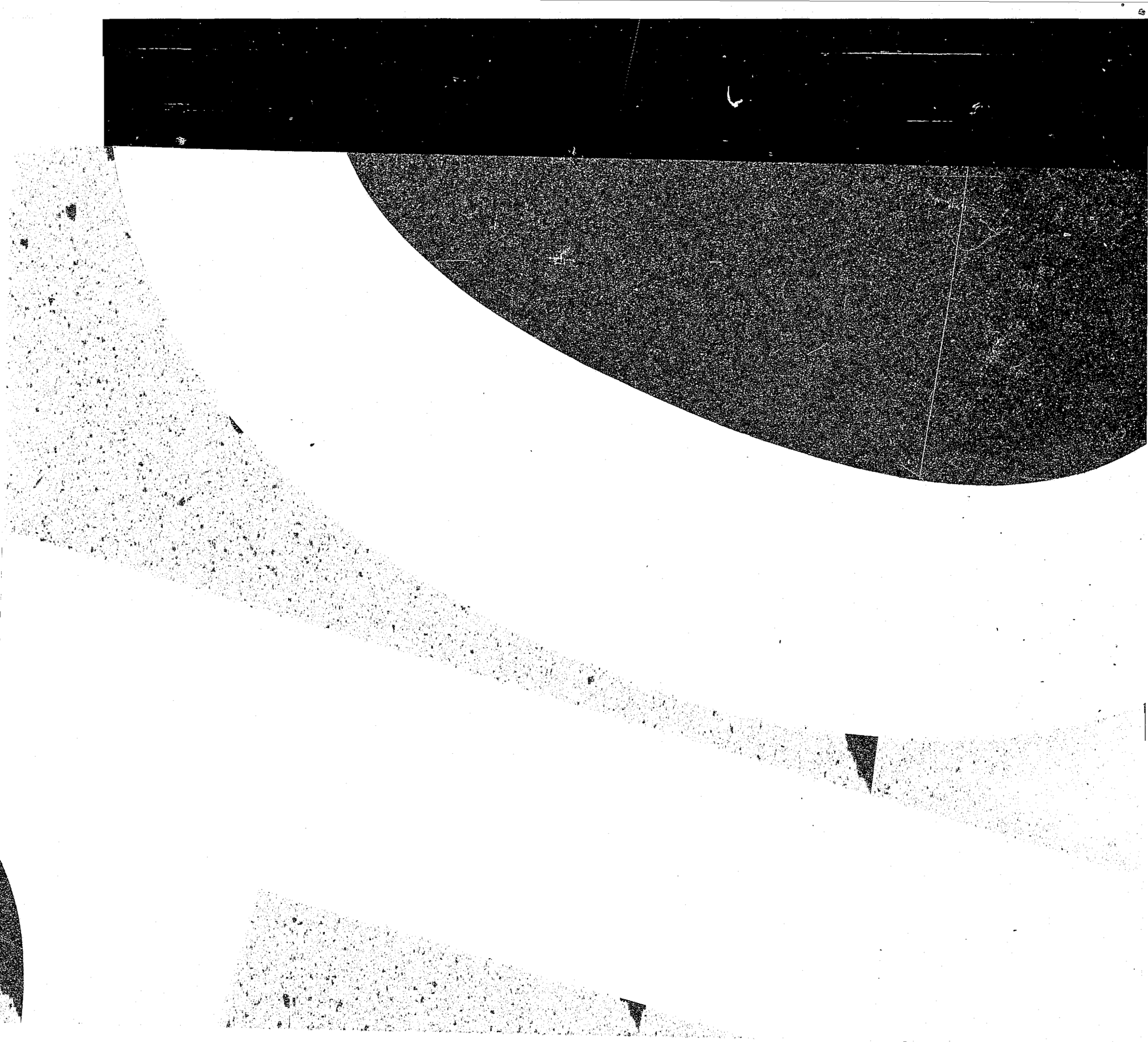
Few facilities actually provide meaningful services for their inmates. Rather, in most facilities, educational and vocational training is grossly inadequate, and idleness is the rule. Also, programs of psychiatric and psychological counseling are understaffed or nonexistent. The Nebraska Jail Survey revealed that only 4% of the facilities claim any kind of educational programs, and barely 5% provide vocational training programs for their inmates. The question presented is whether inmates have an enforceable right to access to meaningful rehabilitative programs.

The standard developed for services envisions a range of programs including education, vocational training and work programs. These types of programs receive support in the handbook Jail Programs. The handbook reports that the major area of concentration in work activities has been the maintenance and operation of the facility itself--cleaning, painting and minor repairs as well as food service work. This building and ground maintenance might be expanded to other governmental agencies outside the jail. Such programs may be limited by the need for supervision, although departments receiving service may be able to provide staff who, with some training, can supervise inmate workers.

The Nebraska Jail Survey reveals that city facilities do not appear to sponsor any kind of work release programs. This is probably because they are chiefly short-term holding facilities. On the other hand, 71% of Nebraska's county facilities do maintain a work release program.

Many work opportunities have some training or skill-retention value. As the handbook points out and as the Nebraska Jail Survey shows, most individuals spend only a short time in jail. Therefore acquiring a complicated skill is unlikely, but there is the opportunity to test one's aptitude and interest in some type of work such as food service, painting, clerical work or vehicle maintenance. This experience may be useful as a prelude to training release or post-release training arranged by staff.

The most useful service a local criminal detention facility can provide is to advise inmates of available community services and encourage utilization. Such efforts are directory in nature and entail identifying specific inmate needs and assisting the inmate in obtaining help from community resources. Since most inmates stay only a few days at a local facility, it is impractical to expect an elaborate program. Nonetheless, invaluable rehabilitative services can be rendered merely by assisting the inmate to find community resources such as legal aid attorneys, local welfare agencies, schools, ministers, social workers, potential employers or organizations designed to help alcoholics, the mentally ill or ex-offenders.



Regulation 10
Programs and Activities

10-(1) Mail. Each holding center or jail administrator shall develop and implement within six (6) months of the effective date of these regulations a written plan for the handling of inmates' mail consistent with established legal rights of inmates and facility security. Lockup administrators need not develop such written plan, but shall comply with the provisions of this subsection. Each such plan shall include at a minimum the following:

(a) Facility staff shall have the right to inspect incoming but not outgoing mail, and neither incoming nor outgoing mail shall be read or censored. If contraband is discovered in incoming mail, it shall be removed. It is recommended that cash, checks or money orders be removed from incoming mail and credited to the inmates' accounts.

(b) Notice of the seizure of contraband shall be given to the inmate and to the sender. Written reasons for such seizure shall be given in the notice.

(c) The inmate shall be permitted to use the grievance procedure to challenge the seizure of contraband. The sender shall be allowed the opportunity to appear and challenge the seizure before the facility administrator or a designee empowered to reverse the seizure.

(d) Unless it is needed for a criminal investigation or prosecution, contraband which can legally be possessed outside the facility shall be stored, returned to sender, given to another person or destroyed, as the inmate wishes.

(e) Facility personnel shall not limit the volume of mail to or from an inmate. Inmates shall be permitted to purchase or receive as much writing material as they wish for writing purposes.

(f) If an inmate is indigent, he shall be provided free of charge sufficient postage, envelopes and writing materials to write and send five letters per week if he wishes to do so. Inmates shall also be provided free of charge, if they are indigent, sufficient postage, envelopes and writing materials to draft and send all legal documents or correspondence to courts, attorneys, law students and paralegal assistants providing them with legal services.

(g) An inmate may send mail to or receive mail from whomever he wishes.

(h) The facility administrator may choose to attach to any outgoing mail a letter disclaiming any administrative responsibility for the nature or contents of such mail, so long as such a practice is applied equally to all inmates.

(i) Outgoing mail shall be collected and sent daily except Sundays and holidays. Incoming mail to an inmate shall be delivered to him within twenty-four (24) hours of its arrival at the facility.

10-(2) Visiting. Each facility administrator shall develop and implement within six (6) months of the effective date of these regulations a written plan for visitation.

(a) Each jail's plan shall include at a minimum the following:

i Nine (9) visiting hours per week;

ii Three (3) visiting days per week;

iii One (1) weekend visitation period of at least four (4) hours;

iv Two (2) hours of visitation on one week day after 6:00 p.m.;

v Special additional visiting hours and arrangements for visitors who must travel over 150 miles;

vi Provisions to assure that visits shall not be limited to less than one-half hour;

vii Provisions to assure that during regular visitation hours, detainees are permitted at least two (2) hours of visitation per week. Provisions to assure that each offender is allowed at least two (2) visits per week;

viii Visits by persons providing services or assistance such as ministers, physicians, mental health or addiction therapists, probation officers, attorneys and law students or paralegal assistants providing an inmate legal services shall not count against the minimum visits.

(b) If a detainee is held for longer than six (6) hours after arrest, he shall be allowed one (1) one-half hour visit within twenty-four (24) hours.

(c) Inmates on work release shall be permitted at least two (2) one-half hour visits in the evening or on the weekend each week.

(d) No restrictions shall be placed on who may visit an inmate except that any person who the facility administrator has reasonable grounds to believe presents a substantial threat to facility security or order may be precluded from visiting. No person shall be denied admission to a facility for visitation solely because of age. A person shall not be deemed to present a threat to security or order merely because of a past record of felony or misdemeanor convictions or arrests or a combination of these. No person shall be precluded from visiting an inmate if the threat to security or order can be removed by utilization of a noncontact visit. Notice that a visitor has been precluded shall be given to the inmate in question.

(e) All inmates shall be allowed contact visitation. Contact visitation shall be denied only if:

i A visitor or inmate requests noncontact visitation;

ii It presents a threat to the safety of the visitor or inmate;

iii It presents a substantial threat to facility security;

iv Such denial is being used as a disciplinary measure because of a visit-related disciplinary infraction.

(f) Visitors may be subjected to a pat-down type search and inmates may be searched before and after visits. Searches of inmates shall be conducted in accordance with §11-(5). Visitors shall be required to register their names, addresses and nature of the visit.

(g) A staff member may be present in the visiting area of a facility if necessary for security purposes. Staff shall not monitor conversations.

(h) Persons providing inmate services and assistance, such as ministers, mental health and addiction therapists, inmates' attorneys or any law student or paralegal assistant providing legal service shall be allowed to visit at any reasonable time between 8:00 a.m. and 10:00 p.m. for any reasonable length of time. §§10-(2)(d), (e), (f), (g) and (k) shall apply to visits by such persons. However, if it is urgent that the inmate be seen, such persons shall be allowed to visit the inmate at any time.

(i) Anything brought in by visitors for inmates or given by inmates to visitors shall be treated as mail under §10-(1).

10-(3) Telephone Privileges. Each facility administrator shall develop and implement within six (6) months of the effective date of these regulations a written plan for inmate use of telephones. The plan shall include at a minimum the following:

(a) Detainees shall be allowed to make any reasonable number of calls at any reasonable time.

(b) Convicted inmates may be subject to any reasonable rules on phone calls. At a minimum, however, such rules must permit the inmate to make at least two phone calls per week.

(c) If the facility receives a phone call for an inmate pertaining to an emergency, either the

inmate shall be allowed to receive the call or a message shall be taken and the inmate allowed to return the call as soon as possible.

(d) Phone calls shall not be limited to less than ten (10) minutes.

(e) Inmates may be required to pay for phone calls, except that an indigent detainee shall be allowed at least five (5) free local phone calls per week and an indigent offender shall be allowed at least two (2) free local phone calls per week.

(f) Phone calls shall not be monitored unless otherwise authorized by law.

10-(4) Access to Media. News media shall be permitted access to all parts of any facility at reasonable times so long as such access does not present a substantial threat to facility security or order.

(a) News media shall be permitted at any time to interview any inmate for any length of time unless the inmate does not wish to be interviewed or unless the facility administrator has reasonable grounds to believe that such an interview will present a substantial threat to facility security or order.

(b) Jails and holding centers shall allow inmates access to radios and televisions. Inmates in all facilities shall be permitted to keep and use personal portable radios in their rooms. They shall be permitted to receive any radio or television broadcast except that the facility administrator may set reasonable rules regarding the use of radios and televisions, including hours.

10-(5) Access to Legal Counsel and to the Courts. Personnel and administrators of all facilities shall make maximum efforts to aid inmates in obtaining legal counsel and aid when needed and in gaining access to the courts. In order to aid inmates to obtain legal counsel and aid:

(a) Facility administrators shall make every effort to obtain for inmates the services of legal aid societies, public defender offices, law school programs and other qualified organizations and individuals who are willing to give legal aid and advice to inmates.

(b) Inmates shall be freely allowed to give one another legal advice and to aid one another in the preparation of legal documents. They shall not be permitted to ask for or receive any remuneration for these services.

10-(6) Access to Legal Materials. Inmates shall be permitted to purchase or receive all law books and other legal research materials that they wish. Inmates shall be permitted to keep as many of these materials in their living units as applicable fire regulations permit.

(a) Each jail with a capacity of under one hundred (100) shall provide inmates with immediate access to a law library consisting of materials specified on a list promulgated and revised yearly by the Standards Administrator. The list shall consist of:

i A leading law dictionary;

ii A simple book on criminal procedure;

iii A simple treatise on evidence or trial techniques or practices;

iv A simple treatise on criminal law;

v Rules of the United States District Court, District of Nebraska; Nebraska Supreme Court; local district, county and municipal courts which have jurisdiction over inmates in the facility;

vi An up-to-date copy of the Nebraska Revised Statutes;

vii A list of all lawyers in the county with their phone numbers and business addresses;

viii These regulations;

ix Any other suitable materials.

(b) Each jail having a capacity of over one hundred (100) shall provide inmates with immediate access to a law library consisting of those materials required for facilities with a capacity of under one hundred (100) and the following:

i Nebraska Supreme Court Reports, Nebraska Digest (West) or Northwestern Reporter Digest (West) or equivalent digest approved by the Standards Administrator;

ii Digest to United States Reports (U.S. Govt. Printing Office), Supreme Court Reporter (West), United States Supreme Court Reporter (Lawyer's Cooperative; Bancroft Whitney) or equivalent approved by the Standards Administrator.

(c) Facility administrators shall make reasonable efforts to obtain law books or copies of legal material requested by inmates which are not required to be made available pursuant to §§10-(6)(a) and (b).

(d) Every area where inmates do legal research shall have lighting adequate for sustained reading.

(e) Inmates shall be allowed access to a facility's law library at any time between 8:00 a.m. and 10:00 p.m. when they are not required to be engaged in other activities.

10-(7) Freedom of Expression within the Facility. The facility administrator shall assure that the right of inmates to freedom of expression is respected.

(a) Inmates shall be permitted to keep, write or circulate among other inmates anything which does not present a substantial threat to facility security.

(b) Inmates shall be permitted to discuss any subject among themselves. They shall be permitted to meet in groups unless such meetings conflict with the regulation on classification or disciplinary actions or present a substantial threat to facility security.

10-(8) Freedom of Religion. The facility administrator shall assure that the right of inmates to freedom of religion is respected.

(a) Inmates shall not be in any way punished or rewarded for practicing or not practicing any religion, attending or not attending religious serv-

ices, seeing or not seeing ministers, or in any other way involving or not involving themselves in any religious activities.

(b) An inmate's free exercise of his religion shall not be restricted unless failure to impose the restriction will cause a substantial threat to facility security:

i Special diets required by a religion or religious sect shall be provided where reasonably possible to inmates who are members of that religion or religious sect if the inmate so wishes;

ii Inmates shall be permitted to wear hairstyles, clothing and jewelry encouraged or required by their religion;

iii Inmates shall be permitted to attend religious services inside the facility. Both ministers from outside the facility and inmates shall be permitted to conduct such services and provide religious counseling.

10-(9) Exercise and Recreation. The jail administrator shall develop and implement within six (6) months of the effective date of these regulations a written plan for inmate exercise and recreation which will provide at a minimum that:

(a) Each inmate over the age of sixteen (16) shall be permitted at least one (1) hour of physical exercise and recreation each day. When weather allows, such recreation and exercise shall be permitted out of doors.

(b) Inmates of age sixteen (16) or younger shall be permitted at least one and a half (1-1/2) hours of physical exercise and recreation each day. When weather allows, such exercise and recreation shall be permitted out of doors.

(c) Any site used for outdoor exercise shall have an area of at least nine hundred (900) square feet or at least

$$\frac{\text{80\% of facility capacity}}{\text{Number of one-hour exercise periods per day}} \times 50 \text{ sq. ft.,}$$

whichever is larger.

(d) Each jail shall make available to inmates an adequate amount of recreational equipment. Jails of a capacity of seventy (70) and above shall at a minimum make available all six (6) of the following; and those of a capacity of under seventy (70) shall at a minimum make available at least i through iv of the following:

i Basketballs and baskets;

ii A variety of games, kits and puzzles;

iii Table tennis tables, balls and paddles;

iv Barbells and weight sets;

v Volleyballs and nets; and

vi Footballs.

Equipment for any other physical sport or activity requiring at least a moderate amount of physical exertion may be provided by jails.

10-(10) General Library. Each jail shall have a general library for the use of both inmates and facility personnel. The library shall be created within six (6) months of the effective date of these regulations.

(a) The library shall contain at least the following materials:

i Newspapers--one local newspaper and one newspaper with statewide circulation (in some cases one newspaper may meet both qualifications). Multiple copies shall be provided if needed.

ii Magazines which are of interest to inmates. It is recommended that one title be subscribed to for each sixteen (16) of the daily average number of inmates held in the facility and that multiple copies be provided if needed. The Standards Administrator shall promulgate a list of magazines most in demand by inmates to aid in the selection of titles. Selection of titles on the list shall not be mandatory.

iii Books which are likely to be of interest and benefit to inmates. The number of books shall be calculated by multiplying the average daily number of inmates held in the facility by five (5). The Standards Administrator shall compile a list of recommended books to aid selection. Selection of books on this list shall not be mandatory.

(b) The materials in the general library shall be responsive to ethnic interests. Materials of special interest to Afro-Americans, Native Americans and Americans with a Spanish speaking background shall be provided in approximate proportion to the average daily population of each of these groups in the facility.

(c) Inmates shall have daily access to the facility's general library during stated hours unless their library privileges have been revoked or restricted as a disciplinary measure.

10-(11) Inmate Commissary. In all facilities provision shall be made for inmates to purchase items such as candy, tobacco products, toilet articles, stationery supplies and newspapers.

10-(12) Locks and Lights. Inmates shall be able to control lights in their rooms, and open and lock doors to their rooms. Mechanisms allowing facility personnel to override the lock in order to open or lock all rooms in the living area shall be provided. Mechanisms for lighting or extinguishing lighting in all rooms in a living area should be provided for facility personnel, but should not be used routinely.

Commentary

Mail

The importance of mail to inmates is demonstrated by the considerable amount of case law in the area of restrictions on inmate mail.

Probably the most important mail provision in the proposed standards is §10-(1)(a) which prohibits the reading or censorship of mail. The wisdom and practicality of this regulation is demonstrated by the fact that, according to the Nebraska Jail Survey, nearly two-thirds of Nebraska's facilities presently do not censor (or, presumably, read) mail. This is also the standard set in many other recommended regulations. See, for example, Minnesota's Local Adult Holding, Lockup, Jail, Workhouse and Corrections Facility Standards, First Draft, p. 50; California Correctional Systems Study: Institutions, p. 40; National Advisory Commission on Criminal Justice Standards and Goals, Corrections, §2.17; the American Correctional Association, Response of the American Correctional Association to Correctional Standards, §2.17.

The traditional justification for interference with inmate mail, the need for facility security and order, fails to hold up under careful analysis. As one of those who reviewed and commented upon a draft of the recommended standards stated, "security is achieved by good staff and training, not by denying imprisoned people the right to read." As for protecting facility order, the same commentator rightly pointed out that "[t]he fantasy life of most inmates and the gossip they exchange daily is more 'dangerous', more 'lewd' and more 'inciting' than anything that censorship can 'protect' them from." Two-thirds of Nebraska's facility administrators apparently agree that the lack of censorship is no threat to their facilities. The National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 72, lists the main causes of escapes and lack of censorship or reading of mail is not among them.

Not only is mail censorship of little use in assuring facility security and order, it is also a grave invasion of the inmates' and the public's First Amendment rights. Reading outgoing mail prevents an inmate from writing about family and other matters he considers private. It also infringes upon the public's right to know if improper actions are taking place within a facility for "the threat of identification and reprisal inherent in allowing correctional authorities to read prisoner mail is not lost on inmates who might otherwise criticize their jailors." Procunier v. Martinez, 416 U.S. 396 at 427 (1974) (concurring opinion of Marshall, J.).

Reading and censorship of incoming mail affects First Amendment rights as well. It prevents those outside the facility from writing to inmates about private matters. This is particularly likely to be true in Nebraska's many small towns where, if facility personnel were to disclose a private family matter, it could become community knowledge in a short time. As pointed out above, there is simply no justification for this type of prying into an inmate's private life.

In addition, by not censoring inmate mail, facility administrators save much needed time and expense and avoid the burdensome procedures required by the constitutional doctrine of due process when mail is censored. Such procedures include notice to a letter's author of the censorship and the opportunity to protest. Procunier v. Martinez, supra. Although the Supreme Court has not yet settled the matter, it seems probable that these requirements also apply to all mail. Due process should require notification of the inmate and provision for a hearing to challenge the censorship. See, for example, Sostre v. Otis, 330 F.Supp. 941 (S.D. N.Y. 1971). By not censoring mail, these procedures are avoided.

Finally, reading and censorship of inmates' mail in a local correctional facility is doubtless presently forbidden by the Equal Protection Clause of the Fourteenth Amendment. The mail of convicted felons at the Nebraska Penal and Correctional Complex is not read or censored, and there is no valid reason why the mail of misdemeanants and pretrail detainees should be subject to more restrictions than that of convicted felons.

Section 10-(1) also allows, although it does not require, that incoming mail be searched for contraband. Incoming mail presents the main problem concerning contraband. As for outgoing mail, the National Sheriffs' Association handbook, Inmates' Legal Rights, p. 43, recommends that it not be searched because of the small likelihood of anything being found.

Other Mail Requirements

The proposed mail regulations, §§10-(1)(e) through (i), cover areas other than censorship. One proposal is that no restrictions be placed on the amount of mail an inmate may send or receive. No state interest is served by doing so. It is not surprising therefore, that 98% of Nebraska facilities already follow this standard, according to the Nebraska Jail Survey.

Section 10-(1)(f) requires that indigent inmates be given enough writing material, stamps and envelopes to send five letters per week. Insofar as this standard applies to pretrial detainees, it has been required by several courts. In both Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Ohio 1971), aff'd sub nom Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972), and Brenneman v. Madigan, 343 F.Supp. 128 (N.D. Calif. 1972), five letters per week were approved.

Cases regarding convicted inmate mail are rare and they conflict. The most recent case does, however, hold that inmates must be given materials and postage for five letters per week exactly as these regulations require. Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976). Providing an inmate with five letters a week should not be unduly expensive and will alleviate the holding of an indigent inmate virtually incommunicado. Also, correctional authorities recognize that it is helpful to an inmate if he can remain in communication with the outside world.

This subsection further requires that indigent inmates be given free of charge all materials necessary to draft and send legal documents and correspondence to courts and attorneys. This standard is necessary to guard an inmate's right of access to counsel and the courts. Justice may not be denied an inmate because of his poverty.

Section 10-(1)(g) requires that no restrictions be placed on persons to whom an inmate may send or from whom he may receive mail. This standard is required by Finney v. Arkansas Board of Corrections, 505 F.2d 194 (8th Cir. 1974). That case outlawed correspondence lists in that judicial circuit as being too restrictive of First Amendment rights. An inmate, the court held, could be prohibited from corresponding with someone only to achieve a legitimate governmental purpose. This subsection perhaps goes beyond Finney in that it allows no restrictions at all. However, the Nebraska Jail Survey reports that only 2% of Nebraska facilities do in fact impose any restrictions. This means that there is no legitimate purpose served by such restrictions and that, based upon the facts in Nebraska, this standard is constitutionally required under Finney.

Of course Finney formally applied only to correspondence, but the recent trend in decisions is to treat correspondence and other mail alike, so no differentiation is made here. See, for example, Aikens v. Jenkins, 534 F.2d 751 (7th Cir. 1976).

It might also be mentioned that a number of recent cases have held that pretrial detainees have a constitutional right to send mail to and receive it from whomever they wish. Jones v. Wittenberg, supra; Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971); Brenneman v. Madigan, supra.

Finally, the proposed mail regulations require that outgoing mail be collected and sent daily except on days the United States Postal Service does not pick up mail. Incoming mail is to be delivered to the inmate within twenty-four hours of its arrival at the facility.

This regulation is a mere application to local detention facilities of the holding in McDonnell v. Wolff, 342 F.Supp. 616 (D. Neb. 1972), aff'd 483 F.2d 1059 (8th Cir. 1973), aff'd 418 U.S. 539 (1974). There the court held that inmate mail must be sent within forty-eight hours of its sealing and incoming mail to inmates must be delivered within forty-eight hours of its receipt at the Nebraska Penal Complex. Since all local detention facilities in Nebraska are much smaller than the Penal Complex and have fewer logistical problems, the latter figure has been reduced in these regulations to twenty-four and the former reduced to daily.

Visiting

The critical importance to an inmate of visits with friends and relatives has long been recognized. Corrections, supra, p. 68. Confinement alienates an individual from his family and friends. This alienation makes it more difficult for the inmate to refrain from criminal acts after release. It should therefore be minimized by provision for liberal visiting hours and privileges which is the goal of the proposed regulations on visiting.

The regulations begin by requiring nine (9) visiting hours each week in jails, spread over at least three days, one of which is required to be on the weekend. Visits are not to be less than one-half hour in length. Special arrangements are to be made for those who must travel over 150 miles. Visits are to be allowed on one weekday evening. These rules seek to ensure that every member of an inmate's family will be able to visit him. The requirement of weekend and evening visits results from the fact that many people who work can-

not come at other times. The reason for not allowing visits shorter than one-half hour is simply that any substantially shorter period does not allow enough time to discuss any important problems an inmate may have or to maintain substantial contacts with the outside. The soundness of the rule, that special arrangements be made for those who must travel over 150 miles, is shown in that it is already part of practically every District Judge's jail rules.

For pretrial detainees, the above regulations are probably set at the minimum level permitted by the Constitution. In Jones v. Wittenberg, supra, for example, the court held that pretrial detainees must be permitted daily visiting hours, daytime and evening, and on holidays and weekends. Similar cases are Brenneman v. Madigan, supra (substantial time for visitation required); Dillard v. Pitchess, supra (evening visitation ordered); and United States ex rel. Wolfish v. Levi, 406 F.Supp. 1243 (S.D.N.Y. 1976) (preliminary injunction issued to prevent any reduction in visiting hours from three hours per day, seven days per week with three visits allowed each week for each inmate). The decisions were based on the concepts of either cruel and unusual punishment or punishment without due process of law.

Equally liberal visiting rights have not heretofore been required by the courts for convicted inmates although two recent decisions signal a new trend. In Barnes v. Government of the Virgin Islands, 19 Cr. L. Rptr. 2254 (D.C. Virgin Islands, May 20, 1976), the court held that a small prison (120 persons) must increase its three two-hour visiting periods each week to four such periods with one taking place in the evening. The case of Pugh v. Locke, supra, held that convicted prison inmates must be allowed weekly visitation and each visit must be for a reasonable time. See also Thomas v. Brierly, 481 F.2d 660 (3rd Cir. 1973); Almond v. Kent, 459 F.2d 200 (4th Cir. 1972). Furthermore, when there are pretrial detainees in the facility, as long as personnel must be on duty to supervise constitutionally required visits for the pretrial detainees, they may allow convicted offenders to visit as well. To no do so would indeed be cruel considering the value visits have for all inmates.

The requirement that pretrial detainees must be permitted at least two hours of visitation each week is also probably constitutionally required. The United States District Court for the District of Nebraska has stated that pretrial detainees have the right to substantial periods of visitation each week. Bell v. Wolff, CV 72-L-227 (1973). The court did not define "substantial", but two hours strains the lower limit. Facility administrators should probably try to permit at least three hours per week since courts have ordered more than

what this regulation requires. The court in Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), for example, held that one two-hour visit per week was insufficient.

Other model jail standards recommend substantial visitation rights for both convicted inmates and pretrial detainees. The National Sheriffs' Association booklet, Inmates' Legal Rights, p. 42, for example, recommends visiting standards that equal and in some cases exceed these. It states that visiting hours should be flexible enough to allow people to visit on days they are not working. Visits should be at least one hour in length, and exceptions made for those who must travel long distances.

Convicted felons at the Nebraska Penal and Correctional Complex presently have visiting hours from about 12:00 noon to 4:00 p.m. each weekday, or twenty hours per week. The lesser figure of nine hours for local facilities may satisfy the Fourteenth Amendment because people are generally required to drive longer distances to visit at the Penal Complex, but it would be difficult to justify a greater difference in the amount of visiting hours permitted.

The regulations also require that each offender in all but lockups be permitted at least two visits per week and that pretrial detainees be allowed as many visits during regular visiting hours as security and the rights of other inmates to visits will allow. Visits by ministers, attorneys, probation officers and mental health and addiction therapists are not to be considered visits for this purpose. This regulation is already met by most Nebraska facilities. Three-fourths of them put no limit on the number of visits an inmate may receive, according to the Nebraska Jail Survey. The standard recommended by the National Sheriffs' Association booklet, Inmates' Legal Rights, suggests no limitation on visitation times.

The United States District Court for the District of Nebraska, in Bell v. Wolff, supra, held that the number of visits per month to a pretrial detainee could not be limited unless the restriction was related to security. For pretrial detainees, therefore, this standard merely restates existing law. The equal protection clause of the United States Constitution would seem to require multiple visits for convicted inmates of local facilities since they are permitted at the Penal Complex. In addition, to comply with §10-(2)(a), personnel will have to be on duty and it would seem to require little extra effort to allow the multiple visits.

Excluded from the two visits required by this regulation are minister, attorney, probation officer and mental health personnel visits because such visits with inmates are often privileged in nature for professional, and often correctional, purposes, and not what are normally thought of as "visits."

The regulations further require that a pretrial detainee be permitted at least one one-half hour visit within twenty-four hours of arrest, unless he is held for six hours or less. This will constitute the sole visiting hours requirement for lockups.

The first few hours after arrest is the time the greatest feelings of dislocation and alientation strike an inmate. This is the time he most needs contacts with the outside world in order to maintain his equilibrium. He should thus be able to receive at least one short visit during that period.

The times for these visits are left to the discretion of the facility administrator, but he must act reasonably in setting them. He need not set regular hours for such visits.

Section 10-(2)(d) requires that no restrictions be placed upon who may visit an inmate, except those required by facility security or order. In Bell v. Wolff, supra, the United States District Court for the District of Nebraska held that this is constitutionally required for pretrial detainees. The court stated that there must be a demonstrable relationship between the security of the detainee's confinement and any limits on the types of persons who may visit him. The regulations regarding visitors who are children or those previously arrested or convicted of crimes are mere applications of this general rule. The provisions allowing visits from former felons needs particular emphasis. A person who has in the past brought in contraband, or caused disturbances during his visit, or incited or aided inmates to riot or escape, can certainly be denied the right to visit. He may alternatively be denied contact visits under §10-(2)(e). However, the mere fact that one has in the past, for example, forged checks, does not necessarily mean that he will do any of these things in the future, and he should not be denied the right to visit an inmate merely because he has a record of conviction.

The case law is less clear as to convicted inmates. It is certain only that facility personnel cannot act arbitrarily in deciding who may visit, but rather they must use some rational criteria. Rowland v. Wolff, 336 F.Supp. 257 (D. Neb. 1971). In view of the importance of visits to inmates, however, these restrictions should be as few as possible. Since case law on prisoners' rights is rapidly expanding, what is practice today may be unconstitutional tomorrow.

This is another regulation that is supported by correctional authorities. The National Sheriffs' Association handbook, Inmates' Legal Rights, p. 42, for example, recommends that a visitors' list be kept and that it be allowed to be amended at any time. It further states that the mere fact that an individual is a former offender should not in and of itself keep him from visiting an inmate.

Section 10-(2)(e) requires contact visitation unless it presents a substantial threat to facility security, visitor safety or it is requested by either the inmate or the visitor. There is today little doubt that this is constitutionally required for pretrial detainees. Virtually every court that has considered the matter recently has concluded that denial of contact visitation to pretrial detainees, unless maintenance of security or order requires it, violates the Constitution because it constitutes either punishment without due process of law or cruel and unusual punishment. Rhem v. Malcolm, 507 F.2d 333 (2nd Cir. 1974); Inmates of Suffolk County Jail v. Eisenstadt, supra; Jones v. Wittenberg, 323 F.Supp. 93 (N.D. Ohio 1971), aff'd. sub nom Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972).

For convicted inmates the case law is less explicit. There is a dictum in Dillard v. Pitchess, supra, that to deny contact visitation to anyone is cruel and unusual punishment. The very recent (1976) case of Pugh v. Locke, supra, may represent the trend for the future. Judge Johnson there ordered contact visits for convicted felons in Alabama prisons unless there were documented security purposes for not doing so. The Equal Protection Clause of the Fourteenth Amendment may well require contact visitation for local detention facility inmates also, since the convicted felons at the Nebraska Penal Complex are allowed contact visits and it is unlikely that a constitutionally valid reason can be found to allow contact visits for convicted felons at the Penal Complex but to deny such visits to the convicted misdemeanants in the local facilities.

Contact visitation is also recommended by many correctional authorities. The National Sheriffs' Association booklet, Inmates' Legal Rights, p. 42, for example, states that "[m]echanical barriers, such as glass partitions or bars, between the inmate and visitor should be avoided, since this tends to emphasize separation rather than to help retain bonds between the inmate and the outside world."

Visitor conversations are not to be monitored under the proposed regulations. Moore v. Janing, supra, at p. 11. The reason for this standard is that monitoring conversations chills visitors' and inmates' rights to free speech. They will be afraid to discuss criticism of the facility and, especially in small facilities, even family matters that they do not wish to be open to community knowledge and gossip. Their fears may be unjustified but they exist nevertheless. Because they do exist, eavesdropping on visits will also cause resentment against personnel of the facility and heighten the possibility of discipline problems. Many other standards agree with the standard here proposed. See, for example, Corrections, supra, Standard 2.17, pp. 66-67 (approved by the American Correctional Association, Response of the American Correctional Association to Correctional Standards, Standard 2.17, p. 6 (1976)); Washington State Jail Standards §112 (random staff surveillance permitted); ABA Joint Committee on the Legal Status of Prisoners, Standards Relating to the Legal Status of Prisoners, Tentative Draft §6.2 (1976). Inmates' Legal Rights, p. 42, states that "[a] correctional officer can be in the visiting room during the visiting hours in order to maintain order and security. However, his job should not be to monitor conversations between inmates and visitors."

A further reason for recommending this standard is that 23% of Nebraska's local detention facilities presently supervise visits only "sometimes", and 7% never, according to the Nebraska Jail Survey. If 30% of the facilities can safely permit even unsupervised visits sometimes or always, it would seem quite feasible to not monitor conversations.

To protect security and guard against introduction of contraband into the facility both visitors and inmates may be searched before a visit and the inmate may be searched after the visit as well.

Section 10-(2)(h) requires that persons providing inmate services and assistance be allowed to visit at any reasonable time between 8:00 a.m. and 10:00 p.m. The Commentary to the section on Freedom of Religion explains why inmates' religious rights must be respected. This standard probably goes beyond what would be constitutionally required; however, it does so because ministers generally provide a good influence upon inmates and should be accorded the maximum opportunity to do so, subject to all limitations necessary for security and order. The same is true of therapists and others providing inmate services. It should be noted that a minister's counseling need not be totally religious. A minister should not be denied the opportunity to visit merely because he talks to inmates about family problems as well as religion. Sections

10-(2)(d) and (e) apply to visits by persons providing inmate services, however, so that if a minister or therapist threatens facility security, he may be denied the opportunity to visit or have a contact visit.

As a practical matter, this standard should cause few problems in implementation since most facilities only experience problems with ministers or others providing inmate services in that they will not come to the facility, inmates do not want them or they are not available, not that they come too often. The Nebraska Jail Survey shows that only 18% of the facilities are able to obtain religious counseling and only 25% can obtain religious services even "sometimes". Only 6% can provide any psychiatric or alcoholism counseling. This standard is intended to insure that those few providers of services that can or will serve the facilities be given the opportunity to do so.

Facilities must also, under §10-(2)(h), permit attorneys, or others giving legal assistance to an inmate, access to that inmate at any reasonable time between 8:00 a.m. and 10:00 p.m., except that if it is urgent an inmate may see his attorney at any time. The provision for any "reasonable" time means that an attorney may be constrained to wait until an inmate meal or count is over or a deputy returns to his post so there can be supervision or for some other similar reason. In the absence of riot or other emergency, however, an attorney should not be kept waiting for very long. The purpose of the standard is to guarantee to inmates their Sixth Amendment right of access to counsel and the courts. If an attorney is to adequately represent a client, he or his assistants must be able to see that client when needed.

Recent court cases support this standard, at least as to pretrial detainees. The court in Miller v. Carson, supra, for example, held that denial of attorney visits to pretrial detainees after 9:00 p.m. or during meals or regular family visiting hours violated the Sixth Amendment. The court in Inmates of Suffolk County Jail v. Eisenstadt, supra, held that attorney visiting hours must be at least 9:00 a.m. to 5:00 p.m. on holidays and Sundays and 9:00 a.m. to 8:00 p.m. on weekdays.

A convicted inmate also has the right to see his attorney. The courts hold merely that this right is subject to reasonable regulation, such as denying visits during meals. Souza v. Travisono, 368 F.Supp. 959 (D. R.I. 1973), aff'd in part, 498 F.2d 1120 (1st Cir. 1974); Via v. Cliff, 470 F.2d 271 (3rd Cir. 1972). It may be that "reasonable" times for convicted inmates are fewer than for pretrial detainees, but it is not certain. Therefore, the standards for them have been set at the same level.

Law students, paralegal aides and others providing legal aid are covered by this standard as well as attorneys because their aid can be crucial if a busy lawyer is to properly conduct a case. Of course, these people must be working for an attorney, except for law students working for an accredited law school program. It is probably constitutionally required that they be afforded the same treatment as attorneys. Procunier v. Martinez, supra.

It should be pointed out that this standard as now proposed allows attorney visits at all reasonable times even when the attorney is working on a civil, and not a criminal or civil rights, matter. This is not constitutionally required; however, it should cause little extra burden on facility staff. Furthermore, inmate civil legal problems, such as divorce proceedings, can cause much tension and lead to consequent disciplinary problems among inmates. A recent survey of correctional officials nationwide showed this to be true. ABA Commission on Correctional Facilities and Services, Offender Legal Services, p. 11 (1976). Allowing inmates to see their attorneys often should help alleviate this situation. Since a civil suit can be a catastrophic event in one's life, facility staff should try not to make the situation worse than it is. Rather they should try to help the inmate have positive experiences with the law so that he will be less ready to violate it upon his release.

It is not surprising, in light of the reasons noted above, that many other recommended standards closely follow these, including the provision regarding legal assistance in civil matters. The National Sheriffs' Association booklet, Inmates' Legal Rights, p. 30, for example, states that an inmate must be able to consult with his attorney, even on civil matters, as often and as long as necessary. It extends this recommendation to visits with law students, paralegals and investigators assisting attorneys as well. See also standards such as Corrections, supra, Standard 2.2, p. 27, and S. Krantz, et al., Model Rules and Regulations on Prisoners' Rights and Responsibilities, p. 57 (West 1973).

Under §10-(2)(g), attorney-client conversations are to be unmonitored. The standard on monitoring conversations is almost unquestionably required by the Sixth Amendment. Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973); Souza v. Travisono, supra.

Inmate visits with those persons providing inmate services and assistance are to take place in rooms which provide for confidential consultation. Regulation 4(5)(g).

In order to work most effectively, a person providing inmate services and other assistance should have a place to write. There should also be sufficient space for him and for his clients. This regulation is supported by the case law, in which courts require an "adequate" area for attorney visits in local detention facilities. Collins v. Schoonfield, 344 F.Supp. 255 (D. Md. 1972); State v. Jones, 37 Ohio St.2d 221, 306 N.E.2d 409 (1974). A specific standard, requiring four chairs and a writing table, was set in Jones v. Wittenberg, supra, 323 F.Supp. 93.

Finally, in §10-(2)(i) the proposed visiting regulations require that items brought into local correctional facilities by visitors for inmates be treated as if they were mail for purposes of inspection, censorship, etc. The reason for doing so is that there is no rational distinction to be made for these purposes between items sent by mail and items brought in by hand. Of course, facility personnel can and often should require that visitors give such items to them for delivery at a later time so that a search for contraband can be made.

Telephone Privileges

Telephone calls are important for inmates for the same reason visits are important. They help the inmate to maintain his ties with the outside. If an inmate is illiterate they are particularly important. If his family cannot come during visiting hours, they may be his only contact with them. Accordingly, the recommended telephone regulations attempt to ensure that each inmate has adequate access to a telephone.

The standards require that pretrial detainees be permitted to make all the telephone calls they wish at reasonable times. "Reasonable times" means, among other things, that no detainee should be permitted to monopolize the telephone when others wish to make calls and that telephone use may be prohibited when detainees are required to be elsewhere, such as at a meal or in bed. "Reasonable times" will also depend on staff availability, but should probably at least include 9:00 a.m. to 5:00 p.m.

The reason for this standard is that pretrial detainees may be subject to no more constraints than is necessary for their confinement. Moore v. Janing, supra; Bell v. Wolff, supra. Denial of phone use does not seem necessary, for interviews have shown that several sheriffs in the state do allow quite liberal use of the telephone. The Nebraska Jail Survey shows that 25% of the facilities put no restriction even on incoming calls.

The courts have agreed with this standard, holding that pretrial detainees have a constitutional right, based on the Eighth and Fourteenth Amendments, to access to a telephone at reasonable hours. Moore v. Janing, supra; Jones v. Wittenberg, supra, 330 F.Supp. 707; Brenneman v. Madigan, supra; Dillard v. Pitchess, supra.

The regulations also require that convicted offenders be permitted at least two telephone calls per week. For some facilities this will require no expense and little more bother than they will be subjected to anyway in complying with the provisions for pretrial detainees. It is also recommended by various sets of model standards, for example, the Washington State Jail Standards §§303-305 (calls at all reasonable times), and the Model Rules and Regulations on Prisoners' Rights and Responsibilities, supra, p. 5 (two calls per week).

The fact that, according to personal interviews, several sheriffs already allow inmate calls demonstrates that this standard is practical. See also, Marie Arnot, For Better or Worse, p. 39, which reported that over one-third of Nebraska jails permitted over two phone calls in 1969.

Inmates are also to be allowed incoming calls on an emergency basis or an emergency message is to be taken and the inmate is to be allowed to return the call. This standard is based on simple humanity and, in fact, it merely restates what is presently the practice according to the Nebraska Jail Survey.

A minimum limit of ten minutes is to be placed on telephone calls. Any lesser limit simply does not give the inmate time to discuss anything significant. This is especially true of calls to attorneys. Pretrial detainees' calls should be limited no more than is absolutely necessary since they should not be subject to any more constraints than are necessary for their confinement.

In order to minimize expenses the proposed regulations allow facilities to require that inmates pay for telephone calls. The cases do allow this. However, as the National Sheriffs' Association handbook, Inmates' Legal Rights, p. 18, points out, a pretrial detainee cannot be held incommunicado. This standard, therefore, requires that he be allowed to inform his family of his situation and to obtain an attorney by telephone. If he is indigent then the facility must pay for his local telephone calls rather than hold him in secret.

The regulations require that telephone calls not be monitored unless otherwise authorized by law. For pretrial detainees such unmonitored telephone calls are a constitutional right according to recent case law. Moore v. Janing, supra; Jones v. Wittenberg, supra, 330 F.Supp. 707; Brenneman v. Madigan, supra; Hamilton v. Love, supra.

The case law is not so clear as to convicted inmates' calls. The most relevant case for Nebraska is Konigsberg v. Ciccone, 417 F.2d 161 (8th Cir. 1969), where the Eighth Circuit Court of Appeals held that listening to some telephone conversations in a prison hospital for strictly medical reasons was permissible. The court was careful, however, not to say that any other eavesdropping was permissible. In view of this decision, it would seem safest to do no more eavesdropping than necessary.

Access to Media

The proposed regulations on access to media require that the press be allowed access to a facility at all reasonable times. Recent cases have held that this standard is required by the First Amendment. Washington Post Co. v. Kleindienst, 494 F.2d 994 (D.C. Cir. 1974). The public has a right to know what is going on inside public institutions and this right to know is served by the news media. A court, considering the issue of press access to jails, concluded that a federal district court order allowing the press access to the jail at reasonable times and hours and permitting the use of photographic and sound equipment and interviews of inmates was not an abuse of discretion. KQED, Inc. v. Houchings, 546 F.2d 284 (9th Cir. 1976). The court held that the right of the press to enter the jail parallels that of the public, but newsworthiness may require immediate access whereas the public need is satisfied by formal, scheduled tours. It should be emphasized, however, that such media visits may be limited to reasonable times. For example, they might be required to take place during the day and the facility administrator may require advance notice.

The regulations also require that reporters be able to interview consenting inmates at any reasonable time unless the interview would endanger facility security or order. This is another standard that is probably constitutionally required. The United States Supreme Court has held that it is not required for prisons. Pell v. Procunier, 417 U.S. 817 (1974). However, the primary reason the court did so was because it believed interviews could cause certain inmates

to become "celebrities" who could use their status to become threats to order. This argument does not apply to local detention facilities, where inmates stay for only a short period of time--seventeen days on the average according to the Nebraska Jail Survey. Inmates are usually not there long enough to become celebrities. One court that has considered this "celebrities" problem regarding local detention facilities, therefore, concluded that interviews must be permitted. Houston Chronicle Publishing Co. v. Kleindienst, 364 F.Supp. 719 (S.D. Tex. 1973).

The National Sheriffs' Association handbook, Inmates' Legal Rights, p. 43, states that inmate interviews are often appropriate and voices concern only about pretrial publicity.

Section 10-(4)(b) provides that inmates shall be permitted to keep personal radios and that access to radios and televisions be permitted. Of course, reasonable regulations may be imposed to keep noise levels down and to ensure that radio and television sets are turned off at lockup time. Access to all television and radio broadcasts shall be permitted by jails and holding centers.

The reason for allowing televisions and radios is simply to alleviate boredom and thereby diminish disciplinary problems. See the Commentary to the section on General Library for a fuller treatment of inmate idleness and its effects. This regulation will cost nothing and is also probably required by equal protection since inmate televisions and radios are permitted in the Nebraska Penal Complex.

Access to Legal Counsel and the Courts

In Johnson v. Avery, 393 U.S. 483 (1969); Younger v. Gilmore, 404 U.S. 15 (1971); Cruz v. Hauk, 404 U.S. 59 (1971); and Wolff v. McDonnell, 418 U.S. 539 (1974), the United States Supreme Court has held that inmates, including local facility inmates, have a right of access to the courts and counsel, in civil rights and habeas corpus actions at least. To implement this right the Supreme Court held that facilities must either provide inmates with an adequate alternative, or they must provide inmates with adequate access to legal materials and allow them to aid one another in the preparation of legal documents.

Any "adequate alternative" would involve the facility hiring an attorney on at least a part time basis. Offender Legal Services, supra, pp. 20-27. Since it is highly unlikely that any Nebraska facility will take this expensive

step, facility personnel must allow inmates to help each other to prepare legal documents. The proposed regulations so provide. Inmates' giving of advice to one another can be subject to some reasonable regulations, such as designating who may give such advice, but the regulations cannot be such that they hinder an inmate in preparing legal papers and sending them to the courts.

The regulations further require that facility administrators make every effort to obtain legal services for their inmates. This standard is inspired by a realization that inmates in local facilities cannot, even with a law library and other inmates' help, properly prepare effective legal documents in most cases. In the interest of justice, therefore, facility administrators should do their best to obtain legal services for inmates who need them. This is especially true in light of the fact that in some Nebraska counties an adequate law library may not be available.

Both of these provisions go somewhat beyond constitutional standards in that they pertain to civil cases as well as criminal and civil rights cases. However, referring an inmate to a legal aid office or allowing another inmate to help him costs nothing and, as may be read in the Commentary section on Visitation, there are sound reasons for doing so. Other standards for jails, such as Response of the American Correctional Association to Correctional Standards, §2.2, support these regulations.

Access to Legal Materials

As noted in the introduction to the preceding Commentary section on Access to Legal Counsel and the Courts, the Supreme Court requires that facilities provide inmates with adequate access to legal materials. It is the purpose of this section to provide for that access.

The Constitution may only require that such access be given to convicted inmates because pretrial detainees can obtain court appointed attorneys. The Eighth Circuit has so held. Noorlander v. Ciccone, 489 F.2d 642 (8th Cir. 1973). However, in Farretta v. California, 422 U.S. 806 (1975), the United States Supreme Court held that a pretrial detainee has an absolute right to defend himself in a court of law without an attorney representing him. Such a right would be worthless without access to legal materials. Furthermore, the provisions described below will cost little if anything more if applied to pretrial detainees than if merely applied to

convicted offenders. Therefore, no distinction between access for detainees and offenders is made. Other standards for jails have done the same. See, for example, the National Sheriffs' Association booklet, Inmates' Legal Rights, p. 33.

The introductory section to the Access to Legal Materials regulation requires that inmates be permitted to purchase, or otherwise receive, and keep personal legal materials so long as this does not present a fire hazard. This costs the facility nothing and can greatly facilitate an inmate's access to the courts. The courts have therefore held that it is constitutionally required. Lathan v. Oswald, 359 F.Supp. 85 (S.D.N.Y. 1973); Adams v. Carlson, supra; Noorlander v. Ciccone, supra.

Section 10-(6)(a) sets out the requirement that all but two of Nebraska's jails should be required to have or provide access to the actual law library. The case law was little help in developing this standard because it deals mainly with larger facilities. Miller v. Carson, supra, 401 F.Supp. 835, for example, dealt with a county jail with a capacity of 432. The court there held that a library consisting of the Florida statutes, a municipal code, the state's rules of court and a law dictionary was inadequate. It did not say what was adequate.

Most Nebraska facilities are far smaller than the facility considered in Miller v. Carson. The library provided for in these standards, though of about the same extent as that one, should therefore pass the constitutional test. The reason for this is that the demand for legal materials in our smaller facilities should be much less than the demand in larger facilities. Also, account must be taken of the scarcity of legal materials even for attorneys and judges in much of Nebraska.

This standard therefore requires only the Nebraska Statutes, rules of the various Nebraska courts, a list of local attorneys and a few inexpensive books whose goal is to teach inmates who use them a little about the courts and the criminal law and how to do legal research. Once they have learned that, they may request access to whatever other legal resources their county may have available. A copy of the local detention facility standards themselves is also required.

This library should be quite inexpensive. According to the Nebraska Jail Survey, over one-third of the facilities required to have the statutes already have them. The other two-thirds will have to pay $156 each to buy them. They should be able to obtain the annual Nebraska Legislative session laws free from the county clerk. Nebraska Revised

Statutes §§49-502 and 503. The rules of the various courts should be available from their clerks, and the remainder of the list which will be recommended to the Department of Correctional Services will cost under $60. Section 10(6)(a) does not require facilities to actually purchase the materials. It merely requires that inmates be given immediate access to them. Arrangements for complying with this regulation can be made with local county officials or county law libraries.

Section 10-(6)(b) sets the requirements for the law libraries of the two largest facilities in the state. These are the Lincoln-Lancaster County Jail and the facility that will exist in Douglas County after the Douglas County Department of Corrections completes construction of its new institution. In addition to the materials outlined in §10(6)(a), these two facilities are required to have (1) the Nebraska Supreme Court Reports and a digest of such cases and (2) a digest to one of the United States Supreme Court case reporting services. The larger budgets and larger inmate demand for legal services at these two institutions makes the expanded library necessary.

The Nebraska Supreme Court Reports and either the Nebraska Digest (West) or Northwestern Reporter Digest (West) are required in §10(6)(b) facilities. If the digests were not in the facility, inmates would be unable to use the Nebraska Supreme Court Reports. Having the digests saves much time, effort and probably expense. Also, most law libraries would, doubtless, be unwilling to loan out digests very often. Therefore, while they might loan digests to a small facility with little demand for them, they probably would not be able to loan them to a larger facility with a greater demand.

Instead of requiring a set of the United States Supreme Court cases to be provided in each of the two large Nebraska jails, only a digest of such cases is required. This digest will contain essential information concerning constitutional rights and United States Supreme Court decisions interpreting them. Inmates who wish to read a decision in its entirety may ask facility staff to obtain a law book or a copy of the legal material.

The initial cost of the Nebraska Digest is $448.50 with an annual upkeep cost of about $54. The cost of the Nebraska Supreme Court Reports is subject to negotiation, but it is approximately $5 per volume for 194 volumes. The annual subscription cost for the Nebraska Supreme Court Journal, Advance Sheets of Nebraska Reports is $59. A United States Supreme Court Reporter Digest will cost $552 and the cost for annual supplements is $52. These costs, it should be noted, are far less than the law library recommended by the National

Advisory Commission on Criminal Justice Standards and Goals, Corrections, p. 29, for facilities with a capacity of over 100. This concept has been endorsed by the American Correctional Association, Response of the American Correctional Association to Correctional Standards, §2.3. That collection would cost approximately $5,730. Even the law library recommended by the National Sheriffs' Association booklet, Inmates' Legal Rights, p. 33, would cost about $5,180. It would seem far better to implement this standard, which, as a well considered regulation, will weigh favorably with a court, than to risk judicial imposition of a more costly library.

Obviously, neither of the law libraries provided for in these sections would be at all adequate if they were not supplemented by access to other legal materials, primarily the case books located outside of the facility. If there is a county law library in the county in which the facility is located, inmates should be provided with copies of legal material contained therein within forty-eight hours of a specific request by an inmate. Photocopies of materials, if not contained in a county law library or not available, at inmate expense, unless he is indigent, will be adequate. Reasonable efforts should be made by facility administrators to obtain any legal material inmates request. It is true that, in many cases, utilizing county law libraries or other sources of lawbooks will not provide access to what organizations such as the American Correctional Association, in its Guidelines for Legal Reference Services in Correctional Institutions, p. 96, call the minimum for an adequate law library. However, it is simply not realistic to believe that more can be done.

Under this regulation, it should be noted, facility administrators can and indeed should make reasonable rules to prevent destruction of legal materials loaned by other institutions.

Section 10-(6)(d) provides that inmates must be permitted access to the facility law library at any time between 8:00 a.m. and 10:00 p.m. when they are not required to be involved in other activities. This approximates the standard ("all day") suggested by the United States District Court for the District of Nebraska, in McDonnell v. Wolff, 343 F.Supp. 616 (1972), aff'd 483 F.2d 1059 (8th Cir. 1972), aff'd. 418 U.S. 539 (1974). It is also the standard recommended by the National Sheriffs' Association booklet, Inmates' Legal Rights, p. 34. The reason is simply that legal research is time consuming. Therefore, it is constitutionally required that an inmate be given adequate time to do that research so that he may be guaranteed his right of access to the courts.

It must be pointed out here that this standard, like §10-(5), requires access even when an inmate is only investigating a civil matter. The reasons for this requirement are explained in the Commentary to Access to Legal Counsel and the Courts.

Freedom of Expression within the Facility

The regulations on freedom of expression, §10-(7), require that inmates be permitted to keep or write or circulate within the facility anything which does not present a substantial threat to facility security. It should perhaps be made clear that these standards operate alongside the criminal law. They therefore do not prevent the seizure of any material which it is otherwise illegal to possess.

This standard is designed to restate the most recent case law relating to receiving materials and keeping them in one's cell. The leading cases are Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971) (en banc), and Morgan v. LaVallee, 526 F.2d 221 (2nd Cir. 1975). The latter is particularly important in that it holds that Pell v. Procunier, 417 U.S. 817 (1974), requires that reading materials may not be seized unless necessary for security or order. In other words, Pell v. Procunier requires the portion of this standard on the keeping of materials.

Pell v. Procunier would also seem to require that inmates be allowed to write and circulate anything which does not threaten security. Recent cases on the censorship of prison newspapers hold that this is so. Burke v. Levi, 391 F.Supp. 186 (E.D. Va. 1975). See also Christman v. Skinner, 468 F.2d 723 (2nd Cir. 1972).

It should be noted that it is permissible under this standard and the above decisions to require that materials be read by facility personnel before they are circulated.

The regulations on freedom of expression also require that inmates be permitted to gather in groups and discuss any matter which does not threaten facility security. Since the First Amendment rights of freedom of speech and assembly are involved, Pell v. Procunier and the standards outlined above would seem to apply. Recent case law supports this position. In North Carolina Prisoners' Labor Union, Inc. v. Jones, 409 F.Supp. 937 (E.D. N.C. 1976), the court stated that under Pell v. Procunier "prisoners have a First Amendment right to talk about any subject of interest to them that does not conflict with the legitimate penological objectives of the institution. These state interests are security, or-

der, and rehabilitation and restrictions can be no greater than is essential or necessary to protect the governmental interest." Butler v. Preiser, 380 F.Supp. 612 (S.D. N.Y. 1974), held that since it presented no threat to security or order, inmates were to be allowed to solicit funds from one another for a legal defense fund. That case also involved the right of freedom of assembly, the right involved in allowing inmates to meet in groups. See also National Prisoners' Reform Ass'n. v. Sharkey, 347 F.Supp. 1234 (D. R.I. 1972).

Other model standards support these regulations. Response of the American Correctional Association to Correctional Standards, §2.15, states in part that "Regulations limiting an offender's right of expression and association should be justified by a compelling state interest requiring such limitation."

Freedom of Religion

Freedom of religion has long been exalted as one of the "preferred" freedoms of the First Amendment. Murdock v. Pennsylvania, 319 U.S. 105 (1943). The stringent requirements of the Amendment have rarely justified any limitation on the free exercise of religion.

The First Amendment, through the Fourteenth Amendment, makes two guarantees to inmates with respect to religion. First, it guarantees that the state shall make no law or take any other action respecting an establishment of religion. Second, it guarantees that the state shall not prohibit the free exercise of religion.

The regulations on religion first address the guarantee of nonestablishment of religion at §10-(8)(a). It prohibits facility personnel from in any way encouraging inmates to take part in religion or religious activity. This position is supported by case law as being constitutionally required. The court in Thericault v. Carlson, 339 F.Supp. 375 (N.D. Ga. 1972), for example, enjoined prison ministers from giving reports to prison officials on prisoner religious activities because this would encourage such activities.

This also is the position of the Eighth Circuit Court of Appeals. In Remmers v. Brewer, 494 F.2d 1277 (8th Cir. 1974), the court upheld a lower court's decision that ministers could give reports to a parole board as long as the contents of the reports were not primarily religious. It did so, however, only because it could not find to be clearly erroneous the lower court's finding that religion was not being favored by the parole process. To make itself clear, the

court stated that great care must be exercised to avoid even the appearance of reliance on religious reports as determinative of one's eligibility for parole.

It should be noted that this standard is to be found among many sets of recommended jail standards. Examples are the National Sheriffs' Association handbook, Inmates' Legal Rights, p. 41; Corrections, supra, Standard 2.16, p. 64; and Response of the American Correctional Association to Correctional Standards, §2.16.

Section 10-(8)(b), which allows no interference with inmate exercise of religion absent a substantial threat to facility security, enforces the constitutional right to free exercise of one's religion. It follows the decision of the United States Supreme Court in Pell v. Procunier, supra. There, as noted above, the Court stated that an inmate retains those First Amendment rights not inconsistent with his status as a prisoner or the legitimate penological objectives of the corrections system. It also enumerated the following permissible reasons for limiting First Amendment freedoms: deterrence, to quarantine prisoners from society, rehabilitation and the security of the institution. Only security is mentioned in the standard because no one has yet suggested that infringement upon an inmate's freedom of religion is necessary for deterrence, quarantine or rehabilitation.

This standard should also satisfy the rule that pretrial detainees may be deprived of no rights unless such deprivation is necessary for their incarceration.

The various subsections of §10-(8)(b) are merely specific enumerations of the right of freedom of religion. Section 10-(8)(b)i, which requires that religious diets be provided for inmates if possible, is supported by several cases. Kahane v. Carlson, 527 F.2d 492 (2nd Cir. 1975); Walker v. Blackwell, 411 F.2d 23 (5th Cir. 1969); Barnett v. Rodgers, 410 F.2d 996 (D.C. Cir. 1969); Finney v. Hutto, 410 F.Supp. 251 (E.D. Ark. 1976). The phrase "if reasonably possible" means that a sheriff must go to the limit of the statutory food allowance for all his inmates together to provide a religious diet, but no further. For example, if it costs $4 to prepare a religious diet for one inmate but only $3 to feed another inmate and the statutory allowance is $3.50 per inmate, the sheriff must apply the $.50 saved in feeding one inmate to the other's diet. A sheriff need not go beyond this limit, however. Section 10-(8)(b)ii, which requires that inmates be permitted to wear religious hairstyles, jewelry, etc., unless it threatens security or order, is also supported, at least to some extent, by cases. In Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975), for example, the Eighth Circuit held

that an Indian must be permitted to wear his hair long, as required by his religion. Most recent cases have also agreed with §10-(8)(b)iii, that inmates must be permitted to attend religious services within the facility unless this would cause a substantial threat to security. Remmers v. Brewer, supra, and Cooper v. Pate, 382 F.2d 518 (7th Cir. 1974).

This regulation is also supported by other model standards, such as the National Sheriffs' Association handbook, Inmates' Legal Rights, pp. 40-41 (which does not state that inmates should be allowed to conduct religious services, but does use the clear and present danger standard for limiting rights rather than the lower "substantial threat" standard), Corrections, §2.17, and Response of the American Correctional Association to Correctional Standards, §2.16.

That all religions must be treated equally by facility personnel is required by the decision of the United States Supreme Court in Cruz v. Beto, 405 U.S. 319 (1972). The court there held that if a Buddhist prison inmate was denied a reasonable opportunity to pursue his faith, comparable to the opportunity afforded fellow inmates who adhere to conventional religious precepts, there had been unconstitutional religious discrimination. Cruz v. Beto thus requires that all religions be treated equally. It does not, as the court itself pointed out, require that exactly identical facilities and opportunities be provided to each religion. Factors such as size of the religion's representation among the inmate population may be taken into account in deciding what kind of treatment is truly "equal".

Exercise and Recreation

Medical literature indicates that daily exercise is essential to health. As Dr. Karl Meninger has said, "I think my profession considers it almost part of its ten commandments to say that everyone should have some exercise daily." Rhem v. Malcolm, 371 F.Supp. 594 at 611 (S.D.N.Y. 1974). Such exercise outside the close confinement of a cell, especially if outdoors, is also very important to inmate mental health. In addition, exercise and recreation is a wholesome way of expending energy that might otherwise find an outlet in misbehavior. For these reasons the proposed standards require that one hour of daily exercise be permitted for all inmates in county jails. The exercise is to be outdoors if weather permits.

The trend in recent court decisions supports this standard, especially in regard to pretrial detainees. Every court that has ruled on the matter in recent years has held that pretrial detainees must be given the opportunity for physical exercise and recreation. If they are not, they are being subjected to either cruel and unusual punishment or punishment without due process of law. Moore v. Janing, supra. The minimum figure any of the courts has set is one hour of exercise three days a week. Alberti v. Sheriff of Harris County, Texas, supra. The maximum figure that has been set is one hour each day of the week. Conklin v. Hancock, supra. The proposed standard should, therefore, be certain to meet the constitutional requirements. Sometimes the courts do not specify, but more often they do, that such exercise must be outdoors if weather permits. Conklin v. Hancock, supra; Alberti v. Sheriff of Harris County, Texas, supra.

Because most of the jail cases concerning recreation and exercise concern only pretrial detainees, the law is less clear as to convicted inmates. In at least three cases, however, convicted inmates were involved and were given exercise rights equal to those allowed to pretrial detainees. Hamilton v. Landrieu, supra; Martinez Rodriguez v. Jimenez, 409 F.Supp. 582 (D. Puerto Rico 1976); Alberti v. Sheriff of Harris County, Texas, supra. Furthermore, the most recent cases concerning prison inmates do hold that even convicted felons must have a reasonable opportunity for exercise and recreation. Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976) (one hour of recreation each day, five days per week), and Sweet v. South Carolina Department of Corrections, 529 F.2d 854 (4th Cir. 1975) (remanded to the district court for a determination of whether two hours per week were sufficient). Nearly all of the prisoners in the Nebraska Penal Complex may take all the outdoor exercise they wish during the day. Even inmates in solitary confinement at the Penal Complex receive one-half hour per day. An equal protection argument could be made in favor of this standard in addition to due process requirements.

In light of the case law, it is not surprising that many other sets of standards also contain this standard or one similar to it. The National Sheriffs' Association handbook, Inmates' Legal Rights, pp. 13, 16, for example, states that inmates should be given reasonable opportunities for physical exercise and recreation, with both indoor and outdoor facilities. The American Correctional Association's Manual of Standards (1966), recommends that "prisoners be allowed some form of exercise daily." The United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) recommended one hour of exercise daily for prisoners not engaged in physical labor and this is a standard that has been approved by countries that are looked upon by the United States as being extremely backward in the protection of human rights.

Section 10-(9)(c) sets a minimum size for exercise areas. Obviously, the opportunity for exercise is of little use if there is not sufficient space. The formula used to calculate the size of an exercise area has been used in California and found to be satisfactory. The Nebraska standards do, however, set a minimum area of 900 square feet rather than the 1,500 square feet required in California.

No standard is set for the size of indoor recreation areas. The area must, however, be large enough to allow a moderate degree of physical activity or the facility will not be able to comply with §10-(9)(a). Probably most facilities will use a multi-purpose or dayroom for indoor exercise.

Jails must also furnish inmates with an adequate amount of recreational equipment. If inmates are truly to be given an adequate opportunity to exercise, they must be given some equipment. There are at least four judicial decisions which support this concept. In Inmates of Suffolk County Jail v. Eisenstadt, supra, the court held that in a large jail it did not meet Fifth Amendment due process of law standards to furnish pretrial detainees with only a small exercise yard in a facility where volleyball, basketball and other forms of exercise were available and which also included a room containing a bumper pool table, two billiard tables, a television, a ping pong table, pinball machine and a badminton set. The court in Pugh v. Locke, supra, ordered that adequate recreational equipment be provided for prison inmates. See also Martinez Rodriguez v. Jimenez, supra, and Alberti v. Sheriff of Harris County, Texas, supra.

Section 10-(9)(d)ii requires that facilities provide a variety of popular games, puzzles and kits for inmates. These items are quite inexpensive and can do much to relieve idleness and the problems it causes. The following quotation from the National Sheriffs' Association handbook, Jail Programs, p. 23, is relevant:

> Frequently, the recreational needs of inmates not interested in sports are neglected. Provision for a wide variety of other activities should be made. Chess, checkers, dominoes, playing cards, and other table games are inexpensive and are of interest to many people. In the past, there has been objection that such games might lead to gambling, but this has not proved to be a major problem. Inmates who want to gamble will find a way to do so; an alert staff can ordinarily keep it at a minimum so that gambling debts do not

> pile up. Crafts such as leather working or painting can provide many hours of wholesome activity at little cost. . . .

The American Correctional Association has accepted the following standard for local criminal detention facilities which were proposed by the National Advisory Commission on Criminal Justice Standards and Goals:

> Leisure activities should be supported by access to library materials, television, writing materials, playing cards, and games. Response of the American Correctional Association to Correctional Standards, §9.8(7).

Recreational equipment is available at the Nebraska Penal Complex and the equal protection clause would probably require at least some recreational equipment for local facilities.

This regulation does not set a requirement for exactly how much of each type of equipment a facility must provide. Section 10-(9)(d)i, for example, does not state how many basketballs should be provided if the facility chooses to provide basketballs. The standard merely requires an adequate number, and, due to different inmate population characteristics, what is adequate will vary from facility to facility.

General Library

There is a need for libraries in local facilities. According to the Nebraska Jail Survey, inmates presently spend most of their time in complete idleness, playing cards or reading a newspaper. It hardly needs to be stated that this should not be encouraged. The National Sheriffs' Association handbook, Jail Programs, p. 22, points out that idleness is bad for both inmate mental and physical health. It further observes that idleness is detrimental to security and order for "frequently, lack of proper use of leisure time helps get a man into trouble while in jail." Idleness also inhibits rehabilitation of an inmate, and indeed it probably harms his chances of restructuring his life. Since many inmates are in trouble as a result of misusing their leisure time, it can hardly be expected that leaving them to their own devices for countless hours within the local correctional facility will have a positive effect.

When forced upon pretrial detainees, such idleness can amount to punishment without due process of law. At least two courts have held it to be so and have ordered that pretrial detainees be given adequate access to reading material. Dillard v. Pitchess, supra; Miller v. Carson, supra, 401 F.Supp. 835. A library is as useful as physical exercise and recreation in relieving convicted inmate idleness.

Equally important, a library is one of the few effective tools for education and rehabilitation which a facility holding inmates for short periods of time can have. (Illinois County Jail Standards, Ch. XIX, §(D).) The Association of Hospital and Institutional Libraries lists the following as goals that can be furthered by a library: "help prepare for vocations, enlarge social and educational backgrounds and ready an inmate for post-institutional life, develop reading as a successful leisure time activity, be a therapeutic release from strain, and be an aid to substituting new interests for undesirable attitudes." Materials Selection for Hospital and Institutional Libraries, p. 1. The National Sheriffs' Association handbook, Jail Programs, p. 22, enlarges upon the last point, stating that if an inmate learns how to better use his leisure time, it can help to keep him out of trouble in the future.

For these reasons, Jail Programs, the Illinois County Jail Standards, Response of the American Correctional Association to Correctional Standards, §9.8(7), and these proposed standards agree that jails should have libraries.

It is important not only that there be a library, but that its contents be adequate. For this reason specific requirements are set out in the regulations. Section 10-(10)(a)i requires each jail to subscribe to one local and one statewide newspaper. Newspapers are excellent for facility libraries because of their easy reading level, the variety of information offered, their interest to inmates, low cost and the fact that their destruction by inmates does not harm the facility budget. It is worth noting that the American Correctional Association Committee on Institution Libraries recommends newspapers for prison libraries in its Library Standards for Adult Correctional Institutions, §2.3.4.1 (1976).

Section 10-(10)(a)ii requires that there be magazines in jail libraries and recommends one title for each sixteen inmates. Appropriate magazines are also excellent for facility libraries because of reading level, low cost and interest to inmates. The American Correctional Association recommends one title for each four to five inmates up to three hundred inmates and one title for each sixteen inmates there-

after. Id. The one title for each sixteen inmates this standard recommends seems more than reasonable in comparison. It would mean only one title for most facilities.

Section 10-(10)(a)iii provides for books, the staple of most libraries. The recommended number of five per inmate should achieve a balance between the need for a variety of titles and budgetary constraints. If anything, it is too low. The American Correctional Association standard for prisons sets a minimum number of 12,000 titles for a prison of 300 inmates, or 40 per inmate. Id. Books need not be purchased. Borrowing from a local library or other source is encouraged because of its relatively low cost (even if some books are destroyed) and because it is easy to keep a library up-to-date in that manner. Local librarians should be consulted to find books that will both interest local inmates and be of benefit to them. The Standards Administrator should also compile a list of books to assist in compliance with this standard.

The library regulations also provide that library materials shall be responsive to ethnic interests. Among other things, this means that materials of special interest to Afro-Americans, Native Americans and Spanish speaking Americans should be provided in proportion to their average numbers in the facility population. The lack of ethnic-responsive library materials is, according to the Nebraska Civil Liberties Union comments on a draft of these regulations, an area about which minority inmates make many complaints.

Finally, the regulations state that inmates should have daily access to the general library during stated hours. Not all inmates need have access at the same hours, but maximum use should be made of the library.

Inmate Commissary

The section entitled Inmate Commissary requires that all facilities make some provision for inmates to purchase such items as candy, tobacco, toilet articles, etc. This section is required by the decision of the Nebraska Supreme Court in State v. Tomka, supra. There the court held that a sheriff must make provision for the reasonable or necessary wants of jail inmates through a commissary or other method. It should be noted that because of §14-605 R.R.S. Neb. 1943, police chiefs have the same responsibilities as sheriffs.

Locks and Lights

Facility personnel should be able to control lights and lock mechanisms for security and safety reasons. Nonetheless inmates should normally be allowed to secure their living units from intrusion by fellow inmates in order to protect themselves and property and to enjoy privacy. There is also no reason why inmates should not be able to control lights and electricity within their living units. Where security of the facility or safety of individuals are endangered ultimate control of locks and electricity in living units is in the facility personnel.

Regulation 11
Discipline

11-(1) Rules and Disciplinary Penalties. Each facility administrator shall establish written rules and disciplinary penalties to guide inmate conduct within three (3) months of the effective date of these regulations. Such rules and disciplinary penalties shall be stated simply and affirmatively, posted conspicuously in living units and the booking area and issued to each inmate upon booking. For those inmates who are illiterate or unable to read English, provision shall be made for the facility staff to orally instruct them or provide them with written material in their native language regarding facility rules and disciplinary procedures and penalties.

(a) Such rules shall:

i Be designed to effectuate or protect facility security or order;

ii Be the least restrictive means of achieving that interest;

iii Be specific enough to give inmates adequate notice of what is expected of them;

iv Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.

(b) The facility administrator in promulgating rules of conduct should not attempt generally to duplicate the criminal law. Where an act is covered by administrative rules and statutory law the following standards should govern:

i Acts of violence or other serious misconduct should be prosecuted criminally and not be the subject of administrative sanction.

ii Where the State intends to prosecute, disciplinary action should be deferred.

iii Where the State prosecutes, the facility shall not take further punitive action.

11-(2) Standards for Minor and Major Violations of Rules. Each facility administrator shall develop and implement within three (3) months of the effective date of these regulations and consistent with §11-(1) standards distinguishing minor and major violations of facility rules.

(a) Minor violations of rules of conduct are those punishable by no more than a reprimand or loss of commissary, entertainment, recreation or other privileges for not more than forty-eight (48) hours. Rules governing minor violations shall provide that:

i Facility personnel may impose the prescribed sanctions after informing the inmate of the nature of his misconduct and giving him the opportunity to explain or deny it.

ii A report of the violation shall be placed in the inmate's file, and the inmate shall be so notified.

iii The inmate shall be provided with the opportunity to request a review by an impartial officer or panel of the appropriateness of the staff action.

iv Where the review indicates that the inmate did not commit the violation or the original action was not appropriate, all reference to the incident shall be removed from the inmate's file.

(b) Major violations of rules of conduct are those punishable by sanctions more stringent than those for minor violations, including but not limited to transfer to separate housing as defined in §8-(4). Rules governing major viola-

lations shall provide for the following pre-hearing procedures:

i Someone other than the reporting officer shall conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the inmate committed a violation. If probable cause exists, a hearing date shall be set as soon as possible before an impartial officer or panel, and in any event within seven (7) days.

ii The inmate shall receive a copy of any disciplinary report or charges of the alleged violation and notice of the time and place of the hearing at least twenty-four (24) hours in advance of the hearing.

iii It is recommended that the inmate, if he desires, receive assistance in preparing for the hearing from a member of the facility staff, another inmate or other authorized person (including legal counsel if available).

iv No sanction for the alleged violation shall be imposed until after the hearing. The inmate may be separately housed from the rest of the population if the facility administrator finds that the inmate should be reclassified under §8-(1)(c) or (d).

v The inmate shall be permitted to appear on his own behalf at the time of the hearing and to present evidence and the voluntary testimony of witnesses.

(c) Rules governing major violations shall provide for internal review of the hearing officer or panel's decision. Such review shall be automatic. The reviewing authority shall be authorized to accept the decision, order further proceedings or reduce or increase the sanction imposed.

(d) In lieu of, or in addition to the above procedures, and if the District Judge's Rules so provide, sanctions for major violations of rules

of conduct may be imposed by the District Judge according to procedures which he shall devise.

11-(3) No Discipline of Inmates by Inmates. Inmates shall not be subject to any system or arrangement that utilizes other inmates to maintain discipline.

11-(4) Protection Against Personal Abuse. Each facility administrator shall immediately establish policies and procedures to fulfill the right of inmates to be free from personal abuse by facility staff or other inmates. The following shall be prohibited:

(a) Corporal punishment;

(b) The use of physical force by facility staff except as necessary for self-defense, maintenance of order or prevention of escape and the greatest caution and conservative judgment shall control the use of firearms;

(c) Any deprivation of light; ventilation; heat; balanced diet; hygienic necessities; clothing; mail; adequate sanitation; visitation, except as provided in §10-(2); access to the courts; access to legal materials; inmate religious services; and access to legal counsel. If an inmate is put in separate housing, he may be deprived of services which are only available by leaving the separate housing units to participate;

(d) Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any inmate; and

(e) Infliction of mental distress, degradation or humiliation.

11-(5) Searches. Each facility administrator shall develop and implement within three (3) months of the effective date of these regulations written policies and procedures governing searches and seizures and to insure that the rights of inmates under his authority are observed.

(a) Each facility administrator shall develop and submit for approval to the appropriate judicial authority a plan for making regular administrative searches of facilities and inmates. The plan shall provide for:

i Avoiding undue or unnecessary force, embarrassment or indignity to the individual.

ii Conducting searches as frequently as reasonably necessary to control contraband in the facility. If body cavity searches are utilized, they may be conducted only by licensed medical personnel.

iii Respecting an inmate's rights in property owned or under his control, as such property is authorized by facility regulations.

11-(6) Grievance Procedure. Inmates shall have a right to report grievances verbally or in writing to any proper official within the state. Each facility shall immediately develop and implement a grievance procedure. The procedure shall have the following elements:

(a) Each inmate shall be able to report a grievance on a form prescribed by the Standards Administrator.

(b) The grievance shall be transmitted without reading, alteration, interference or delay to the person responsible for receiving and investigating grievances. If possible this person should be independent of the facility.

(c) The inmate reporting the grievance shall not be subject to any adverse action as a result of filing the report.

(d) Promptly after receipt, each grievance not patently frivolous shall be investigated. Within three (3) days, or earlier depending upon the urgency of the grievance, a written report shall be prepared for the facility administrator and the complaining inmate. The report shall set forth the findings of the investigation and the recommendations of the person responsible for making the investigation. A copy shall be delivered to the inmate upon completion of the report.

(e) The facility administrator shall respond in writing to each such report within three (3) days, or earlier depending on the urgency of the grievance, indicating what disposition will be made of the recommendations received.

(f) When the grievance involves a complaint of an emergency nature and threatens the inmate's immediate health or welfare, the investigative report and response of the facility administrator thereto shall be completed within at least forty-eight (48) hours of receipt of the oral or written grievance.

(g) A copy of the investigative report and the facility administrator's response and recommendations shall be placed in the inmate's file and kept there for as long as the file must be maintained.

11-(7) Records of Disciplinary Actions. A record of all minor and major disciplinary infractions and punishment administered therefor shall be kept. This requirement shall be satisfied by retaining copies of rule violation reports and reports of the disposition of each in the inmate's file.

Commentary

Introduction

The two focal points of inmate complaints in the area of disciplinary methods are the Due Process Clauses of the Fifth and Fourteenth Amendments and the Prohibition against Cruel and Unusual Punishment of the Eighth Amendment. Both the notions of due process of law and cruel and unusual punishment have stubbornly refused to be pinned down; and both are closely tied to the sentiments and policies of American society. As the late Justice Frankfurter stated in Rochin v. California:

> . . . "due process of law" requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims . . . on a judgment not ad hoc and episodic but duly mindful of reconciling the needs both of continuity and of change in a progressive society. 342 U.S. 165 at 172 (1952).

Former Chief Justice Warren expressed a similar view of the prohibition against cruel and unusual punishment in Trop v. Dulles:

> The exact scope of the constitutional phrase "cruel and unusual" has not been detailed by this Court . . . and basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards . . . . The words of the Amendment are not precise, and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of

CONTINUED

2 OF 4

decency that mark the progress of a maturing society. 356 U.S. 86 at 99 (1958).

These quotations, while not from the area of correctional law, demonstrate that the notions of due process of law and cruel and unusual punishment are not fixed and immutable, but rather reflect the notions of the society at a given time of what is fair, just and civilized. This principle is applicable also to the jail environment, and the responses that these constitutional provisions will exact from jail administrators thus cannot be settled once and for all.

Wolff v. McDonnell, supra, is the most definitive decision to date considering the constitutionality of intra-prison rules and regulations. In that case, the Court used due process analysis in an attempt to find a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." Wolff v. McDonnell, supra, 418 U.S. at 542.

With respect to the primary claim in Wolff of due process, the Court held that the protections of the Constitution and the due process clause extended to incarcerated offenders but that these rights were subject to limitation because of the nature of the prison regime. Thus, where the potential sanctions for a prisoner's "flagrant or serious misconduct" include solitary confinement and loss of "good time," the Court required certain minimum due process safeguards in the disciplinary hearing. The Court recently reaffirmed this holding in Baxter v. Palmigiano, 425 U.S. ___. 47 L.Ed.2d 810, 96 S.Ct. ___ (1976).

The Court refused to require the same procedures for in-prison disciplinary proceedings which it had previously mandated for parole and probation hearings in Morrissey v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 778 (1973). However, some of the minimum due process safeguards required by Morrissey for parole revocation hearings were deemed necessary in prison disciplinary proceedings.

These included: (1) a hearing before an impartial examining body; (2) written notice of charges to the defendant at least twenty-four hours in advance of the hearing; (3) a written statement by the fact finders as to the evidence relied upon and reasons for the punishment imposed; (4) the right to call witnesses and to present documentary evidence when doing so will not jeopardize institutional security or the goal of rehabilitation; and (5) the right of a defendant to seek the aid of a fellow inmate, staff member or inmate legal assistance in cases where the defendant is illiterate or the issues very complex.

The Court expressly denied inmates the right to confront or cross-examine adverse witnesses. By way of justification, the Court cited its obligation to make one rule for maximum as well as minimum security institutions, and pointed to the potential for hostility and retaliation which would be aggravated by requiring adversary procedures in proceedings whose goals are rehabilitation and behavior modification.

Rules and Disciplinary Penalties

Section 11-(1) requires that the facility administrator establish, post and issue rules and penalties for their violation. The reason for this is that, as the National Sheriffs' Association handbook, Jail Security, Classification and Discipline, p. 63, points out, an inmate who violates facility rules may not know that he is doing so unless given the opportunity to learn what those rules are. It would be manifestly unfair to punish an inmate for the violation of a rule of whose existence he could not have known. Publishing rules will help avoid such violations caused by ignorance. Publishing penalties will help deter all violations.

It should be noted that Nebraska Revised Statutes §§47-101 and 201 (1974) require the District Judges to prescribe rules for local criminal detention facility inmate punishment for violation of facility rules and that these rules be posted where the inmates can see them. It can thus be seen that the policy behind this regulation has already been approved by the Legislature. The National Sheriffs' Association handbook, Jail Security, Classification and Discipline, pp. 67, 69, also advocates this policy, as do other sets of model standards such as the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, §2.11.

The provision for explaining the rules to illiterate and non-English speaking inmates is merely another ramification of this policy. See Jail Security, Classification and Discipline, p. 69.

Minor and Major Violations

The proposed regulations copy, and the National Sheriffs' Association booklet, Jail Security, Classification and Discipline, pp. 59-61, supports the model suggested in the report by the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, supra, §2.12.

Minor violations of rules of conduct are those punishable by not more than a reprimand, or loss of commissary, entertainment, or recreation privileges for not more than forty-eight hours. Major violations are those punishable by sanctions more stringent than those for minor violations, including, but not limited to, transfer to separate housing or any other changes in status which may tend to affect adversely an inmate's time of release or discharge. The due process provisions incorporated in the proposed regulations will comply with Wolff requirements.

It is not yet clear how much of the due process required by this regulation for "major violations" is constitutionally required. The United States Supreme Court in Baxter v. Palmigiano, supra, stated that Wolff due process was required for all hearings concerning "major disciplinary violations". The Eighth Circuit Court of Appeals has held that Wolff due process is required to impose such sanctions as reduction in classification, extra duty and job changes. Finney v. Arkansas Board of Corrections, supra. Some of the punishments mentioned in Finney, especially "extra duty", may be comparable to deprivation of privileges forty-eight hours. It is possible, therefore, that Finney requires Wolff due process for all "major violations", as defined in this regulation.

No Discipline of Inmates by Inmates

> Inmates should not be subject to a "kangaroo court," a "barn boss" system, or any other arrangement that utilizes prisoners to maintain discipline. The National Sheriffs' Association handbook, Inmates' Legal Rights, p. 27 (1974).

The proposed regulations at §11-(3) have incorporated this sound recommendation, which is supported by the recent case of Pugh v. Locke, supra, which at page 333 states: "At no time shall prisoners be used to guard other prisoners, nor shall prisoners be placed in positions of authority over other inmates."

Protection Against Personal Abuse

Facility personnel are under a duty to provide inmates reasonable protection from threat of violence.

> A prisoner has a right, secured by the Eighth and Fourteenth Amendments, to be reasonably protected from constant threat of violence

> and sexual assault by his fellow inmates, and he need not wait until he is actually assaulted to obtain relief.

Woodhous v. Commonwealth of Virginia, 487 F.2d 889 at 890 (4th Cir. 1973); see also Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970), aff'd 442 F.2d 304 (8th Cir. 1971).

Inmates are protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, Washington v. Lee, 263 F.Supp. 327 (M.D. Ala. 1966), aff'd per curiam, 390 U.S 333 (1968); therefore, they must be free from arbitrary and capricious treatment by jail personnel. Sostre v. McGinnis, supra.

The regulations at §11-(4)(a) and (b) prohibit corporal punishment and the use of force by facility staff except as necessary for self-defense, maintenance of order or prevention of escape. They also extend to any act or lack of care that injures or significantly impairs the health of any inmate.

This is supported by the National Sheriffs' Association handbook on Inmates' Legal Rights, p. 9 (1974).

> A primary right of a prisoner relates to his personal safety and welfare. Enforcement of this right is the responsibility of the sheriff and the jail staff, and failure to enforce it may result in legal action against them. The sheriff and the jail staff are responsible for preventing mistreatment of prisoners by jail personnel or by other inmates.

Thus, as stated in the proposed regulations, facility staff may exert physical force upon inmates only for several logically distinguishable reasons. For example, a staff member may physically restrain, jostle, or even strike an inmate in order to protect himself or others from attack, or in connection with an order presently being disobeyed. In the following representative decisions, it was expressly or implicitly acknowledged that physical force which is utilized by prison personnel for one or more of the "preventive" purposes described above does not, at least to the extent that it is reasonable in degree, constitute cruel and unusual punishment. Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969), cert. denied 396 U.S. 915 (1969); Bethea v. Crouse, 417 F.2d 504 (10th Cir. 1969).

Denial of food as punishment for any offense committed within the facility is a clear and direct violation of the Eighth Amendment's prohibition against cruel and unusual pun-

ishment. James v. Wallace, supra; Pugh v. Locke, supra. The National Sheriffs' Association handbook, Food Service in Jails, p. 65, agrees completely, noting (with emphasis) "that food should never be withheld as a punishment for bad behavior[,] . . ." and that "[t]hree meals a day are the right of every inmate."

Searches

This section requires facility administrators to devise a plan to protect inmates from unreasonable searches. The plan must protect inmates from unnecessary indignity, unnecessary numbers of searches and must protect inmate property rights.

In Robinson v. United States, 414 U.S. 218 (1973), and Gustafson v. Florida, 414 U.S. 260 (1973), the Supreme Court held that the fact of custodial arrest gives rise to the authority to search the person under arrest, and in United States v. Edwards, 415 U.S. 800 (1974), the Court allowed the seizure of an arrestee's clothes "with or without probable cause." Id., at 804. These cases are significant in analyzing any search of a convicted inmate as well, because they establish that a search can be reasonable even if there is not probable cause to believe the search will reveal evidence of a crime. The same principle applies to searches of inmate cells. United States v. Palmer, 469 F.2d 273 (9th Cir. 1973); Hoitt v. Vitek, 361 F.Supp. 1238 (D. N.H. 1973), aff'd 497 F.2d 598 (1st Cir. 1974). Since the warrant requirement is also eliminated in these cases, almost all custodial searches will presumably be declared reasonable.

Searches will not be held reasonable which "violate the dictates of reason either because of their number or their manner of perpetration". United States v. Edwards, supra, at fn. 9, quoting from Charles v. United States, 278 F.2d 386 at 389 (9th Cir. 1960), cert. denied 365 U.S. 831 (1961). Searches are also not to be used for the purpose of humiliating the person searched. Daugherty v. Harris, 476 F.2d 292 (10th Cir. 1973), cert. denied 414 U.S. 872 (1973).

Hodges v. Klein, 412 F.Supp. 896 (D. N.J. 1976), held that prisoners are protected against unreasonable searches and seizures and do have a qualified right to privacy. However, in a prison environment there are circumstances where strip and anal cavity searches are "a necessary and reasonable concomitance of . . . imprisonment." Daugherty v. Harris, 476 F.2d 292, 295 (10th Cir. 1973), cert. denied, 414 U.S. 872 (1973).

Hodges v. Klein, supra, 412 F.Supp. at 903, held that the decision to require strip searches is within the discretion of prison officials; however, a visual anal search is permitted only if there is a clear indication or suggestion that the inmate is concealing something in his anal cavity. The regulation requires that body cavity searches be conducted only by licensed medical personnel. This is supported by Daugherty v. Harris, supra.

In most situations, a metal detector protects the safety of guards and, to this extent, the inmate's constitutional right to privacy and the state's interest are both protected. See also, Bonner v. Coughlin, 517 F.2d 1311 (7th Cir. 1975), an opinion by now Supreme Court Justice Stevens which considered the limited expectation of privacy a prisoner could claim and the need for surveillance and control in a prison society. The court concluded "that the surrender of privacy is not total and that some residuum meriting the protection of the Fourth Amendment survives the transfer into custody." 517 F.2d at 1316.

Often contraband is seized during searches of individuals or cells. In the United States of America ex rel. Wolfish v. United States of America, 75 Civ. No. 6000, slip opinion at p. 20, Judge Frankel discusses the legal implications of such seizures:

> Whatever minimal property a jail inmate may possess, and however minimal the rights attending that property may be, nobody doubts today that the prisoner is to be protected against seizures without some rudiments of primitive fairness. It is not necessary, though it seemingly will be before this case ends, to forecast the list of such fundamentals--notice, an opportunity to protest, "some kind of hearing," etc. It is enough for now, ruling only on what is properly here, that respondents must be ordered to give receipts for what is taken in searches of the rooms. It is depressing to hear in this time the solemn contention that minor correctional officers may seize property in unobserved searches, take it away, and then destroy it (or purport to destroy it) without even telling the possessor what they have taken, leaving no possibility of recourse or question concerning their self-regulated judgments (as to whether they actually took anything, as to whether things they took were contraband, what should be destroyed, what may be returned). Now that the contention has been made, for the first time in this court's knowledge, it merits prompt rejection.

The regulation requires that the facility administrator's plan regarding search and seizure insure the rights of inmates and respect the inmate's rights in property owned or under his control, as such property is authorized by facility regulations. The requiring of a receipt for all contraband seized in searches of inmates or their cells would be consistent with a philosophy of accountability and fairness which is also reflected in §10-(1), requiring notice of seizure of contraband. The clear statement on this subject in the Wolfish decision should add emphasis to this principle.

Grievance Procedure

Traditionally, the basic components of an administrative grievance procedure have been a complaint system, followed by an investigation and reasoned determination of the facts (including a hearing by an impartial examiner or body in appropriate cases or if requested), and a resolution of the controversy. Often there is included a right of appeal from an adverse decision. All these aspects are included in the grievance procedure outlined in the proposed regulations.

An administrative procedure to be effective must be swift, fair and decisive. As a matter of correctional administrative policy it would seem that an administrative grievance procedure that worked would be a great advantage. First, to the extent that it was simpler and swifter, it might supplant, as a practical matter, the courts as the most popular inmate route for complaint. However, in order to accomplish this, the inmates must perceive the procedure as giving them at least as much chance of a fair hearing as they would receive in the courts. This can only be the case if the procedure does in fact give remedies in appropriate cases.

The regulation includes specifications, limits and provisions for swift response to emergency complaints. These concepts are supported by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice in a 1975 publication entitled Grievance Mechanisms in Correctional Institutions.

Finally, if a dissatisfied inmate presented his case to a court following an adverse hearing and determination by the grievance procedure, the facility administrator would have a full record of the complaint and the institutional response, as well as a reasoned decision upon which to base its courtroom defense. In fact the court might well defer to the expertise of the administrators of the facility.

The National Sheriffs' Association handbook on Jail Security, Classification and Discipline (1974), p. 62, also states the need for grievance procedures:

> The basic reason for unrest and violence in most of the jails throughout the country appears to be a lack of communication between jail staff and inmates. The inmate frequently feels that a grievance will not be acted on or that those who make decisions on grievances will act arbitrarily or capriciously without affording any satisfaction to the inmate. There may be no uniform procedure for dealing with inmate grievances. When dispositions are made, they are not always disseminated and explained to the inmate or to the staff. If an inmate has a grievance, it may possibly be handled informally by a staff member who makes a decision that may be unsatisfactory to both the inmate and the administration.
>
> Approaches and policies for resolving inmate grievances should flow from the inmate through the correctional staff to the administrator. They should be investigated, and the results should be made known to staff and inmates alike. If grievances are properly handled, there will undoubtedly be fewer disciplinary problems, and the morale of both staff and inmates will be enhanced.

The judicial process will always serve as an ultimate means of resolving inmate grievances. See McCray v. Burrell, 516 F.2d 357 (4th Cir. 1975), cert. granted, 423 U.S. 923 (1976), cert. dismissed, ___ U.S. ___, 48 L.Ed 2d 788, 96 S.Ct. ___ (1976), allowing federal court jurisdiction without exhaustion of administrative remedies.

However, many grievances felt by inmates do not amount to constitutional deprivations, and administrative mechanisms for resolving these minor complaints are critically important for a variety of reasons.

> Authorities generally agree that absence of effective administrative mechanisms for handling prisoner complaints increases the risk of violence within prison facilities. L. Singer and Keating, Prisoner Grievance Mechanisms, 19 Crime & Delinq. 367 (1973), The Official Report of the New York State Special Commission on Attica, ATTICA, ch. 2 (1972). American Bar Association Committee on the Legal Status of

Prisoners, Standards Relating to the Legal Status of Prisoners, Tentative Draft, Part VIII, Commentary, p. 2 (December 1976)).

> Experience teaches that nothing so provokes trouble for the management of a penal institution as a hopeless feeling among inmates that they are without opportunity to voice grievances or to obtain redress for abusive or oppressive treatment. (Landman v. Peyton, 370 F.2d 135 (1966), cert. denied, 388 U.S. 920 (1967)).

> Peaceful avenues for redress of grievances are a prerequisite if violent means are to be avoided. (National Advisory Commission on Criminal Justice Standards and Goals, Corrections 57 (1973). See also R. Goldfarb and L. Singer, After Conviction 515-516 (1973)).

An effective inmate grievance procedure can relieve the growing burden on the courts from prisoner petitions in a manner more acceptable to both inmates and administrators. Courts are "ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints." Procunier v. Martinez, supra, 416 U.S. at 404-05, n. 9 (1974). An adequate procedure could filter out the frivolous complaints, respond to the justified ones and clarify the unresolved ones.

Records

Wolff v. McDonnell, supra, requires a written statement for major violations by the fact finders as to the evidence relied on and reasons for the punishment imposed. This requirement may be satisfied by retaining copies of all rule violation reports and reports of the disposition of each in the inmate's file.

Records should also be kept so that they may be referred to in classification and other disciplinary proceedings. In addition, they will be needed if the Standards Administrator wishes to review facility disciplinary practices.

Written records of disciplinary hearings also serve to protect an inmate from collateral consequences based on a misunderstanding of the nature of the original proceeding and insure that administrators, faced with scrutiny by state officials, the public, and even the courts, will act fairly. Wolff v. McDonnell, supra, 418 U.S. at 565.

Regulation 12
Health Services

12-(1) Right to Medical Services. Inmates have a right to necessary medical services, including, but not limited to, dental, physical, psychiatric, physical therapy and other accepted medical care. No person other than an institution physician or a licensed physician acting in his stead may diagnose any illness or injury, give treatment, or prescribe medication, except that in cases of emergency a nurse or qualified employee shall administer first aid as expeditiously as possible and pending the arrival of the physician.

12-(2) Medical Service Staffing. Each facility shall have a licensed physician designated for the supervision, care and treatment of inmates during their confinement in the facility. The designated physician shall reside in the same or a nearby community.

(a) The facility shall have a written agreement with a health care provider to assure that there is a designated physician to provide the necessary services.

(b) The physician shall develop a written facility health care plan to cover the health needs of the facility and shall be available for consultation with facility personnel at all times.

(c) No provision of these regulations shall be construed to prohibit an inmate held during mental health commitment proceedings from consulting in person with his own physician concerning medical matters.

(d) Each jail with an average daily population of seventy (70) or more inmates shall employ one full-time licensed or certified nurse who shall

provide nursing care at the jail on an eight (8) hour basis, five (5) days per week. The specific duties of the nurse shall be set out in the written facility health care plan developed by the designated jail physician.

12-(3) Admission or Referral. Before a person is admitted to a facility, the screening officer shall observe his current medical and physical condition.

(a) If this observation indicates head injuries, coma, broken bones, open wounds, fever, hallucination, unconsciousness, symptoms of withdrawal from alcohol or controlled substances, advanced state of intoxication or serious injury, the person shall be denied admission and taken immediately to the nearest medical center.

(b) If the observation indicates tuberculosis, venereal disease or other communicable disease, the inmate shall be admitted, but shall be separately housed from the rest of the inmate population. Arrangements shall be made for his transfer to a facility equipped to provide appropriate care, unless the admitting facility can safely and effectively maintain a suitable course of treatment for the inmate while insuring the safety of the rest of the inmate population.

(c) If the observation indicates that the person may be mentally ill, he shall be admitted and put under close supervision.

(d) If, at any time, any condition referred to in (a), (b) or (c) above is detected, it shall be brought immediately to the attention of the designated physician.

12-(4) Physical Examination upon Admission. The facility administrator shall provide a written plan which assures that each inmate held over twenty-four (24) hours undergoes a physical examination within forty-eight (48) hours of admission to the facility.

(a) This examination should be conducted by the designated physician but may, in holding centers or lockups, be conducted by licensed or certified nurses or medically trained technicians.

(b) If there is reasonable cause to believe a female inmate is pregnant, the designated physician shall provide directions for her care and treatment.

12-(5) Emergency Care. Each facility shall have a written agreement with one or more health care providers, such as hospitals or medical clinics, to provide emergency services either at the facility or at the location of the health care provider.

(a) A schedule which lists the names, telephone numbers and call days of the emergency physician(s) and health care provider shall be posted prominently at each facility staff station.

(b) All facility personnel responsible for the supervision, safety and well-being of inmates shall be trained in emergency first aid procedures.

(c) Each facility shall have a minimum of one first aid kit located in a place accessible to all staff members. It is the responsibility of the facility administrator to insure that the first aid kit is adequately stocked with fresh and useable supplies at all times.

12-(6) Daily Sick Call. All jails with an average daily capacity of seventy (70) or more inmates shall provide space and staff to hold a daily sick call each week day conducted under the immediate supervision of a physician for the purpose of providing inmates the opportunity to receive or arrange for appropriate medical services for illness or injury.

(a) The facility administrator shall be responsible for determining the time and place of sick call, in consultation with the designated physician.

(b) Sick call procedures and regulations shall be in writing and shall be posted prominently for the information of both staff and inmates.

(c) All other facilities detaining inmates for more than forty-eight (48) hours shall provide a weekly sick call to be supervised by the designated physician.

12-(7) Dental Services. Each jail shall have a written agreement with a licensed dentist to provide necessary dental care.

(a) The name, address and telephone number of the dentist shall be posted prominently at the primary staff station.

(b) Facility personnel shall assist inmates in maintaining dental hygiene through provision of appropriate dental care materials.

12-(8) Administration of Medication. Medications shall be administered in accordance with the facility health care plan only by licensed medical personnel or by facility staff members according to the directions of the facility's designated physician. Each facility administrator, in accordance with the facility's designated physician, shall develop plans, establish procedures and provide space for the secure storage and controlled administration of all medications and drugs. Such plans, procedures, space and accessories shall include, but not be limited to, the following:

(a) Secure cabinets, closets and refrigeration units.

(b) Means for positive identification of the intended recipient of the prescribed medication.

(c) Procedures for administering legally obtained drugs only in the dose prescribed and at the time prescribed.

(d) Procedures for the administration of controlled substances and dangerous drugs in liquid or powdered form whenever possible.

(e) A procedure for recording the fact that the prescribed dose has been administered and by whom.

(f) Drugs should only be administered or dispensed by facility personnel.

(g) A procedure whereby inmate reactions are reported to the physician at once and an explanation noted in the inmate's record.

(h) A procedure for disposition of medication at the time of an inmate's release or transfer.

(i) A procedure whereby inmate refusals of medications are reported to the designated physician and noted in the inmate's medical record.

(j) No inmate should be deprived of prescribed medication for any reason.

(k) A procedure for contacting the designated physician when a newly admitted inmate expresses a need for medication or other medical treatment.

12-(9) Medical Records. Each facility shall, in complying with this section, utilize medical record forms recommended by the Standards Administrator.

(a) A medical report shall be maintained for each inmate and shall include, but not be limited to:

i the report of the admission history;

ii the admitting diagnosis and report of subsequent physical examinations;

iii reports of appropriate laboratory tests;

iv general medical condition including disabilities and limitations;

v instructions relative to the inmate's care;

vi written orders for all medications with dosage, stop dates, treatments, special diets and for extent or restriction of activity;

vii physician's orders and progress notes; and

viii condition on release or transfer or cause of death.

(b) The facility administrator shall be responsible for recording all complaints of illness or injury and any action taken pursuant to same.

(c) A copy of each inmate's medical record shall be kept by the facility for a period of not less than five years following the release, transfer or death of the inmate, and shall be avail-

able for the inmate's inspection at any reasonable time, both during his confinement and subsequent to his release or transfer. Access to inmate medical records shall be governed by the provisions of §6-(8) above.

12-(10) Extraordinary Events. The death of any inmate must be immediately reported to the designated physician and to the coroner. The death of any inmate shall be reported in writing on the recommended form to the Standards Administrator within seventy-two (72) hours. A copy of the reports of the coroner and the designated physician shall be included.

12-(11) Inmate Participation in Research. Any research which is undertaken or proposed by any governmental or private authority which would involve the participation of any inmate shall be approved by the Standards Administrator in addition to complying with any applicable federal or state laws or regulations. In evaluating proposals for research the Standards Administrator should consult the recommendations of the National Research Act, P.L. 93-348 §202(a)(2), and the applicable recommendations and regulations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research and any other similar regulations.

Commentary

Introduction

The focus of regulations 12, 13 and 14 is upon the basic physical needs of the individual inmate. Clearly a facility's ability or inability to successfully accommodate these needs will affect the satisfactory adjustment of the inmate to the facility and will, therefore, have significant implications for some of the major concerns of any facility administrator: security, order and inmate management. The vast majority of the recent judicial decisions which consider any one of the areas addressed in these three regulations employ the same constitutional yardstick for review and thus these regulations invite concurrent discussion. Therefore, it seems appropriate to deal initially with some general considerations which are applicable to all three areas, and then to address each rule specifically in light of pertinent judicial decisions and other current thinking concerning what appears to be a reasonable level of care and custody for an incarcerated individual in terms of (1) health services, (2) food services and (3) hygienic standards.

Most "jail conditions" cases have arisen as a result of plaintiff inmates alleging their subjection to "cruel and unusual punishment" in contravention of the Eighth Amendment to the Constitution, which was made applicable to the states through the passage of the Fourteenth Amendment. Furman v. Georgia, 408 U.S. 238 (1972). The concept of what may constitute cruel and unusual punishment has seen significant development over the years. The Supreme Court of the United States, in 1910, noting that what constituted cruel and unusual punishment prohibited by the Eighth Amendment had not really been defined and that no case had, up to that time, arisen which would have required the court to provide an "exhaustive" definition, ended some of the uncertainty which had existed by declaring that what constitutes "cruel and unusual punishment" is not limited to society's views in 1787 but rather "may acquire wider meaning as public opinion becomes

more enlightened by humane justice." Weems v. United States, 217 U.S. 349 (1910). This position was enunciated again by the court in 1958 when it stated that the Eighth Amendment's cruel and unusual punishment clause "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86 (1958).

Among the various tests devised by the courts in their efforts to ascertain whether a condition or series of conditions of incarceration rise to the level of cruel and unusual punishment, perhaps the one most useful to this discussion was recently articulated by a United States District Court:

> The concept of cruel and unusual punishment is not limited to instances where the prisoner is subjected to individual punishment or abuse; confinement may amount to cruel and unusual punishment where it is characterized by conditions and practices so bad as to be shocking to the conscience of civilized people. Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976).

Similarly, the United States Court of Appeals for the Eighth Circuit has expressly stated that there is no meaningful distinction for Eighth Amendment purposes between specific punishment imposed within a correctional facility and general conditions extant in such a facility: both are subject to Eighth Amendment scrutiny. Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968).

The common thread which necessarily runs through any careful discussion of these three regulations is ultimately grounded in a distinction made in another significant case by the same Eighth Circuit Court of Appeals to the effect that, in the correctional context, the line separating cruel and unusual punishment from punishment that is not cruel and unusual is based on "the fundamental difference between depriving a prisoner of privileges he may enjoy and depriving him of the basic necessities of human existence." Finney v. Arkansas Board of Corrections, 505 F.2d 194 (8th Cir. 1974).

There is another related point which is germane to an overview of these "conditions" rules of the proposed regulations. Many of the requirements and standards set forth in the sections under discussion would, in order to be met, entail substantial monetary expenditures by local governments. Although the burden is real and the difficulty great it is now a generally accepted principle in the federal courts that

merely because it may be "inconvenient or expensive . ... [to operate a correctional facility] in a constitutional fashion [this] is neither a defense to . . . [an] action [n]or a ground for modification of a judgment rendered." James v. Wallace, 382 F. Supp. 1177 (M.D. Ala. 1974). See also Pugh v. Locke, supra, and Finney v. Arkansas Board of Corrections, supra. Along the same lines, it is often stated that if a city or county "chooses to run a jail it must do so without depriving inmates of rights guaranteed to them by the federal Constitution." Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975).

Right to Medical Services

In discussing the constitutional necessity of providing an incarcerated individual with an adequate level of health care it is instructive to consider that some current judicial thinking indicates, quite properly, that when a governmental entity finds it necessary to deprive an individual of his liberty it owes him "an even more fundamental constitutional duty to use ordinary care to protect his life and safety while in prison" than it owes the rest of its citizens. Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970), aff'd. 442 F.2d 304 (8th Cir. 1971). In any event, there is today no serious constitutional debate over the proposition that inmates do have a basic right to receive adequate medical care at all times during their incarceration. Martinez v. Mancusi, 443 F.2d 921 (2nd Cir. 1970); Edwards v. Duncan, 355 F.2d 993 (4th Cir. 1966). If there is any dispute over, or difficulty with, this issue it turns on the question of what definition should be attached to the terms "adequate medical care". One United States District Court found that correctional officials, in order to avoid the prohibition against cruel and unusual punishment, were required to provide medical services calculated to meet all "predictable health care needs of inmates." Battle v. Anderson, 376 F.Supp. 402 (E.D. Okla. 1974). Judge Frank Johnson, in Alabama, simply ordered correctional authorities to comply with the general standards of the American Correctional Association relating to medical services for prisoners, upon which these regulations are based in large part. James v. Wallace, supra; Pugh v. Locke, supra. Generally, of course, the courts must view the issue of the provision of adequate medical care within the context of the factual pattern of the particular case at hand.

The United States Supreme Court in the recent case of Estelle v. Gamble, U.S., 50 L.Ed. 2d 251, S.Ct. (1976), had the following to say concerning the provisions of medical care to prisoners:

> We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain . . . proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoners' needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.

See also Corby v. Conboy, 457 F.2d 251 (2nd Cir. 1972).

As indicated above, however, it is essential to remember that the right of inmates to a constitutionally adequate level of medical care "cannot be dependent on the State Legislature approving more money." Costello v. Wainwright, 525 F.2d 1239 (5th Cir. 1976). Finally, by way of general introduction, although most litigation of medical conditions in the federal courts has, as indicated earlier, been based on the Eighth Amendment's ban on cruel and unusual punishment, at least a few courts have found a denial of due process and fundamental fairness in the denial of medical care "where circumstances are clearly sufficient to indicate the need of medical attention for injury or illness . . . ." Fitzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972); Tolbert v. Eyman, 434 F.2d 625 (9th Cir. 1970).

Medical Service Staffing

The operative consideration in these health service regulations is a need for flexibility in recognition of the wide diversity among Nebraska's local detention facilities in their design capacity as demonstrated by the Nebraska Jail Survey. In the facilities which are designed to house seventy or more inmates, a fairly complete medical program should be provided within the facility itself. However, in the smaller facilities, which are the norm in Nebraska, no such program should be attempted. Rather this standard has been formulated to focus on the individual inmate and to insure that he receives, within several general categories, appropriate medical care. It is the responsibility and prerogative of the facility administrator to determine, through his experience and familiarity with his own facility, how best to cause the necessary level of health care to be delivered. He should be aided in this decision by the facility's designated physician, who is to be secured by contractual arrangement either directly or through a health care provider, such as a hospital or medical clinic.

Recognition of the usefulness and flexibility of this approach was given by the National Sheriffs' Association in its pamphlet, Jail Programs, which points out that while the ideal might be for a full-time physician to be available in each facility, this is clearly unrealistic for most facilities, which must instead "rely upon the local health officer or contractual arrangement with a local physician". The Nebraska Jail Survey indicates that, as appears to be the case in other states, very few medical personnel are actually emloyed in the jails. This is understandable given the size and resources of most facilities. The potential problem area here, however, is with respect to the fact that in only 39% of Nebraska's jails are physicians available on call. The State of Illinois has addressed this concern by requiring that smaller facilities "contract . . . with a local physician for full-time coverage on specified days and for emergencies . . ." and "contract . . . with a local physician to be on call to conduct sick call for emergencies and examine newly received prisoners . . . ." Illinois County Jail Standards, Ch. XIV, §(B)(5) (1971).

The regulation requiring a licensed or certified nurse in each jail with an average daily population of seventy inmates is supported by Rule 5(d) of the Amended and Collated Rules for the Government of the County Jails Within the Fourth Judicial District of Nebraska and the National Sheriffs' Association manual, Jail Administration, §4.

Among the other specific guidelines on health care delivery to be found in this rule are sections on physical examination upon admission, emergencies, sick call procedures, dental care, administration of medication and maintenance of medical records. It seems most useful to deal in this discussion with all of these areas together, highlighting some of the more significant current thinking which is applicable. For example, one United States District Court sanctioned an agreement between contesting inmates and facility authorities which said, in part, that the "jail is constitutionally required to provide 'reasonable' medical assistance to inmates including a reasonable medical examination, access to sick call, treatment for specific medical problems, proper dental attention, and adequate suicide prevention techniques." Collins v. Schoonfield, supra, 344 F.Supp. at 277. Oregon requires that a medical examination be given within twenty-four hours of admission to all inmates, and calls for the secure storage of all medications, provision of emergency dental care, written procedures for all emergencies, provision of daily sick call, and, most importantly, availability of a medical officer on call on a twenty-four hour a day basis. Jail Standards and Guidelines for Operation of Local Correctional Facilities, State of Oregon, pp. 36-41 (1973).

The National Sheriffs' Association handbook, Jail Programs, p. 13, points out that it is in the facility staff's own interests to follow a reasonable course of health care delivery: ". . . staff interests in protection from law suits alleging mistreatment can be served by an adequate, documented medical examination of every prisoner on admission and a record of treatment provided subsequently." The following excerpt from the United States Bureau of Prisons publication, The Jail: Its Operation and Management, dramatically illustrates the need for accurate medical records in jails:

> The importance of good medical records cannot be overemphasized. Many problems have been created in jails because good records have not been kept. In one instance, a prisoner awaiting trial complained of pain from an ulcerated toe. The doctor was called and after examining the prisoner, prescribed medication. The medication did not help and the doctor prescribed another medication over the phone. After four weeks the toe had to be amputated. Two months later, the prisoner had to have his leg removed below the knee. The prisoner's charge that the jail had been negligent and had not provided him with medical attention could not be contested because the jail did not keep adequate records.
>
> In another incident, a federal prisoner filed a suit in which he charged that he was denied medical care. He claimed that while he was confined in a county jail awaiting trial, a jailer had slammed a door on his hand, and he was refused medical attention. The jail had a full-time nurse who kept complete records on all prisoners who attended sick call. Investigation revealed that the prisoner had attended sick call on three different occasions after he claimed to have been injured, but that he had made no mention of an injured hand. When the prisoner was confronted with this information, he withdrew his suit. (p. 67.)

In addition to the states noted above, Pennsylvania requires individual written medical records for each inmate in its county prisons, and calls for an agreement between each county facility and a local hospital for admission of prisoners "without delay". Minimum Standards and Operating Procedures for Pennsylvania County Prisons (1973).

It is thus very important to emphasize again that these regulations on health care delivery for Nebraska local detention facilities are necessarily broad and flexible. They permit the facility administrator maximum discretion in arranging, in cooperation with the designated physician, a realistic and effective medical program for his facility which will allow for a humane and constitutionally-mandated level of care for the inmates for which he is responsible. There is no question that correctional officials "possess broad discretion in the area of conditions of confinement, but the courts have repeatedly stated there may be cases in which deprivation of medical care . . . will warrant judicial intervention . . . ." Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974). The Court of Appeals for the Eighth Circuit has recently found such intervention necessary in the case of the Arkansas state correctional system. The court, in finding that inmates were continuously denied proper medical and dental care, that individuals with contagious diseases and the mentally and emotionally ill were at large in the general prison population, and that no basic emergency service or the assurance of more complete medical services were available, directed the district court to insure that every inmate in need of medical attention be seen by a qualified physician when necessary, and referred the district court to Judge Frank Johnson's medical directives issued by court order in James v. Wallace, supra. Finney v. Arkansas Board of Corrections, supra. It is precisely this kind of judicial involvement in administration which can be avoided by Nebraska local authorities if reasonable health services standards such as the ones being discussed are adopted and followed in this state.

Regulation 13
Food Services

13-(1) General Requirements. Each facility administrator shall develop a written food service plan approved by a licensed dietitian or nutritionist. Each inmate shall be provided three meals per day. The meals shall be nutritionally adequate, palatable, reasonably attractive, produced under sanitary conditions and prepared at reasonable cost in terms of ingredients and staff time.

13-(2) Records. Records of menus, of foods purchased, of cost and of inmates served shall be maintained by each facility for a period of one (1) year following the effective date of these regulations on forms recommended by the Standards Administrator and shall be maintained for each twelve (12) month period thereafter. Such records shall be open to inspection by the Standards Administrator at all times, and shall be delivered to him at the conclusion of each twelve (12) month period.

13-(3) Frequency of Meals. There shall not be more than fifteen (15) hours between the evening meal and breakfast. When inmates are not routinely absent from the facility for work or other purposes, at least three (3) meals, one of which shall be hot, shall be made available at regular times during each twenty-four (24) hour period.

13-(4) Adequacy of Meals. The food and nutritional requirements of each inmate shall be met. Diets shall also comply with physician's orders, and shall meet the dietary allowances as adjusted for age, sex and activity as stated in the Recommended Dietary Allowances, National Academy of Sciences, 8th Edition (1974). Providing each inmate the specified servings per day from each of the following five food groups will satisfy this requirement:

(a) Meat or Protein Group. Two or more servings per day are required. A serving of meat or protein is defined as:

i Two to three ounces cooked (equivalent to three to four ounces raw) of any meat without bone, such as beef, pork, lamb, poultry or variety meats such as liver, heart and kidney.

ii Two slices prepared luncheon meat.

iii Two eggs.

iv Two ounces of fresh or frozen cooked fish or one-half cup of canned fish.

v One cup cooked navy beans.

(b) Milk Group. Two or more servings per day are required. A serving is defined as eight (8) ounces (one cup) of milk. A portion of this amount may be served in cooked form, such as cream soups or desserts. Serving equivalents:

i One ounce of cheese equals three-fourths cup of milk.

ii Three-fourths cup of cottage cheese equals one-third cup of milk.

iii One-half cup of ice cream equals one-fourth cup of milk.

(c) Vegetable Group. Three or more servings per day are required, one of which should be deep green or yellow. A serving is defined as one-half cup.

(d) Fruit Group. Two or more servings per day are required, one of which should be citrus or tomato. A serving of citrus fruit or tomato is defined as:

i One medium orange or four ounces of orange juice.

ii One-half grapefruit or four ounces of grapefruit juice.

iii One large tomato or eight ounces of tomato juice.

(e) Cereal and Bread Group. Three to four servings per day of whole grain or enriched products are required. A serving is defined as:

i One slice of bread.

ii One-half cup of cooked cereal.

iii Three-fourths cup of dry cereal.

iv One-half cup of macaroni, rice or noodles.

13-(5) Medically Prescribed Diets. If the facility accepts or retains inmates in need of medically prescribed diets, such diets shall be provided as ordered or authorized by the designated physician.

13-(6) Religious Diets. The freedom of each inmate to his own religious beliefs shall be respected by the facility in its menu scheduling. The facility shall make provision for special diets required by religious beliefs or religious sects where reasonably possible and if the inmate so wishes.

13-(7) Supervision. All meals shall be served under the direct supervision of staff to insure that favoritism, careless serving and waste are avoided. Staff shall record those instances where an inmate refuses meal service.

13-(8) Sanitation. Each facility shall comply in all matters of sanitation in food handling and preparation with the Food Service Sanitation Manual issued by the Department of Health, State of Nebraska.

Commentary

> . . . [E]veryone with experience in the corrections field knows that food service influences the whole jail climate. It plays a significant role in control and supervision. An excellent food program has a calming and stabilizing effect, easing the lot of the inmate and reducing tension in the custodial force. The National Sheriffs' Association, Food Service in Jails, p. 7 (1974).

Since, according to the Nebraska Jail Survey, 97.9% of this state's jails serve three meals a day and 93.3% include variety foods, there seems to be little disagreement locally with the need expressed above in the regulation on General Requirements for food services and in the National Sheriffs' Association booklet for a high caliber food program in jails.

Recognition is given in the same booklet to the fact that the problem nationally is "that no standards for food service in jails have been established", thus inviting the intervention of the courts, again usually on Eighth Amendment grounds. One court, in reviewing the food situation at the Duval County Jail in Florida, found that the diet provided was deficient in that it failed to meet the nutritional needs of adult persons, finding on a long-term basis a 25% deficiency of Vitamin "C", a 50% deficiency of Vitamin "A", that the milk provided was, in quantity, 75% below what was required, that coffee should be available twenty-four hours a day, and that the jail needed better supervision of inmates in the kitchen and eating areas to prevent theft in the serving process. Miller v. Carson, supra, 401 F.Supp. 835. Such detailed scrutiny by the courts of the local jail feeding operation can, in the view of the National Sheriffs' Association publication, best be avoided by implementation of sound food service minimum standards.

Since most Nebraska local criminal detention facilities are not large enough to justify a full institutional food component within the facility itself, this rule is intended to be flexible enough to assist all facilities, large and small, to focus on the inmate and his dietary requirements and to leave to the facility administrator the task of determining which of several food service approaches he might wish to follow. The Nebraska Jail Survey indicates that meals are prepared most typically in the facility by facility personnel (38.3%), but a significant portion of the jails (27.7%) obtain food from outside sources.

Records

The purpose of the records section of this rule is two-fold. First, it should greatly assist the facility administrator in his own internal cost analyses and budgeting, and provide him with an accurate reflection of his food service operations should he ever be challenged in court or elsewhere as to the adequacy of the diet provided to inmates under his supervision. Additionally, financial records and menu schedules can greatly enhance the Standards Administrator's ability to render any needed assistance to individual facilities in designing their food service operations. By obtaining an annual composite picture of the food plans in Nebraska's facilities, his office will be able to point out the potential for economizing techniques, more varied menus, and any nutritional deficiencies, and can serve as a clearinghouse for the exchange of creative ideas and common problems. Indeed the National Sheriffs' Association emphasizes, in its Food Service in Jails, that "menus are of such importance that they cannot be left to chance, and a good menu cannot be written the day before it goes into effect."

Adequacy of Meals

This section is intended as a broad guideline for food service operations in local criminal detention facilities. Only on a long-term basis will the Standards Administrator be enabled to assess the nutritional adequacy of the food served in any given facility. It must be recognized that, according to the Nebraska Jail Survey, there are currently several different approaches in effect in this state to the jail food service operation, the most prevalent being in-house food preparation, frequently by facility personnel or by members of the facility administrator's family, and the purchase of food prepared by a local restaurant. A number of facilities also purchase frozen prepared dinners which are heated and served to inmates. None

of these systems are per se violative of this rule. Rather it is recognized that through careful planning and supplementation where necessary any one or combination of these approaches can meet the provisions of the Recommended Dietary Allowances, 8th Edition (1974), of the National Academy of Sciences, upon which the Adequacy of Meals section of this rule is based.

Modified Diets

With respect to this section there are two separate considerations. First, in terms of medically prescribed diets, the courts are applying all the principles described in the section of this Commentary dealing with Health Services, to the effect that all reasonable medical needs of inmates be addressed. Finney v. Arkansas Board of Corrections, supra. On the issue of providing special diets in accordance with an inmate's bona fide religious beliefs, however, there has been some disagreement among the federal courts. The trend in recent cases seems to be, however, that inmates should be permitted to follow the tenets of their religious beliefs, where reasonably possible, in terms of dietary requirements. Ross v. Blackledge, 477 F.2d 616 (4th Cir. 1973). In another case, in which it was shown that corrections officials refused to provide food free of pork and pork by-products to Muslim inmates whose religion required that they abstain from such food, the court found a violation of the inmates' First Amendment freedom of religion. Battle v. Anderson, supra. Similarly, it was recently held that an Orthodox Jewish inmate was entitled to a diet which complied with his religious beliefs, Kahne v. Carlson, supra, and that forcing a Muslim to handle pork constituted action upon which a claim for relief could be based. Chapman V. Kleindienst, 507 F.2d 1246 (7th Cir. 1974). Clearly facility administrators are at least risking judicial intervention if they fail to provide diets to inmates in accordance with their religious beliefs.

Regulation 14
Hygienic Standards

14-(1) Facility Sanitation. Each facility shall at all times comply with the County and Municipal Jail Guidelines Concerning Health and Sanitation issued by the Department of Health of the State of Nebraska pursuant to the Nebraska Revised Statutes §§71-901, 905, and shall be kept in a clean and healthful condition. The facility administrator shall develop and implement a written plan for the maintenance of an acceptable level of cleanliness and sanitation throughout the facility. Such a plan shall provide for a regular schedule of housekeeping tasks and inspections which shall include, but not be limited to, the following:

(a) The sweeping of floors, removal of trash and dusting of bars, screens and ledges each day;

(b) The cleaning of shower facilities and janitors' closets with hot water, soap and scouring powder each day;

(c) The thorough cleaning of toilets, wash basins, sinks and other sanitary equipment in the living units each day;

(d) The emptying and cleaning of receptacles provided for cigarette stubs, burned matches and other refuse each day;

(e) The scrubbing and rinsing of living unit walls and built-in bunks once each week;

(f) The cleaning of floors daily;

(g) The regular washing of windows;

(h) The thorough cleaning of mops and other sanitation tools after each use and the storing of same in a well-ventilated place.

14-(2) Staff Practices. All staff shall adhere to acceptable personal hygiene practices.

14-(3) Personal Hygiene Materials. To maintain satisfactory personal hygiene, inmates held over twenty-four (24) hours shall be furnished with soap of good quality, toothpaste or toothpowder and a toothbrush, as necessary. Articles necessary for feminine hygiene shall be provided.

14-(4) Showering. Each inmate held over twenty-four (24) hours shall be given the opportunity to shower or bathe daily, and shall in any event be required to shower or bathe at least twice weekly.

14-(5) Shaves and Haircuts. Facilities for shaves, haircuts and hairdressing shall be made available. Equipment shall be of the appropriate security type and carefully supervised.

14-(6) Poisons. Extreme caution shall be used in the employment of insecticides, rodent killers and other poisons. Inmates shall never be permitted to have access to such materials.

14-(7) Inmate Clothing. Provision shall be made for the laundering at least twice weekly of inmates' clothing, both facility-issued and personal. It shall be the responsibility of the facility administrator to insure that each inmate is equipped with necessary clothing which is in reasonably good condition and appropriate to the season.

14-(8) Linens and Bedding. Each inmate who is to reside overnight in the facility shall be provided with a standard issue of bedding and linens.

(a) A standard issue of bedding and linens shall include the following:

i One clean, firm, fire-retardant mattress;

ii Two clean sheets and a clean mattress cover;

iii One clean bath size towel;

iv Sufficient clean blankets to provide comfort under existing temperature conditions.

(b) Clean bed linen shall be furnished at least once each week to each inmate. Blankets shall be laundered or dry cleaned at least once each three months, or more often if needed. Towels shall be exchanged or laundered upon inmate request, but at least weekly. Mattresses shall be cleaned regularly. Inmates may be asked to assist in maintaining these levels of cleanliness to the extent practicable.

(c) Bedding and linens which are so worn as to be unfit for further use shall not be issued to inmates.

(d) Under extreme circumstances it may be deemed necessary by the facility administrator to remove the linens and bedding from an inmate's bed. Such action may be taken only as a measure to protect the inmate from self-injury, to protect other inmates or to protect facility furnishings, and must be reviewed daily.

14-(9) Training and Education. Appropriate courses and literature concerning health, safety, hygiene and sanitation shall be made available to both staff and inmates. Such educational programming should be determined by the facility administrator in cooperation with the designated physician.

Commentary

> It is the responsibility of the jail administrator to insure that high standards are maintained at all jail facilities under his jurisdiction. The county or city has the obligation to make funds available to the jail administrator for equipment, repairs and services needed to maintain the jail as a constructive community asset. But even if this obligation is not fully met, there is no excuse for failure to keep the jail clean and to correct obvious health hazards. [Emphasis supplied.] The National Sheriffs' Association, Sanitation in the Jails, p. 7 (1974).

Little disagreement could probably be found with the statement of principle above. Yet the courts have been inundated with inmate suits alleging their subjection to inhumane jail conditions of filth and vermin infestation in contravention of the Eighth Amendment's prohibition against cruel and unusual punishment. Such an apparent conflict between principle and practice in this area is attributed by the National Sheriffs' Association pamphlet cited above, at the same page, to "carelessness, indifference and ignorance on the part of inmates and lack of supervision by jail personnel."

That failure to measure up to minimum sanitation and hygienic standards such as those here proposed in Nebraska can subject correctional authorities to the specter of judicial intervention is evident from even a brief discussion of recent court decisions. It was recently held that allegations of vermin infestation, lack of bedding, of plumbing, and of light, and generally filthy conditions of confinement stated a claim for a violation of an inmate's constitutional rights. Patterson v. MacDougall, 506 F.2d 1 (5th Cir. 1975). Similarly, where a district court had dismissed an inmate's complaint for failure to state a claim upon which relief could be granted, the complaint alleging

that cockroach infestation, lack of soap, hot water and showers, filthy cells due to denial of cleaning supplies, and filthy and excrement-encrusted toilets in the prison combined to constitute conditions amounting to cruel and unusual punishment, the Court of Appeals reversed, labeling the dismissal "improper". Black v. Brown, 513 F.2d 652 (7th Cir. 1975). Recently a United States District Court, noting that the Eighth Amendment should be construed to demand "basic humanity in the eyes of informed contemporary society" found that the cumulative effect on a jail of a lack of toilets, unsanitary emptying of "chamber pots", the shortage and conditions of places to wash, and the disrepair of showers was "to produce feelings of deprivation and despair" and violated the Eighth Amendment. Bel v. Hall, 392 F.Supp. 274 (D. Mass. 1975). Another court found that conditions in the Duval County Jail in Florida "gave one the psychological feeling of being trapped in a dungeon"; there were, in a facility used to hold inmates for anywhere from one to eight days, no mattresses, blankets, sheets or pillows, or towels provided, no means of showering or brushing of teeth, and "vomitus, urine and feces" were on the floor, amounting to conditions which were "depraved and animal-like". Miller v. Carson, supra, 401 F.Supp. 835. The court noted that "inmates suffered both physical and psychological injuries from prolonged exposure to inhumane, unhealthy and demeaning conditions" and found an Eighth Amendment violation.

In Nebraska it would appear that while most facilities are making good faith efforts to avoid conditions such as those discussed above, real problems do exist in this state. The Nebraska Jail Survey shows that while showers are the most typical bathing accommodation (87.5%) and a single shower is the most common in Nebraska facilities (40.4%), 62.6% of the facilities report that their bathing facilities are inadequate. Most facilities (61.4%) do not have their own laundry equipment and home-type washers are the most common (65.2%) of those that do. Only 63% of the facilities are mopped daily, usually by inmates (49%). In terms of cleaning certain items before reissue to inmates it was found that only 42.9% of the mattresses and 78.7% of the blankets were cleaned before reissue, while 94.6% of the bed linen and 93.2% of the towels were cleaned or laundered before reissue.

This regulation is intended to be broad enough to allow each facility to adhere to its requirements, thereby assuring a constitutionally acceptable level of sanitation and hygiene, without imposing undue hardship or strain on the facility's resources. It is the responsibility of the facility administrator to develop his own sanitation plan for the facility, and to insure that the inmates he supervises are not sub-

jected to the kinds of conditions which will amount to "cruel and unusual punishment" and therefore invite the courts to develop a plan for him. As long ago as 1777 it was recognized that jails should provide "sanitary facilities--sweeping and washing every day." The ex-High Sheriff of Bedfordshire, State of Prisons, 3rd ed. (1777). Much discretion is accorded the facility administrator both by the courts and by these regulations. If the "fundamental decency" principle discussed throughout this Commentary is given proper weight, and if a carefully developed and realistic sanitation plan is developed by the facility administrator, preferably consistent with the National Sheriffs' Association handbook on Sanitation in the Jail (1974), Nebraska's local detention facilities should successfully "pass constitutional muster" in this area.

Surveys/Tabulation

NEBRASKA STATE BAR ASSOCIATION JAIL SURVEY

The attached questionnaire is the basis for gathering current information about Nebraska jails in order to develop recommendations for statewide jail standards. These recommendations will be submitted to the Department of Correctional Services of the State of Nebraska for its consideration. Your assistance in obtaining this information and filling out the questionnaire as accurately as possible will be very much appreciated and provide valuable data for this project.

The following instructions should be followed in completing the questionnaire:

1. Most of the questions can be answered by merely circling the appropriate choice or choices. Please circle all appropriate answers to a given question.

2. Specify or list the answers to questions where the appropriate answer is not provided.

3. Obtain the best answers possible from the individual(s) who can provide the most accurate information.

4. Please return the completed questionnaire to the Nebraska State Bar Association Committee on Correctional Law and Practice in the postage-paid envelope provided. Thank you.

Name of Facility_____

Location of Facility_____

Date of Visit_____

Law Enforcement Officer
Responsible for Facility_____

Names of Members of Visitation Team	Title (if any)
1._____	_____
2._____	_____
3._____	_____
4._____	_____
5._____	_____

Physical Facility

card 1: *1-8, 9-1*

1. This facility is best described as a

City jail 1
County jail 2 *10-11*
City/County jail 3
Municipal jail 4
Lockup 5
Regional facility 6
Other - Specify 7

2. This facility shares a building with

No other agencies 1
Court 2
Adult probation 3 *12-13*
Juvenile probation 4
Law enforcement agency . . . 5
Other - specify 6

3. The location of the jail within the building is

Occupies entire structure 1 *14*
Basement 2
Specify number of floors . . 3

4. The design capacity of the facility is

Total 1 *15-17*
Adult males 2 *18-20*
Adult females 3 *21-23*
Juvenile males 4 *24-26*
Juvenile females 5 *27-29*

5. Does the facility have a "drunk tank"?

Yes 1 *30*
No 2

6. How many persons can the "drunk tank" hold?

Specify number 1 *31-33*

7. How many of each of the following size cells are there in the jail?

One-man cells 1 *34-35*
Two-man cells 2 *36-37*
3-4 man cells 3 *38-39*
Dormitories or cells for more than four persons . . . 4 *40-41*

8. What is the closest approximation of cell space for each individual?

25 sq. ft. or less . . . 1
25-40 sq. ft. 2
40-55 sq. ft. 3
55-70 sq. ft. 4
over 70 sq. ft. 5

44

9. Are sentenced prisoners kept apart from prisoners awaiting trial?

Yes 1
No 2
Sometimes 3

45

10. Are misdemeanants kept apart from felons?

Yes 1
No. 2
Sometimes 3

46

11. Are female prisoners kept apart from male prisoners?

Yes 1
No 2
Sometimes 3

47

12. Are juvenile offenders kept apart from adult offenders?

Yes 1
No. 2
Sometimes 3

48

13. Are first offenders kept apart from repeat offenders?

Yes 1
No 2
Sometimes 3

49

14. Are co-defendants kept apart?

Yes 1
No. 2
Sometimes 3

50

15. Classification of prisoners as to security status, program needs, etc., is determined by:

Facility administrator. . 1
Classification Officer. . 2
Classification committee 3
Other - Specify 4

51

Facility Staff

16. How many salaried employees, full time equivalents, do you have in each of the positions listed?

Administration: Chief Jailer (or Sheriff or Chief of Police), Deputies and Assistants .	1	52-53
Custodial Officers	2	54-55
Clerical and maintenance personnel	3	56-57
Professional personnel (psychologists, social workers, teachers, etc.).	4	58-59

17. How are the following positions filled?

	Election	Appointment	Civil Service	Other Specify	Not Applicable	
Chief Jailer (Sheriff or Chief of Police)	1	1	3	4	5	60
Deputies or assistants	1	2	3	4	5	61
Custodial Officers	1	2	3	4	5	62
Clerical and Maintenance personnel	1	2	3	4	5	63
Professional personnel	1	2	3	4	5	64

18. What is the starting salary for each position listed?

	$4999 or less	5000 to 7499	7500 to 9999	10,000 to 12,499	12,500 to 14,999	15,000 to 17,499	17,500 to 19,999	20,000 to 22,499	22,500 to 24,999	over 25,000	
Chief Jailor (Sheriff or Chief of Police	1	2	3	4	5	6	7	8	9	10	65-66
Deputies or assistants	1	2	3	4	5	6	7	8	9	10	67-68
Custodial Officers	1	2	3	4	5	6	7	8	9	10	69-70
Clerical and Maintenance personnel	1	2	3	4	5	6	7	8	9	10	71-72
Professional personnel	1	2	3	4	5	6	7	8	9	10	73-74

19. What is the minimum educational requirement for each position listed? card 2: *1-8 9-2*

	No requirement	Some High School	High School Diploma (Incl.GED)	Some College	College Degree	Graduate Degree	
Chief Jailer (Sheriff or Chief or Police)	1	2	3	4	5	6	*10*
Deputies or assistants	1	2	3	4	5	6	*11*
Custodial Officers	1	1	2	3	5	6	*12*
Clerical and Maintenance personnel	1	2	3	4	5	6	*13*
Professional personnel	1	2	3	4	5	6	*14*

20. How many custodial officers are sworn officers?

None 1 *15-17*
All 2
Percent 3

21. Do the custodial officers work only on jail duties or do they alternate performing law enforcement (police) duties?

Jail duties only 1
Both 2 *18*

22. What percent of the full time or full time equivalent jail staff is female?

_____ %. 1 *29-21*

23. How many of the following staff positions are held by females?

Administration 1 *22-23*
Custodial officers . . . 2 *24-25*
Clerical and Maintenance personnel. 3 *26-27*
Professional personnel 4 *28-29*

Prisoner Population

24. How many prisoners are there now in this jail?

Specify number_____ . . 1 *30-32*

25. What has been the average daily population of this jail during the past year? Specify number_____ . . 1 *33-35*

26. What is the average length of stay of
Pre-trial prisoners — Specify number of days . 1 *36-39*

Sentenced prisoners — Specify number of days . 1 *40-43*

Records and Reports

27. Does the facility make a list of cash and valuables at the time of commitment?

Yes 1
No 2 *44*
Sometimes 3

28. If there is a list of cash and valuables, is the list signed by:

Officer 1
Prisoner. 2 *45*

29. Does the facility maintain a property envelope of personal effects for each prisoner?

Yes 1
No 2
Sometimes 3 *46*

30. Is the property envelope kept under lock and key?

Yes 1
No 2
Sometimes 3 *47*

31. Does the facility keep an itemized record of the prisoner's expenditures and receipts?

Yes 1
No 2 *48*
Sometimes 3

32. If not, how are prisoner's expenditures and receipt handled?

By prisoner 1
Other 2 *49*
Explain:_____

33. Does the facility maintain medical records?

Yes 1
No 2
Sometimes 3

50

34. Do these records include physical condition on admission?

Yes 1
No 2

51

35. Do these medical records include physical condition during confinement?

Yes 1
No 2
Sometimes 3

52

36. Do these medical records include record of date and kind of medical services provided?

Yes 1
No 2
Sometimes 3

53

37. Do the medical records include physical condition at time of discharge?

Yes 1
No 2
Sometimes 3

54

38. Is the record kept in a permanent file?

Yes 1
No 2
Sometimes 3

55

39. Is a record kept of violations of jail rules and regulations?

Yes 1
No 2
Sometimes 3

56

40. Is a record kept of all disciplinary measures taken in regard to each prisoner?

Yes 1
No 2
Sometimes 3

57

41. Is a visitor's card kept listing persons authorized to visit each prisoner?

Yes 1
No 2
Sometimes 3

58

42. Is a record kept of each visit?

Yes 1
No 2
Sometimes 3

59

43. Is a complete record kept of attorney's visit with prisoners including attorney's name, prisoner's name, date and time of beginning and conclusion of visit?

Yes 1
No 2
Sometimes 3

60

44. Is a record kept of telephone calls made by the prisoner?

Yes 1
No 2
Sometimes 3

61

45. List unusual occurrences, i.e., other than routine activities, that have taken place in this facility during the past six months. (Please circle all appropriate items and list any which have not been mentioned.)

Riot 1
Strike 2
Escape 3
Assault 4
Fire 5
Other 6
Specify:_____
_____
_____

62-63

46. Is a record kept of the unusual occurrences noted above?

Yes 1
No 2
Sometimes 3

64

Prisoners' Property

47. Is the prisoner given a receipt for his cash and property?

Yes 1
No 2
Sometimes 3

65

48. Where is inmate cash kept?

With other valuables . . 1
In prisoner's account. . 2
By prisoner 3
Other 4
Specify:_____
_____
_____

66

49. Where is other property kept?

In storage 1
By prisoner 2
Other 3
Explain:_____
_____
_____

67

50. Have there been any complaints regarding the handling of cash and property?

Yes 1
No 2

68

51. What were the complaints regarding the handling of cash and property?

Theft 1
Loss 2
Damage 3
Other 4
Specify:_____
_____
_____

69

52. Is a written order signed by the prisoner required for disbursements when his cash is kept in a fund?

Yes 1
No 2
Sometimes 3
Not applicable 4

70

53. Does the jail have a commissary (program)?

Yes 1
No 2

71

54. If not, how are inmates' purchases handled?

By jail staff 1
By family 2
Other 3
Specify:_____

72

card 3: 1-8

55. Who is in charge of the commissary (program)?

Chief Administrator, Sheriff, or Chief of Police 1 9-3
Shift supervisor 2
Staff assignee 3

56. Who purchases the items sold in the commissary?

Chief Administrator, Sheriff, or Chief of Police 1 *12-13*
Shift supervisor 2
Staff assignee 3
Prisoner 4
Other 5
Specify:_____
_____
_____

57. How often is the commissary available to prisoners?

Daily 1
Once per week 2 *14*
2-4 times a week 3

58. List the items available in the commissary (program):

_____ 1
_____ 2
_____ 3 *15-16*
_____ 4
_____ 5

59. Are prices posted in the commissary (program)?

Yes 1
No 2 *17*
Sometimes 3

60. How much are inmates permitted to spend in the commissary (program) each week?

Less than $2.00 1
Up to $5.00 . . . . . 2 *18*
Up to $10.00 3
Limit_____(List). 4
Unlimited 5

61. What is the system used for commissary (program) purchases?

Cash 1
Deduct from account. 2 *19*
Credit to prisoner 3
Other 4
Specify:_____
_____
_____

62. Have there been any complaints regarding the commissary (program)?

Yes 1
No 2 *20*
Sometimes 3

63. What are the types of complaints regarding the commissary (program)?

Too expensive 1
Variety 2 *21*
Hours 3
Charge system 4
Other_____
_____

64. Is 24-hour on-site supervision of prisoners provided?

Yes 1
No 2 *22*
Sometimes 3

65. How often are prisoners checked by staff?

At least hourly 1
No established routine. . 2 *23*
At count time 3
As needed 4
Other 5
Explain _____
_____
_____

66. Is a written record kept of prisoner checks?

Yes 1
No 2 *24*
Sometimes 3

67. Is a matron or qualified female employee on duty when female prisoners are in custody?

Yes 1
No 2 *25*
Sometimes 3

68. Is a female escort provided for males entering the female housing area?

Yes 1
No 2 *26*
Sometimes 3

69. Do female staff supervise male prisoners?

Yes 1
No 2 *27*
Sometimes 3

70. Are prisoners permitted to supervise, control, or otherwise assume authority over other prisoners?

Yes 1
No 2 *28*
Sometimes 3

71. Does the facility use trusties?

Yes 1
No 2 *29*
Sometimes 3

72. Number of trusties used? _____ 30-31

73. How are trusties selected?

Classification 1
Assigned by Administrator. . 2
Other 3 32
Explain: _____
_____
_____

74. Where are trusties used?

Kitchen 1
Facility maintenance . . . 2
Inside secure area. 3 33
Outside secure area 4
Other 5
Specify: _____
_____
_____

Discipline

75. Are written rules furnished to newly admitted prisoners?

Yes 1
No 2 34
Sometimes 3

76. Are facility rules explained to newly admitted prisoners?

Yes 1
No 2 35
Sometimes 3

77. Are written rules in other languages provided for non-English speaking prisoners?

Yes 1
No 2 36
Sometimes 3

78. What is the procedure for prisoner grievances?

Submitted in writing by prisoner 1
Handled by shift supervisor 2 37
Referred to facility administrator. 3
Other 4
Explain: _____
_____
_____

79. Who establishes disciplinary policy and procedure?

Facility administrator . . . 1
Disciplinary officer 2
Disciplinary committee . . . 3 *38*
Other _____ 4
Specify_____
_____

80. Who determines disciplinary infractions?

Facility administrator . . . 1
Disciplinary officer 2
Disciplinary committee . . . 3 *39*
Other 4
_____

81. What are the types of disciplinary sanctions?

Isolation 1
Segregation 2
Loss of privileges 3 *40*
Loss ofgood time 4
Other 5
Specify: _____
_____
_____

82. Is a hearing held in disciplinary cases?

Yes 1
No 2 *41*
Sometimes 3

83. Is a notice given to the prisoner prior to the disciplinary hearing?

Yes 1
No 2 *42*
Sometimes 3

84. Is a notice given to the prisoner prior to the imposition of discipline?

Yes 1
No 2 *43*
Sometimes 3

85. What are the limits placed on duration of isolation for disciplinary infractions?

Isolation not used 1
24 hours 2 *44-45*
48 hours 3
One week 4
No limits 5
Other 6
Specify:_____
_____
_____

86. How often are inmates in isolation checked by staff?

At least hourly 1
No established routine . . 2
At count time 3 *46*
As needed 4
Other 5
Specify: _____
_____
_____

Visiting

87. Visitation is by:

No visitation allowed 1
Glass wall & telephone . . . 2
Screened partition 3 *47-48*
Partial partition 4
At cell through bars 5
Chairs & tables in multipur-
pose area 6
Other 7
Explain: _____
_____
_____

88. Are visits supervised?

Yes 1
No 2 *49*
Sometimes (Specify) 3

89. Are there any restrictions placed on visiting?

Yes 1
No 2 *50*

90. Visitations are limited to:

Attorneys 1
Spouse 2
Children 3
Parents 4 *51-52*
Other relatives 5
Friends 6
Others 7
Specify: _____
_____
_____

91. Are visiting procedures for attorneys different from other visitors?

Yes 1
No 2 *53*
Sometimes 3

92. Does the prisoner's security status influence visiting privileges?

Yes 1
No 2 *54*
Sometimes 3

93. Does the prisoner's legal status (pre- or post-trial) affect visiting privileges?

Yes 1
No. 2 *55*
Sometimes 3

94. What are the visiting days and times?

S M T W T F S *56-57*

Hours: _____ *58-62*

Time limit _____ *63-64*

Number of visitors allowed per prisoner per week _____ *65-66*

95. Are visiting days/hours adequate as determined by the jail administrator?

Yes 1 *67*
No 2

Health and Sanitation
Medical and Health Services
Admitting Examination

96. What areas are provided for medical services?

Examining room 1
Shower 2
Infirmary 3 *68-69*
Dental clinic 4
Medication storage . . 5
Doctor's office . . . 6
Nurse's station . . . 7
None 8
Other 9
Specify: _____
_____
_____

97. Who conducts the physical examination upon admittance of the prisoner?

Not conducted 1
Physician 2
Nurse 3
Jail staff 4
Other 5 *70*
Specify: _____
_____
_____

98. Are new admissions screened for communicable diseases?

Yes 1
No 2
Sometimes 3

71

99. Are new admissions screened for suspected psychotic conditions?

Yes 1
No 2
Sometimes 3

72

100. How is the intoxicated (or overdosed) prisoner handled on admission?

Placed in "drunk tank". 1
Placed in isolation . . 2
Hospitalized 3
Handled as other prisoners 4
Other 5
Specify:_____
_____
_____

73

101. Does the admitting physical examination include tests for:
(Please circle appropriate answer.)

card 4:

1-8
9-4

	Yes	No
1. Veneral Disease	1	2
2. Tuberculosis	1	2
3. Other	1	2

102. Are identifying marks such as cuts, scars, tattoos, etc., recorded during the admitting physical examination?

Yes 1
No 2
Sometimes 3

13

Sick Call and/or Routine Medical Procedure

103. Does the facility have a scheduled sick call?

Yes 1
No 2

14

104. If yes, indicate schedule:

S M T W T F S

15-16

Hours: _____

17-20

105. Are new admissions examined for infestations such as pediculi, lice, etc.?

Yes 1
No 2
Sometimes 3

21

106. How are medical complaints handled outside scheduled sick call?

Physicial on call. 1
Medical personnel available 2 *22*
Other 3
Specify:_____
_____
_____

107. Where are the prisoner's medical services provided?

In jail 1
Community hospital/ clinic 2 *23*
Physician's office 3
Other 4
Specify:_____
_____
_____

108. Prisoners with communicable diseases are:

Placed in isolation 1
Transferred to medical facility 2 *24*
Other 3
Specify:_____
_____
_____

109. Prisoners who are suspected psychotics are:

Placed in isolation 1
Transferred to psychiatric facility 2 *25*
Other 3
Specify:_____
_____
_____

Medical Personnel and Services

110. Are medical professionals employed under contract to this facility?

	Number		
Physician	_____	1	*26-27*
Nurse	_____	2	*28-29*
Medical Technician	_____	3	*30-31*
Other		4	*32-33*

Specify:_____
_____
_____

None 5

111. If no medical professionals are employed or under contract to the facility, who is on call and reasonably available to deal with the prisoner's medical complaints?

Physician 1
Nurse 2
Medical Technician 3
Paramedic 4 *34-35*
Shift Supervisor 5
Staff Assignee 6
Other 7
Specify:_____

112. Who dispenses prescribed medication to the prisoners?

Physician 1
Nurse 2
Medical Technician 3 *36-37*
Paramedic 4
Shift Supervisor 5
Staff Assignee 6
Other 7
Specify:_____

Hygienic Standards

Facilities

113. Bathing facilities consist of:

None 1
Shower 2
Tub 3 *38*
Other 4
Specify:_____ 5

114. How many operable bathing facilities are provided for prisoners in this jail?

Specify number ____ 1 *39-40*

115. Inadequacies in bathing facilities consist of:

Too few 1
Plumbing. 2 *41*
Other 3
Specify:_____

116. Bathing procedures are:

Not required 1
As desired by prisoner . . 2
Required by jail 3
Daily 4
Bi-weekly 5
As Scheduled 6
Specify: _____
_____
_____
Other 7
Specify: _____
_____
_____

42-43

117. Which items are furnished by the facility needed by the prisoner?

Soap 1
Towels 2
Razors 3
Toothbrush 4
Dentifrice 5
Toilet paper 6
Other 7
Specify: _____
_____
_____

44-45

118. If the above items are not routinely furnished, how do prisoners obtain these items for personal use?

Purchase 1
Family 2
Donations 3
Other 4
Specify: _____
_____
_____

46

119. If the above personal items are available through the commissary (program) and the prisoner is indigent, does the facility provide these items?

Yes 1
No 2
Sometimes 3

47

120. Are barbering services provided?

Yes 1
No 2
Sometimes 3

48

121. How are barbering services provided?

By professional 1
By jail staff 2
By inmate 3

49

122. Does the facility have its own laundry equipment?

Yes 1
No 2

50

123. In-house laundry equipment consists of,

Home washers/dryers . . . 1
Commercial washers/ dryers 2
Other 3
Specify:_____
_____
_____

51

124. If there are no in-house laundry facilities, how are laundry services provided?

Inmates wash own laundry in cells 1
Contracted out 2
Other 3
Specify:_____
_____
_____

52

125. Is clothing provided by the facility?

Yes 1
No 2
Sometimes 3

53

126. What kind of clothing is provided by the facility?

Denim 1
Jumpsuits 2
Uniforms 3
Underwear 4
Footwear 5
Other 6
Specify:_____
_____
_____

54-55

127. What provisions are made for cleaning prisoner's clothes?

Not cleaned 1
In-house 2
Outside laundry 3
Other 4
Specify:_____
_____
_____

56

Food Services

128. How many meals are served each day?

One 1
Two 2 *57*
Three 3

129. How many hot meals are served each day?

One 1
Two 2 *58*
Three 3

130. Do the meals include a variety of foods, including all of the following: meat, dairy products, fruit, cereals and vegetables?

Yes 1
No 2 *59*
Sometimes 3

131. Are special diets provided when prescribed by a physician?

60
Yes 1
No 2
Sometimes 3

132. Are beverages and snacks available to prisoners between scheduled meals?

Yes 1
No 2 *61*
Sometimes 3

133. How is food served?

Individual apportions . . 1
Apportioned by others . . 2 *62*
Both 3

134. Where is food prepared?

In-house with inmates' help 1
In-house with salaried employees. 2 *63*
Outside of facility. . . 3
Other 4
Specify:_____
_____
_____

135. How is food transferred from preparation area to dining area?

Hot carts 1
Dining area adjacent to Kitchen 2
Other 3 *64*
Specify_____
_____
_____

136. By whom is the food prepared?

Salaried cook 1
Inmates 2
Jail staff member 3 *65*
Caterer 4
Other 5
Specify: _____
_____
_____

137. Where do prisoners eat?

Cells 1
Dayroom 2
Multipurpose area 3 *66*
Separate dining room. . . . 4
Other 5
Specify: _____
_____
_____

138. Describe eating and service utensils:

Plastic 1
Metal 2
Trays 3
China 4
Paper 5 *67-68*
Other 6
Specify: _____
_____
_____

139. Are prisoners allowed food brought in to them by family or friends?

Yes 1
No 2 *69*
Sometimes 3

140. If prisoners are allowed food broughtin to them by family and friends, what items are restricted?

List:
_____ *70-71*
_____
_____
_____

Sanitation and Housekeeping

141. How frequently is facility mopped or washed?

Daily 1
Every other day 2
Twice a week. 3
Weekly 4
Other 5 *72*
Specify: _____
_____
_____

142. Who cleans the facility?

Prisoners 1
Staff 2
Civilian contract 3 *73*
Other 4
Specify:_____
_____
_____

143. Are prisoners responsible for cleaning detention areas?

Yes 1
No 2 *74*
Sometimes 3

144. How often is the facility, including detention area, fumigated?

No program in effect . . . 1
Weekly 2
Bi-weekly 3
Monthly 4 *75-76*
At least every 6 months .. 5
Annually 6
Other 7
Specify:_____
_____
_____

Facility Equipment

card 5: *1-8*

9-5

145. Where is hot water available to the prisoners?

Cells 1
Dayroom 2
Shower/Tub 3
Other 4
Specify:_____ *10*
_____
_____

146. Where is drinking water available to the prisoners?

Cells 1 *11*
Dayroom 2
Other 3
Specify:_____
_____
_____

Check the following appropriate responses

147. Are the following cleaned before reissue:

	Yes	No	Sometimes	
Mattresses	1	2	3	*12*
Blankets	1	2	3	*13*
Bed Linen	1	2	3	*14*
Towels	1	2	3	*15*

148. How often are the following items cleaned?

Mattresses:
Never 1
Twice Weekly 2
Weekly 3
Once in two weeks . . . 4 *16*
Monthly 5
As Needed. 6
Other 7
Specify:_____
_____
_____

Blankets:
Never 1
Twice Weekly 2
Weekly. 3
Once in two weeks . . . 4 *17*
Monthly 5
As needed 6
Other 7
Specify:_____
_____
_____

Bed Linen:
Never 1
Twice Weekly 2
Weekly. 3
Once in two weeks 4 *18*
Monthly 5
As needed 6
Other 7

Towels:
Specify:_____ *19*
_____
_____

Safety

149. Does this facility have a written emergency plan?
Yes 1
No 2 *20*

150. If there is an emergency plan, is it adequate forthe various emergencies that might arise?
Yes 1 *21*
No 2

151. Does the emergency plan provide for the disposition of prisoners once they are removed from the facility?

Yes 1
No 2

22

Personnel, Procedures and Training

152. Is the staff-inmate ratio sufficient to insure adequate safety for both?

Yes 1
No 2
Sometimes 3

23

153. Is there at least one officer per shift stationed on each floor of the detention area?

Yes 1
No 2
Sometimes 3

24

154. Are detention areas checked often enough and thoroughly enough to provide adequate safety for prisoners?

Yes 1
No 2
Sometimes 3

25

155. Are officers given the opportunity and/or encouraged to avail themselves of any first aid training?

Yes 1
No 2

26

156. Does the administration of the facility provide any first aid classroom training?

Yes 1
No 2

27

157. Does each shift have at least one officer with some type of first aid training?

Yes 1
No 2
Sometimes 3

28

Programs

Education

158. Does this facility have any academic educational programs?

Yes 1
No 2

29

159. What type of academic educational program does the facility have?

Adult Basic Education(ABE) . . 1
General Education 2
Diploma (GED)
Post High School 3
Other 4
Specify: _____

30

160. Does the facility have any vocational training programs?

Yes 1
No 2
Sometimes 3

32

161. What types of vocational training programs does the facility have?

Specify:_____
_____
_____

33

162. Does the facility have a library?

Yes 1
No 2

34

163. What is the source of library material?

Purchased by jail 1
Public library 2
Contributions 3
Other 4
Specify:_____
_____
_____

35

164. Does the facility have a current set of Nebraska Revised Statutes available to the prisoners?

Yes 1
No 2

36

165. If statutes are available what is the procedure for their use?

Requested by prisoner . . 1
Available at all times. . 2
Other 3
Specify:_____
_____
_____

37

166. Are any other legal publications available to the prisoners?

Yes 1
No 2

38

167. If other legal publications are available, what is the procedure for their use?

Requested by prisoner . . 1
Available at all times. . 2
Other 3
Specify:_____
_____
_____

39

168. If Statutes are not available, would the facility meet prisoner's demand for them?

Yes 1
No 2

40

Recreation

169. What type of recreation area does this facility have?

Indoor 1
Outdoor 2 *42*
Indoor and Outdoor 3
No recreation area 4

170. What is the schedule for prisoner's use of recreation area?

Unlimited 1
Daily 2
At least 3 times a week .. 3
No more than twice a week. 4 *43*
Once a week 5
Other 6
Specify:_____
_____
_____

171. What leisure time activities are available to prisoners?

Cards, puzzles, games . . .1
Newspapers, magazines, books 2
Radio 3
Television. 4 *43-44*
Movies 5
Arts and crafts 6
Other 7
Specify:_____
_____
_____

Religious Services

172. Are religious services held in the facility?

Yes 1
No 2 *45*
Sometimes 3

173. What kind of religious services are provided?

Catholic 1
Protestant 2
Jewish 3 *46-47*
Ecumenical 4
Other 5
Specify:_____
_____
_____

Counseling

174. What type of counseling is provided within the facility?

Individual 1
Group 2 *48*
None 3

175. Indicate the type of counseling provided:

Psychological 1
Educational 2
Vocational 3
Drug Addiction 4
Alcoholic 5
Religious 6 *49-50*
Other 7
Specify:_____
_____
_____

176. Who provides the counseling services?

Professional jail staff . . 1
Jail officers 2
Other agency staff 3
Volunteers 4 *51-52*
Other 5
Specify:_____
_____
_____

Communications

177. What are the facility rules related to mail?

Unlimited sending and receiving 1
Restrictions on number received and sent 2 *53*
Restrictions on to whom the prisoner can write. . . .3

178. Is the mail censored?

Yes 1
No 2
Sometimes 3
For contraband only 4 *54*
For content 5
Other 6
Specify:_____
_____
_____

179. What are the conditions regarding incoming telephone calls?

Not allowed 1
Family emergency only 2
Unlimited 3 *55*
Restrictions 4
Specify: _____
_____
_____

180. Does the jail have a work release program?

Yes 1 *56*
No 2

181. If so, what percentage of the sentenced population participates in work release?

_____%. 1 *57-59*

182. Does the jail have a furlough program?

Yes 1
No 2 *60*
Under the following conditions:
_____
_____

Commentary

Jail Survey Data
Index

INTRODUCTION

DATA FORMAT

I. ADMINISTRATION
- 1.1 General Records
- 1.2 Medical Records
- 1.3 Prisoner's Property
- 1.4 Rules and Policies
- 1.5 Disciplinary Sanctions
- 1.6 Disciplinary Infractions
- 1.7 Prisoner Supervision
- 1.8 Trusties
- 1.9 Safety Plan

II. FACILITIES
- 2.1 Jail Capacity
- 2.2 Cell Capacity
- 2.3 Cell Space per Individual
- 2.4 Drunk Tanks
- 2.5 Separation of Prisoners

III. HEALTH AND SANITATION

- 3.1 Medical Services
- 3.2 Medical Personnel
- 3.3 Admitting Examination
- 3.4 Sick Calls
- 3.5 Treatment of Prisoners
- 3.6 Maintenance
- 3.7 Laundry Services
- 3.8 Bedding Items
- 3.9 Bathing Facilities
- 3.10 Inmate Meals
- 3.11 Preparation of Food

IV. PROGRAM SERVICES

- 4.1 Education
- 4.2 Vocational Training
- 4.3 Work Release and Furloughs
- 4.4 Counseling
- 4.5 Recreation
- 4.6 Communications
- 4.7 Visitation
- 4.8 Visitors
- 4.9 Commissary

V. STAFF

- 5.1 Number of Employees
- 5.2 Assignment Procedure
- 5.3 Education Levels
- 5.4 Salaries
- 5.5 Security
- 5.6 Female Staff

VI. PRISONER POPULATION

6.1 Average Daily Population

6.2 Pre-trial Length of Stay

6.3 Post-trial Length of Stay

INTRODUCTION

Local detention and correctional facilities are an integral and important phase of the criminal justice system. For many years, these institutions have operated largely in isolation, without public concern, interest, or knowledge about conditions within them. Local jails have long been housed in inappropriately designed facilities, staffed by underqualified, underpaid workers, and denied the funds necessary to finance adequate services and resocialization programs. Consequently, in most jails, prisoners sit in idleness and despair, isolated from the community to which they must eventually return.

The Nebraska State Bar Association, in coordination with the National Clearinghouse for Criminal Justice Planning and Architecture, conducted a controlled survey of Nebraska's local correctional facilities (July, 1976) with the goal of developing and establishing Jail Standards for the State of Nebraska. The need for this type of survey was recognized by the state officials in order to identify and delineate possible problem areas and deficiencies in the existing corrections system. Conducting the survey was complicated by the absence of sophisticated systems for collecting and compiling data in most jurisdictions in Nebraska. Ready access to a great deal of information is crucial for the successful accomplishment of a project such as this.

To remedy the situation, the National Clearinghouse, ably assisted by Nebraska officials, designed a detailed survey instrument to collect the basic information in 6 primary areas pertaining to Jail Standards: Administration, Facilities, Health and Sanitation, Program Services, Staff, and Prisoner Populations. Almost a hundred questionnaires were distributed, of

which ninety were returned. Approximately 16% of the returned questionnaires were from city jails; 78% were from county facilities, and the remaining 6% originated from other local facilities, such as youth and juvenile homes, etc.

The following document is a brief outline of the detailed computer analyses performed on the returned surveys. It is presented in the form of a commentary, highlighting important elements in each of the six primary areas, and has been cross-referenced with the Jail Regulations presented in the previous section. The commentary was prepared in order to provide a concise and comprehensive overview of the information obtained in the survey and should be regarded only as an appendix to the computer print-outs. The latter, though cumbersome and difficult to handle, contains much more detailed and descriptive analyses of the data. It should be treated as the major source of information.

In order to facilitate further analyses, the data have been classified in terms of city and county facilities, respectively. It should be emphasized, however, that many of the analyses performed on the data may prove to be irrelevant and/or inconsistent because of the limited size of the survey sample, errors in recording and coding of data, and possible misinterpretation of the questions by person filling out the questionnaires. Some of the spurious relationships are delineated in the course of the commentary but a strong word of caution must be offered in regard to the interpretation of any of the correlations observed between analyzed variables/factors. The obvious inferences often cannot be drawn from significant statistical relationships due to internal inconsistencies in the data. Similarly, the data itself may sometimes appear illogical, prohibiting decisive conclusions. Nonetheless, the information does serve its major purpose adequately: it provides a background for the development of standards that will dictate and enforce improved conditions in Nebraska jails. It is cautioned only that Nebraska officials

recognize the limitations of the survey data and treat it accordingly. The data can be considered as a valid and useful tool which helps identify problem areas. On the other hand, it is not sufficient to make administrative or planning decisions.

DATA FORMAT

The tables in the Commentary are presented as three columns (i.e., City Jails, County Jails, and Total) and several rows of data. In order to facilitate reading and analysis of this data a sample table is explained in the following paragraphs:

EXAMPLE:	City Jail	County Jail	TOTAL
Facilities which hold adult females:	(i): 100%	(ii): 93%	(iii): 94%
Facilities which hold juvenile females:	(iv): 50%	(v): 39%	(vi): 45%

City Jails: This column indicates the number (or percentage) of city facilities in the total sample which satisfy a specific row criteria.

County Jails: This column indicates the number (or percentage) of county facilities in the total sample which satisfy a specific row criteria.

Total: This column indicates the number (or percentage) of facilities in the entire sample (i.e., it includes city, county, juvenile, etc. facilities) which satisfy a specific row criteria.

(i): This figure indicates the number (or percentage) of city jails which satisfy the specified row criteria. In the given example, (i) indicates that 100% (or all) of the city jails hold adult females.

(ii): This figure indicates the number (or percentage) of county jails which satisfy the specified row criteria. In the given example, (ii) indicates that 93% of the county facilities hold adult femaies.

(iii): The figure indicates the number (or percentage) of all the surveyed jails, including juvenile and other facilities, which satisfy the specified row criteria. In the given example, (iii) indicates that 94% of all the jails hold adult females.

(iv): Using the same analogy, (iv) indicates the number (or percentage) of city jails which satisfy the 2nd row criteria i.e., (iv) indicates that 50% of the city jails hold juvenile females.

(v): Similarly, (v) indicates that 39% of the county facilities hold juvenile females.

(vi): (vi) indicates that 45% of all the surveyed jails hold juvenile females.

Administration

1.1 General records (#6.1 - #6.3; #6.12; #11.7)

	City Jail	County Jail	TOTAL
Facilities that make a list of cash and valuables and maintain property envelopes:	100%	100%	100%
Facilities that keep property envelopes under lock and key:	71%	79%	78%
Facilities that maintain a record of expenditures and receipts:	86%	89%	86%
Facilities that maintain a record of:			
(i) Visitors	17%	11%	13%
(ii) Each visit	40%	34%	17%
(iii) Attorney's visits	33%	18%	19%
(iv) Inmate phone calls	67%	21%	31%
Facilities that maintain records of:			
(i) Rule violations	33%	29%	33%
(ii) Disciplinary actions	50%	34%	38%
(iii) Unusual occurrences	60%	77%	75%

COMMENTARY:

Nebraska jails appear to maintain extensive and thorough records of inmate cash and valuables. Eighty-five percent of the jails maintain records of all expenditures and receipts as well. All facilities maintain property envelopes signed usually by both the prisoner and the officer-in-charge. Most city and county facilities appear to safeguard prisoner valuables in an adequate manner i.e., under lock and key.

Visitor and visitation related records do not appear to be maintained in as thorough a manner as (offender) property records. Records of (inmate) disciplinary actions also appear to be neglected to a certain extent with only 42% of the facilities reporting any kind of recording being done in this area. However, detailed records are kept of all unusual occurrences (i.e., fires, accidents, etc.) in most of the state's facilities (68%).

1. ADMINISTRATION

1.2 Medical Records (#6.5; #12.9)

	City Jail	County Jail	TOTAL
Facilities that maintain medical records:	54%	51%	51%
Do the medical records include:			
(i) Physical condition on admission	46%	36%	38%
(ii) Physical condition during confinement	31%	34%	34%
(iii) Physical condition at discharge	15%	20%	19%
(iv) Record and date of services provided	54%	64%	62%

COMMENTARY:

Medical records appear to be less thoroughly maintained in the Nebraska local corrections system. Only about one-half of the facilities maintain any kind of medical record system and only about a third keep records of the physical condition at the time of admission (38%), during confinement (34%), or at the time of discharge (19%). On the other hand, about two-thirds of the facilities keep a record of all medical services provided during incarceration.

1. ADMINISTRATION

1.3 Prisoner's Property (#6.3; #6.4)

	City Jail	County Jail	TOTAL
Facilities that keep property envelopes under lock and key:	69%	80%	78%
Facilities that give prisoners a receipt for his cash and property:	77%	42%	48%
Facilities that have received complaints regarding the handling of inmate's cash and property:	8%	10%	10%

COMMENTARY:

In Nebraska, 78% of the surveyed jails keep prisoner valuables under lock and key and 48% of these facilities give prisoners receipts for their cash and property. Most of the facilities (77%) keep inmates' cash with other valuables; about 15% maintain individual prisoner accounts. Only 2% of the facilities allow the inmate to keep his cash with him. Other inmate property is usually stored (89%) or kept by the prisoner himself (3%).

About 10% of Nebraska's jails receive complaints regarding the handling and storage of inmates' properties. None of the city jails profess to have any problems in this area; however, theft (13%) and loss (13%) are two fairly big problems in county facilities. Damage and other related occurrences account for 25% of the inmates' property-handling complaints.

It should be noted that certain discrepancies in the recorded data were noted in this area. For example, although 92% of the surveyed county facilities claimed that they had not received any complaints in the handling of cash and property, only 50% answered likewise in the following question regarding the types of complaints. Such inconsistent answers prompt one to believe that the persons recording information on the survey questionnaire very often misinterpreted the questions. Hence, caution should be exercised in the interpretation and analysis of this data.

1. ADMINISTRATION

1.4 Rules and Policies (#11.1 - #11.6)

	City Jail	County Jail	TOTAL
Facilities that provide:			
(i) Written rules for new prisoners	15%	75%	65%
(ii) Non-English rules for new prisoners	0%	3%	3%
Facilities that explain rules to new prisoners:	23%	74%	65%
Inmate grievances are:			
(i) Submitted in writing by the prisoner	15%	19%	19%
(ii) Handled by the shift supervisor	31%	16%	19%
(iii) Referred to the facility administrator	23%	49%	44%
(iv) Treated in other ways or not at all	31%	16%	17%

COMMENTARY:

About 65% of Nebraska jails provide written rules to new prisoners. Officials of city jails appear to prefer verbal (23%) to written instructions (15%); whereas county jails provide both written (75%) and oral (74%) rules in equal proportion. Non-English rules are provided in only 3% of the jails and all these are county facilities.

Procedures for handling inmate grievances include written petitions by the prisoner and intercessions by shift supervisors and facility administrators for and on behalf of the inmates.

1. ADMINISTRATION

1.5 Disciplinary Sanctions (#6.6; #11.7)

	City Jail	County Jail	TOTAL
Types of Disciplinary Sanctions:			
Isolation	33%	11%	14%
Segregation	11%	6%	7%
Loss of privilege(s)	0%	33%	27%
Loss of good time	0%	3%	4%
Other	22%	35%	32%
All of the above	0%	10%	8%
None	33%	3%	7%

COMMENTARY:

In the Nebraska local correctional facilities disciplinary policies are established by facility administrators in most instances (82%) and disciplinary infractions are also determined, in the majority of facilities (82%), by its administrators.

The survey indicated that loss of privileges for infractions of rules is one of the chief (27%) disciplinary methods used in the Nebraska jails. Isolation is second on the list (14%). The data also indicated that about 25% of the county facilities placed no limits on the duration of isolation whereas most city facilities did so. A day limit appears to be the most frequently used limit in most facilities.

Hourly checks of prisoners in isolation are conducted in 30% of the facilities, while 12% of the jails have no established check-routine. Almost 37% of the facilities profess to conduct checks on an "as needed" basis and the remaining 21% conduct checks at count-time or according to other established schedules.

1. ADMINISTRATION

1.6 Disciplinary Infractions (#6.6; #11.1 - #11.7)

	City Jail	County Jail	TOTAL
Facilities that hold hearings in disciplinary cases:	0%	66%	54%
Facilities that give notices prior to hearings:	0%	34%	28%

COMMENTARY:

The above date are a good example of inconsistent and inaccurate recording of data: none of the city jails claimed to hold hearings in disciplinary cases; nonetheless 50% of these facilities supposedly give notices prior to hearings! However, despite these and other inconsistencies, the data indicate that very few facilities, if any at all, do hold disciplinary hearings and that they are usually county facilities.

1. ADMINISTRATION

1.7 Prisoner Supervision (#11)

	City Jail	County Jail	TOTAL
Facilities that provide 24-hour, on-site prisoner supervision:	85%	85%	85%
Facilities that record "checks" on prisoners:	23%	23%	23%
Facilities that allow prisoners to supervise and control other prisoners:	0%	3%	3%

COMMENTARY:

Most (85%) Nebraska jails appear to provide adequate supervision of inmates. Further, it was noted that 97% of the facilities surveyed did not permit (prisoner) supervision by other prisoners thereby complying closely with U.S. Bureau of Prisons Jail Standards: "No prisoner should be allowed to have authority over any other prisoner." These standards further recommend that even trusties "be under the supervision of (jail) employees."

1. ADMINISTRATION

1.8 Trusties (#11.3; #11.4)

	City Jail	County Jail	TOTAL
Facilities that use trusties for maintenance, supervision and other purposes:	0%	43%	35%

COMMENTARY:

About 35% of Nebraska's county jails have trusties who are selected chiefly through administrative assignment procedures. These trusties assist in tasks related to the security and maintenance of the facility. It should be noted, however, that gross inconsistencies were noticed in the data pertaining to trusties in the local facilities. For example, it was recorded that none of the city jails utilized the trusty-system. However, the following question regarding the number of trusties in city facilities revealed that some city facilities did have as many as three trusties in them. This discrepancy and others like this tend to reduce the validity of this information and hence it is recommended that this data not be used for future analyses.

CONTINUED

3 OF 4

1. ADMINISTRATION

1.9 Safety Plans (#4.6.c; #12.5)

	City Jail	County Jail	TOTAL
Facilities that have adequate emergency plans:	38%	82%	75%
Facilities that include disposition of prisoners in their emergency plans:	3%	77%	71%

COMMENTARY:

Most (75%) of Nebraska's correctional facilities appear to have adequate emergency plans for the various emergencies that may arise. However, only 60% of these plans are (formally) in writing and only 71% incorporate the disposition of prisoners as part of the plans. "The fine line between good safety and good security practice is almost indistinguishable; and one complements the other."[1] The Illinois County Jail Standards recommend that an emergency plan be in effect and in writing in all facilities. It also recommends that the plan outlines the responsibilities of jail personnel, action to be taken with or for the prisoners and evaluation plans, predicated upon the type of disaster/disturbance.

1: Illinois County Jail Standards, State of Illinois, Department of Corrections Bureau of Detention Facilities and Jail Standards. July 1971.

Facilities

2.1 Jail Capacity (#4.1; #4.2)

	City Jail	County Jail	TOTAL
Number of Jails included in survey:	13	62	75
Jails which have a design capacity of:			
(i) 4-8	46%	32%	
(ii) 9-13	15%	27%	
(iii) 14-18	24%	10%	
(iv) 19-46	0%	21%	
(v) 46-132	15%	10%	
Jails which include detention for:			
(i) Adult Males	100%	100%	
(ii) Adult Females	92%	87%	
(iii) Juvenile Males	62%	52%	
(iv) Juvenile Females	62%	37%	

COMMENTARY:

Questionnaires were sent to 100 Nebraska incarceratory facilities. Eighty replied, five of which will not be discussed because those facilities were not classified as jails (e.g., juvenile detention centers). Thirteen city jails and sixty-two county jails are included in the survey. The capacity of the majority of these jails is less than thirteen. Almost all of the jails surveyed have a capacity for adult females as well as adult males. Unfortunately, about 37% of the jails surveyed have a capacity for juveniles as well. The National Advisory Commission on Criminal Justice Standards and Goals as well as many other standard setters recommend that juveniles not be incarcerated in adult facilities.

> "Juveniles should not be held in jails, but if committed should be definitely segregated and well supervised": Minimum Jail Standards, U.S. Bureau of Prisons.

II. FACILITIES

2.2 Cell Capacity (#4.4; #4.5)

	City Jail	County Jail	TOTAL
Jails which have at least one:			
(i) One-man cell	15%	49%	43%
(ii) Two-man cell	92%	74%	77%
(iii) Three-man cell	62%	66%	65%
(iv) Dormitory	77%	59%	62%

COMMENTARY:

Statistics on the numbers of one-man cells were inadequate to make an observation concerning city jails. However, only 49% of those county jails replying had any one-man cells. Furthermore, the statistics showed that the vast majority of bed space in Nebraska county jails is composed of cells which hold more than two offenders. Forty-one percent of those replying to this question indicated that they did not have any dormitories. National standards promulgated by the National Clearinghouse for Criminal Justice Planning and Architecture recommend that all cells be occupied by only one offender.

Statistics[1] pertaining to the age of Nebraska's county facilities reveal that 30% of the cells in these facilities are less than 25 years old, and approximately 29% are between 25 and 50 years old. Finally, it should be noted that 86% of Nebraska's jails share their premises with other agencies (i.e., courthouse, law enforcement offices, etc.) and only 14% are privileged to occupy the entire physical structure/building.

1: National Jail Census, March 1970.

II. FACILITIES

2.3 (Approximate) Cell Space per Individual (#4.4; #4.5)

	City Jail	County Jail
25 square feet or less	24%	27%
26-55 square feet	76%	45%
56-70 square feet	0%	17%
Over 70 square feet	0%	11%

COMMENTARY:

Standards promulgated by the National Clearinghouse for Criminal Justice Planning and Architecture establish a 70 square feet minimum for every one man jail cell. The above statistics indicate that no city jails and only 28% of the county jails surveyed approached this space requirement. The psychological benefits of a larger living space may be reflected in an increased receptivity to attempts to treat and rehabilitate offenders.

II. FACILITIES

2.4 "Drunk Tanks" (#9.1 - #9.5)

	City Jail	County Jail	TOTAL
Jails with "drunk tanks":	46%	31%	39%
Capacity of tanks:			
(i) 1-4 individuals	30%	68%	55%
(ii) 5 or more individuals	70%	32%	45%

COMMENTARY:

As shown above, approximately 39% of the jails surveyed have drunk tanks. Although the capacity of the majority of the tanks is low, national standards recommend that those who are charged with simple inebriation not be incarcerated. A detoxification facility or infirmary is recommended for handling those charged with serious crimes who are inebriated. In effect, these recommendations require that the further use of "drunk tanks" be eliminated.

II. FACILITIES

2.5 Separation of (classes of) Prisoners (#8.2; #8.3; #8.4)

	City Jail	County Jail
The following classes of prisoners are consistently or intermittently housed together in the following percentages of cases:		
(i) sentenced and unsentenced offenders	46%	88%
(ii) misdemeanants and felons	38%	80%
(iii) juveniles and adults	0%	28%
(iv) females and males	.0%	0%
(v) first offenders and repeat offenders	85%	92%
(vi) co-defendants	31%	77%

COMMENTARY:

In many jails the capacity is small enough to preclude the separation of the above felony classes in all activities. However, the adoption of one-man cells by facilities could alleviate many of the problems resulting from mixing the above groups. The undesirable combinations of juveniles with adults and males with females, appear to be controlled in almost all cases. The facility administrator classifies prisoners as to security status, program needs, etc., in the vast majority of jails; only one facility reported the use of a specialized classification officer.

Health & Sanitation

3.1 Medical Services (#12.1)

	City Jail	County Jail	TOTAL
Medical complaints are handled by:			
(i) physicians on call	77%	56%	60%
(ii) medical personnel	0%	8%	8%
(iii) other	23%	36%	32%
Medical services are provided in:			
(i) jail	0%	7%	5%
(ii) community hospital	77%	26%	35%
(iii) physician's office	0%	16%	13%
(iv) combination of above	23%	51%	47%

COMMENTARY:

The U.S. Bureau of Prisons (1970) recommends that: "A competent physician be available to take care of the medical needs of prisoners, and give each prisoner a medical examination when admitted to jail." However, only about two-thirds (68%) of Nebraska's facilities adhere to the recommendation and most jails (72%) do not perform a medical examination when a prisoner is admitted. Community hospitals and (external) physicians appear to play an important role in providing appropriate medical services on an ad hoc basis to these facilities.

III. HEALTH AND SANITATION

3.2 Medical Personnel (#12.1; #12.2)

	City Jail	County Jail	TOTAL
Number of physicians employed			
(i) zero	8%	32%	28%
(ii) one	23%	16%	17%
(iii) two or more	8%	5%	5%
(iv) no response	61%	47%	50%

COMMENTARY:

Twenty-eight percent of Nebraska's jails have no full-time physicians and 17% have one physician. Fifty percent of the returned surveys had recorded no information in this particular area. Moreover about three-fourths of the surveys had recorded no pertinent information regarding the number of nurses and other medical personnel employed in the jails, either.

Forty-two percent of the facilities reported that even when there were no regular medical staff, there was always a physician on call in emergency situations. In 16% of the facilities the shift supervisor is in charge in case of any emergency medical situations.

In 22% of the facilities medication is dispensed by the physician, and in 31% of the facilities the shift supervisor is delegated this responsibility. In the remaining instances, either a nurse or staff assignee fulfilled this task.

III. HEALTH AND SANITATION

3.3 Admitting Examination (#12.3; #12.4)

	City Jail	County Jail	TOTAL
Facilities that do not conduct admitting exams:	85%	69%	72%
Facilities that screen admissions for:			
(i) communicable diseases	0%	5%	5%
(ii) suspected psychosis	0%	26%	23%
(iii) venereal diseases	0%	5%	5%
(iv) tuberculosis	0%	5%	5%
(v) infestations (i.e., lice, pediculi, etc.)	0%	21%	19%

COMMENTARY:

It appears that less than one third (28%) of Nebraska's local correctional facilities conduct admitting medical examinations. City facilities appear to be susceptible to this deficiency in particular. Further, even those facilities that do conduct examinations do not appear to accomplish this in a thorough manner. A physician or a staff member is usually the person who conducts the examination.

Intoxicated and overdosed persons are treated like other non-intoxicated persons in about one-third of the facilities. Fourteen percent of the facilities place these persons in "drunk" tanks, while the remaining facilities either isolate the affected prisoners or utilize a combination of the above-mentioned treatments.

III. HEALTH AND SANITATION

3.4 Sick Calls (#12.6)

	City Jail	County Jail	TOTAL
Facilities that have scheduled sick calls:	0%	14%	12%

COMMENTARY:

The survey information regarding the frequency and hours of sick calls appears to be inaccurately recorded and/or missing in most instances thereby greatly reducing the reliability and validity of the data. Hence it is advised that no conclusions be based exclusively on any information related to sick calls obtained in the survey.

III. HEALTH AND SANITATION

3.5 Treatment of Prisoners (#12.3)

	City Jail	County Jail	TOTAL
Prisoners with communicable diseases are:			
(i) isolated	77%	21%	31%
(ii) placed in a medical facility	23%	56%	51%
(iii) treated otherwise	0%	23%	18%
Suspected psychotics are:			
(i) isolated	31%	3%	8%
(ii) placed in a psychiatric facility	69%	76%	75%
(iii) treated otherwise	0%	21%	17%

COMMENTARY:

"Prisoners with contagious diseases, hardened criminals, and the sexes should be segregated": U.S. Bureau of Prisons, Jail Services, 1970.

In Nebraska prisoners with contagious diseases are usually either isolated or placed in a medical unit (82%). Similarly psychotic offenders are segregated in most instances (83%).

III. HEALTH AND SANITATION

3.6 Maintenance (#14.1)

	City Jail	County Jail	TOTAL
Facilities that are mopped/washed:			
(i) daily	69%	63%	64%
(ii) every other day	8%	18%	16%
(iii) on a weekly or biweekly basis	23%	19%	20%

COMMENTARY:

"All parts of the jail should be kept immaculately clean": U.S. Bureau of Prisons, Jail Services, 1970.

Almost half (51%) of Nebraska's jails utilize inmate labor for cleaning (i.e., mopping and washing. The physical premise and most facilities (64%) are mopped and washed on a daily basis. Civilian contractual cleaning services are made use of in about 20% of the cases and about a third of the facilities use a combination of inmate, staff and civilian labor for this purpose. However, prisoners are almost exclusively (92%) responsible for the cleaning of detention areas.

Regarding the fumigation (and disinfection) of the jail premises, it appears that 21% of the jails have no specific fumigation programs while the remaining 79% report the existence of regular programs.

III. HEALTH AND SANITATION

3.7 Laundry Services (#14.7)

	City Jail	County Jail	TOTAL
Jails that have their own laundry facilities:	0%	42%	35%
Jails that provide inmate clothing:	0%	32%	27%

COMMENTARY:

It was observed that very few, if any at all, of the city jails had in-house laundry facilities. However, on overall 35% of the state's jails do possess laundry facilities consisting of, in most cases, home washers and dryers (53%), and commercial washers (27%). Those facilities which do not have in-house washing capabilities generally contract with outside agencies (46%), or use inmate labor (18%). All of Nebraska's city jails appear to follow the former procedure (i.e., outside contracting).

It appears that less than a third of Nebraska's jails provide their own clothes. Denims, jumpsuits and uniforms appear to be the preferred kinds of clothing provided by these facilities. These clothes are cleaned both in-house (40%) and in outside laundromats via contracting procedures (28%).

III. HEALTH AND SANITATION

3.8 Bedding Items (#14.8)

	City Jail	County Jail	TOTAL
Facilities that clean:			
(i) mattresses before re-issue	23%	56%	51%
(ii) blankets before re-issue	46%	89%	81%
(iii) bed linens before re-issue	92%	95%	95%
(iv) towels before re-issue	92%	97%	96%

COMMENTARY:

Nebraska officials should be commended for their attempts to maintain a fairly high level of cleanliness in their local correctional facilities. More than half (51%) of the facilities clean used mattresses before re-issuing them to new inmates and practically all the facilities appear to furnish fresh bed linen and towels to new arrivals.

Further, most facilities claim that they clean mattresses (62%), and blankets (60%), on an "as-needed" basis. Bed linen is cleaned on a weekly basis in about one third of the jails, and on an "as-needed" basis in about 45% of the others. Finally, it should be mentioned that although there do not exist any written rules regarding the cleaning of these and other such personal (inmate) items, in most facilities, there does appear to be an overall concern that these articles be cleaned as frequently as possible.

III. HEALTH AND SANITATION

3.9 Bathing Facilities (#14.3; #14.4; #14.5)

	City Jail	County Jail	TOTAL
Number of bathing facilities:			
(i) none	31%	0%	5%
(ii) one	46%	32%	35%
(iii) two or more	23%	68%	60%
Facilities that provide barbering services:	0%	65%	53%

COMMENTARY:

It appears that the majority of Nebraska's jails (85%) have showers in their bathing facilities and that most facilities (60%) have two or more such accomodations available for inmate use. However, almost 43% of the jails report that the most serious inadequacy in their bathing facilities is that they are too few in number. Another 19% report that plumbing deficiencies constitute their major problem area.

Further, regarding hygienic standards related to bathing procedures, it appears that almost 12% of the facilities do not require that their inmates bathe regularly. Another 32% permit inmates to bathe whenever the latter so desire, while 17% of the facilities specify that that regular bathing be strictly observed. One-fourth of the facilities have scheduled bathing procedures on daily, weekly and bi-weekly basis. Barbering services (utilizing both professional staff and inmate labor) are provided in 53% of the facilities.

Finally, it should be mentioned that almost 43% of the facilities provide their inmates with all the toiletries (i.e., soap, towels, razors, etc.) that the inmates require/need. In these few cases when these essential items are not readily available in the facility shelf, the inmate's family is permitted to furnish them (36%), or he is allowed to purchase them from the commissary, etc. (12%).

III. HEALTH AND SANITATION

3.10 Meals (#13.1; #13.3; #13.4; #13.5; #13.6)

	City Jail	County Jail	TOTAL
Number of hot meals served per day:			
(i) one	8%	15%	13%
(ii) two	23%	34%	32%
(iii) three	69%	51%	55%

COMMENTARY:

"Prisoners should be fed three times each day. The food should have the proper nutritive value and be prepared and served in a wholesome and palatable way": U.S. Bureau of Prisons, Jail Services (1970).

All (100%) of Nebraska's city and county jails provide their inmates with at least three regular meals per day and 85% of the facilities attempt to include a variety of foods (i.e., meat, fruit, vegetables, etc.) in each meal, while 70% prepare special diets whenever necessary. Almost 55% of the facilities report 3 hot meals per day for their inmates while the remaining 45% claim that inmates are served at least one hot meal per day. Further, 22% of the jails serve inmates snacks and beverages between meals. It was noted that the majority of the facilities (73%) serve food in individual apportionments.

III. HEALTH AND SANITATION

3.11 Preparation of Food (#4.5.f; #13.8)

	City Jail	County Jail	TOTAL
Facilities prepare food:			
(i) in-house	0%	63%	52%
(ii) elsewhere than the jail	85%	16%	28%
(iii) by other means	15%	21%	20%
Dining area located in:			
(i) cells	77%	42%	48%
(ii) dayroom/multipurpose area	23%	44%	40%
(iii) dining room	0%	3%	3%
(iv) other	0%	11%	9%

COMMENTARY:

More than one half (63%) of Nebraska's county facilities prepare food in the facility itself while none of the city facilities do so. Food is served to inmates on hot carts or in the dining rooms, generally. Ninety percent of the city facilities purchase food from outside caterers while only 10% of the county facilities follow this procedure. Neither city nor county appear to utilize inmate labor for the preparation of food.

Prisoners in almost a half of the facilities (48%) eat their meals in their cells, while another 40% dine in the dayrooms and/or multipurpose areas. It is significant to note that none of the city jails lay claims to specific dining rooms per se, and that barely 3% of the county facilities can claim to do so, either.

Prisoners are served food in plastic, metal and paper utensils or in combinations of these, in 85% of the facilities. Food is allowed to be brought in from outside sources more often than not (52%) but in most instances (60%) strict restrictions are placed on the quantity and type of food permitted inside the facility.

Program Services

4.1 Education (#9.1; #9.2)

	City Jail	County Jail	TOTAL
Facilities that have academic educational programs:	15%	16%	16%
Type of education provided:			
(i) Adult Basic Education	0%	8%	7%
(ii) GED (high school equivalency)	0%	6%	5%
(iii) other	15%	17%	16%
(iv) none	85%	69%	72%

COMMENTARY:

The U.S. Bureau of Prisons states in their manual on Jail Services (1970) that "useful occupation (among inmates) stimulates self-respect (and that) idleness breeds trouble and leads to more crime." However, program services in Nebraska's correctional facilities do not appear to have been extensively developed. Only 16% of the facilities claim any kind of educational programs, and 8% provide vocational training programs for their inmates. However, it should be noted that inconsistencies have been noticed in the above data regarding inmate education and program services and hence caution should be exercised when attempting to analyze and interpret this information.

IV. PROGRAM SERVICES

4.2 Vocational Training (#9.1; #9.2; #10.10)

	City Jail	County Jail	TOTAL
Facilities that provide vocational training programs:	8%	8%	8%
Facilities that have library facilities:	0%	37%	31%
Source of library materials:			
(i) purchased by jail			4%
(ii) public library			12%
(iii) contributions			28%
(iv) combinations of the above			56%

COMMENTARY:

As mentioned earlier, only 8% of Nebraska's local correctional facilities sponsor inmate vocational programs of any kind. Minimal information regarding the available programs preclude any kind of valid evaluations being made of these programs. Further, only 31% of the facilities have any kind of library services and it was observed that those which do are assisted in this program partially by public libraries and partially by contributions of sorts.

Regarding legal materials, 41% of the jails claim ready access to the Nebraska Stautues and 69% provide these documents whenever requested by inmates. Less than one third of the facilities make other legal material available for inmate use, but, generally, 78% of the jails provide inmates with most requested publications.

IV. PROGRAM SERVICES

4.3 Work Release and Furloughs

	City Jail	County Jail	TOTAL
Facilities with work release programs:	0%	63%	63%
Percent of sentence population on work release:			
0%	N/A	25%	25%
less than 25%	N/A	62%	62%
between 25% and 50%	N/A	8%	8%
between 50% and 100%	N/A	5%	5%

COMMENTARY:

Nebraska's city jails do not appear to sponsor any kind of work-release or furlough programs but this could be on account of the fact that they are chiefly short-term, pre-trial holding facilities and do not really need any long-term programs of this sort. On the other hand, it is commendable to note that almost two-thirds of Nebraska's county facilities report inmate work release programs and most (70%) of these facilities have less than 50% of their inmate population involved in these programs. Furlough programs, however, do no appear to be used to a significant extent.

IV. PROGRAM SERVICES

4.4 Counseling (#9.4; #9.5; #10.5)

	City Jail	County Jail	TOTAL
Types of counseling:			
(i) individual	8%	11%	11%
(ii) group	0%	6%	5%
(iii) none	92%	83%	84%
Counseling is provided by:			
(i) jail officers	100%	64%	67%
(ii) other agency staff	0%	27%	25%
(iii) volunteers	0%	0%	0%
(iv) other sources	0%	9%	8%

COMMENTARY:

Almost 84% of Nebraska's facilities provide no counseling services for their inmates. Jail officers (67%) and other agency staff (25%) constitute the main sources of counseling and guidance services in those facilities which do boast these services. Psychological, alcoholic, and religious counseling appear to be some of the more common services provided.

Formal religious services are provided in 13% of the facilities. It should be mentioned however that there appears to be an inconsistency in the recorded data regarding religious services as only 10 facilities provide religious services while almost 25 facilities reported having protestant, ecumenical and other kinds of religious services in the following question. One possible interpretation of this data could be that 15 of these facilities provide religious services on an informal, ad hoc basis, while 10 facilities provide regular, formal services.

IV. PROGRAM SERVICES

4.5 Recreation (#10.6; #10.8; #10.9)

	City Jail	County Jail	TOTAL
Types of recreation areas:			
(i) indoor	0%	18%	15%
(ii) outdoor	0%	10%	8%
(iii) both	0%	9%	8%
(iv) none	100%	63%	69%
Leisure time activities:			
(i) cards	23%	3%	7%
(ii) newspapers	23%	8%	11%
(iii) combination	0%	50%	41%
(iv) other	8%	2%	3%
(v) none	54%	40%	43%

COMMENTARY:

The U.S. Bureau of Prisons (1970) recommends that "outdoor exercise be required" in correctional facilities. However, it appears that none of Nebraska's city facilities have any kind of separate recreation area and barely one-fourth of its county jails can claim the "asset," either. Cards, newspapers, or combinations of these appear to comprise the chief leisure time activities available to Nebraska's inmate population. However, those facilities which do claim separate recreation areas profess unlimited and/or daily use of these areas by inmates in more than half of the jails (55%).

IV. PROGRAM SERVICES

4.6 Communications (#10.1 - #10.6)

	City Jail	County Jail	TOTAL
Rules relating to mail:			
(i) unlimited sending and receiving	54%	88%	83%
(ii) restrictions	15%	12%	12%
(iii) no mail	31%	0%	5%
Facilities that censor inmate mail:	15%	32%	29%

COMMENTARY:

Censorship is limited in most Nebraska jails to checks for contraband or other such illicit items. Eleven percent of the jails, 20% of which are city facilities, do not permit incoming phone calls. Thirty percent of the facilities permit incoming calls in emergency situations and 32% allow a limited number of calls per inmate. Less than one-fourth of the facilities permit inmates to have an unlimited number of incoming calls.

IV. PROGRAM SERVICES

4.7 Visitation (#10.2; #10.3)

	City Jail	County Jail	TOTAL
Visitation is through:			
(i) glass wall phone	15%	8%	9%
(ii) screened partitions	0%	4%	3%
(iii) partial partitions	0%	6%	5%
(iv) bars of cell	31%	11%	15%
(v) multipurpose area	8%	48%	41%
(vi) other means	0%	19%	16%
(vii) no visitation	46%	4%	10%
Facilities that supervise inmate visitation:	54%	98%	91%

COMMENTARY:

"Regular visiting by the family and friends of the prisoners should be permitted under reasonable conditions and under supervision": U.S. Bureau of Prisons, Jail Services, 1970.

Nebraska's city jails appear to support very stringent rules regarding visiting privileges with more than one-third the facilities not permitting visitation of any kind. The county facilities appear less strict and allow supervised visiting privileges in almost all their facilities.

IV. PROGRAM SERVICES

4.8 Visitors (#10.4; #10.5)

	City Jail	County Jail	TOTAL
Facilities that restrict visitation privileges:	85%	91%	89%
Visitation is limited to:			
(i) attorneys	23%	16%	17%
(ii) friends	0%	2%	1%
(iii) others	77%	82%	82%

COMMENTARY:

The majority (89%) of Nebraska's jails place restrictions on visitors. About 17% of the facilities restrict visitors to only attorneys and legal persons but most (82%) facilities are fairly lenient and allow most friends, relatives and legal persons to visit. However, visiting privileges differ significantly for attorneys in a large percentage (75%) of the facilities and the security and legal status of an offender strongly influence his visiting privileges.

Only 5% of the facilities permit inmate visitation on all days of the week. Fifty percent of the facilities have one day per week designated for visiting and the remaining 45% allow visitation of inmates two to six days each week.

IV. PROGRAM SERVICES

4.9 Commissary (#10.11)

	City Jail	County Jail	TOTAL
Jails which have commissary programs:	0%	12%	9%
Jails which do not have commissary programs handle purchases via:			
(i) jail staff	69%	78%	76%
(ii) family	31%	13%	16%
(iii) other sources	0%	9%	8%

COMMENTARY:

Commissary programs do not appear to be in use in a significant proportion of the Nebraska jails. Inmate purchases are generally (92%) handled by either the jail staff or inmate's family members. The jail's chief administrators, a shift supervisor, or a staff assignee is usually responsible for this program which is made available to inmates daily (64%) or one to four times a week (36%). In most facilities (75%) commissary prices are not posted but immediate cash payments are required for all purchases (77%). Generally (80%) inmates have no restrictions on the amount of money they are allowed to spend.

This system appears to be working extremely well as 92% of the facilities have received no complaints regarding the commissary program. However, inconsistencies have been noted in the data pertaining to commissary programs. For example, only 3 jails reported having commissary programs but 14 chief administrators are reported as the individuals in charge of commissary programs.

Staff

5.1 Number of Employees (#5.6; #5.7)

	City Jail	County Jail	TOTAL
Administrative:			
(i) One	46%	33%	35%
(ii) Two	15%	26%	24%
(iii) Three or more	39%	41%	41%
Custodial:			
(i) None	69%	30%	36%
(ii) One	0%	8%	7%
(iii) Two or more	31%	62%	57%
Clerical and Maintenance:			
(i) None	46%	21%	26%
(ii) One	0%	52%	43%
(iii) Two or more	54%	27%	31%
Professional:			
(i) None	100%	87%	89%
(ii) One	0%	8%	7%
(iii) Two	0%	6%	4%

COMMENTARY:

Jail Standards recommend a minimum of concrete and steel security "hardware". Direct contact with corrections staff who offer attention and surveillance to incarcerates can, in most instances, replace the necessary security "hardware". This does not mean custodial staff would perform surveillance; much of the attention and surveillance given inmates may be offered by psychiatric counselors, social workers and physical recreation workers, who, in the above chart, are classified as "professional employees." Use of purely custodial employees may then be de-emphasized. Currently, none of the city jails employ professional staff.

V. STAFF

5.2 Assignment Procedures

	City Jail	County Jail	TOTAL
Chief Jailer position filled by:			
(i) election	0%	93%	77%
(ii) appointment	31%	5%	10%
(iii) civil service	69%	2%	13%
Deputy positions filled by:			
(i) appointment	43%	90%	83%
(ii) civil service	57%	5%	13%
(iii) other procedures	0%	5%	4%
Custodial position filled by:			
(i) appointment	0%	84%	68%
(ii) civil service	63%	6%	18%
(iii) other procedures	37%	10%	14%
Clerical positions filled by:			
(i) appointment	50%	65%	62%
(ii) civil service	0%	11%	9%
(iii) other procedures	50%	24%	29%
Professional positions filled by:			
(i) appointments	N/A	63%	63%
(ii) other	N/A	37%	37%

COMMENTARY:

"The selection, appointment, and promotion of jail personnel should be by a merit system. If selection and appointment of personnel is not made by the merit system, then officials responsible for selecting aptitude, a minimum of a high school education (or equivalent), training and good character.": Illinois County Jail Standards, 1971.

"Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions": Standards and Goals for Florida's Criminal Justice System[2], Bureau of Criminal Justice Planning and Assistance, p. 578. 1976.

"Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions": Standards and Goals for Florida's Criminal Justice System[2], Bureau of Criminal Justice Planning and Assistance, p. 578. 1976.

V. STAFF

5.3 Minimum Education Levels (#5.1 - #5.5)

	City Jail	County Jail	TOTAL
Chief Jailer:			
(i) no requirements	0%	40%	33%
(ii) some high school	18%	6%	8%
(iii) high school	82%	50%	56%
(iv) some college	0%	4%	3%
Deputies:			
(i) no requirements	0%	24%	21%
(ii) some high school	10%	12%	12%
(iii) high school	90%	60%	63%
(iv) some college	0%	2%	2%
(v) graduate degree	0%	2%	2%
Custodial Officers:			
(i) no requirements	0%	34%	28%
(ii) some high school	18%	28%	23%
(iii) high school	82%	38%	49%
Clerical and Maintenance:			
(i) no requirements	0%	24%	20%
(ii) some high school	33%	28%	29%
(iii) high school	67%	48%	51%
Professional Staff:			
(i) no requirements	N/A	0%	0%
(ii) some high school	N/A	0%	0%
(iii) high school	N/A	38%	38%
(iv) some college	N/A	50%	50%
(v) college degree	N/A	12%	12%
(vi) graduate degree	N/A	0%	0%

COMMENTARY:

It appears that, on an average, less than 27% of the jails have no specified educational requirements for jail officers, but 58% of the facilities require at least a high school degree for those positions. Even those facilities which do have educational requirements for all employees should "encourage and assist jail staff to take courses in the field of corrections at available universities and community colleges."[1] Further, it should be noted that since the survey data did not indicate that the staff rosters of Nebraska's city jails included professional personnel, this item of the questionnaire was not wholly applicable to these facilities.

1: Illinois County Jail Standards, p. 9. July 1971.

V. STAFF

5.4 Starting Salaries

	City Jail	County Jail	TOTAL
Chief Jailer:			
(i) $5,000 - $7,499	8%	0%	1%
(ii) $7,500 - $9,999	22%	50%	44%
(iii) $10,000 - $12,499	8%	36%	31%
(iv) over $12,499	62%	14%	24%
Deputies:			
(i) $7,499 or less	0%	28%	23%
(ii) $7,500 - $9,999	60%	65%	64%
(iii) over $9,999	40%	7%	13%
Custodial Officers:			
(i) $4,999 or less	0%	40%	31%
(ii) $5,000 - $7,499	33%	40%	38%
(iii) $7,500 - $9,999	33%	13%	18%
(iv) over $9,999	33%	7%	13%
Clerical and Maintenance Staff:			
(i) $4,999 or less	0%	14%	12%
(ii) $5,000 - $7,499	100%	72%	76%
(iii) over $7,500	0%	14%	12%
Professional Staff:			
(i) $7,500 - $9,999	N/A	37%	37%
(ii) $10,000 - $12,499	N/A	25%	25%
(iii) $20,000 - $22,499	N/A	25%	25%
(iv) over $25,000	N/A	13%	13%

COMMENTARY:

The Florida Criminal Justice System's Standards and Goals recommends policies be developed within the system that will provide:

"Salaries for all personnel that are competitive with other facets of the criminal justice system as well as with comparable occupation groups of the private sector of the local economy. An annual cost-of-living adjustment should be mandatory."

Hence it may be advisable for Nebraska officials to compare salary levels within and outside the local environment prior to reaching any decisions regarding salary standards for jail staff.

V. STAFF

5.5 Security (#5.2)

	City Jail	County Jail	TOTAL
Facilities that "have an adequate staff/inmate ratio":	100%	85%	88%
Facilities that offer officers:			
(i) first aid training programs	100%	90%	92%
(ii) first aid classroom training	62%	26%	39%
Facilities that have at least one officer on each floor each shift:	77%	67%	68%
Facilities that have officers with first aid training on each shift:	92%	59%	65%

COMMENTARY:

The personnel needs of any jail depends upon many factors such as the size of the facility and special problems which may be created by its special layout. Basic minimum standards for personnel vary from jurisdiction to jurisdiction. Standards in Illinois require that:

> "Each jail must have sufficient personnel, to provide adequate round-the-clock supervision of prisoners. No person shall be confined in a jail without an officer on duty, awake, and alert at all times. There should be a minimum of one jail officer for every individual floor, of detention area, and sections of a floor wherever separations by walls occur or where supervision by sight or sound cannot be made by one officer."[1]

In Nebraska 12% of the facilities claim that they do not have adequate staff: inmate ratios and 8% claim that detention area supervision is insufficient.

1: Illinois County Jail Standards. State of Illinois, Department of Corrections and Bureau of Detention Facilities and Jail Standards, p. 7, July, 1971.

V. STAFF

5.6 Female Staff (#5.7)

	City Jail	County Jail	TOTAL
Percent of female full-time staff:			
(i) zero	43%	23%	27%
(ii) 1-25%	43%	36%	38%
(iii) 25-50%	7%	23%	20%
(iv) over 50%	7%	18%	15%
Number of female administrators:			
(i) none	100%	89%	91%
(ii) one to six	0%	11%	9%
Number of female custodial officers:			
(i) none	20%	35%	33%
(ii) one	0%	30%	27%
(iii) more than one	80%	35%	40%
Number of female clerks and maintenance staff:			
(i) none	22%	16%	18%
(ii) one	11%	49%	41%
(iii) two or more	67%	35%	41%
Number of female professionals:			
(i) none	N/A	38%	38%
(ii) one	N/A	50%	50%
(iii) two or more	N/A	12%	12%

COMMENTARY:

U.S. Bureau of Prisons, Jail Standards specify that: "Women prisoners should be under the supervision of a matron at all times." Nebraska jails appear to be deficient in the area of female personnel with 27% of the facilities having no full-time female employees. However, when female offenders are in the facility, part-time matrons are hired in most (87%) of the facilities.

"Correctional agencies should develop policies and implement practices to recruit and hire more women for all types of positions in corrections, to include...assumption by the personnel system of aggressive leadership in giving women a full role in corrections":

Standards and Goals for Florida's Criminal Justice System, p. 582, 1976.

Prisoner Population

6.1 Average Daily Population (ADP) (#6.9; #6.13)

	City Jail	County Jail	TOTAL
Facilities that had a 1976 average daily population of:			
(i) zero prisoners	14%	6%	8%
(ii) one prisoner	37%	23%	25%
(iii) two prisoners	21%	10%	12%
(iv) 3-10 prisoners	14%	42%	37%
(v) 10-50 prisoners	14%	16%	15%
(vi) 50-100 prisoners	0%	3%	3%

COMMENTARY:

As the above chart indicates, the average daily population of county jails is considerably higher than city jails. Analysis of the average daily population, like analysis of the average length of stay, is difficult without statistics on the availability of pre-trial release programs, diversion programs and charges for which offenders are incarcerated. The most important data, however, is the design capacity of each jail as compared with the ADP; from this information, it can be determined whether the jail is overcrowded or not.

VI. PRISONER POPULATION

6.2 Pre-Trial Length of Stay (#6.13)

	City Jail	County Jail	TOTAL
Facilities with an average length of pre-trial stay of:			
(i) zero days	38%	2%	8%
(ii) one day	54%	21%	27%
(iii) two days	8%	28%	24%
(iv) three-45 days	0%	49%	41%

COMMENTARY:

Every person charged with an offense is constitutionally guaranteed the right to a speedy trial. Although the length of stay in city jails before trial is short, pre-trial stay in county jails may be much longer in comparison. Such a long stay may be unnecessary and undesirable for many felons and almost all misdemeanants. Information pertaining to the types of offenders in the various facilities may be valuable for future analysis.

VI. PRISONER POPULATION

6.3 Post-Trial Length of Stay (#6.13)

	City Jail	County Jail	TOTAL
Facilities with an average length of post-trial stay of:			
(i) zero days	N/A	3%	3%
(ii) one-two days	N/A	7%	7%
(iii) three-10 days	N/A	20%	20%
(iv) 10-30 days	N/A	48%	48%
(v) more than 30 days	N/A	22%	22%

COMMENTARY:

Although there are no offenders sentenced to city jails, a large number of offenders are sentenced to county jails. The majority of the sentences are less than 30 days which, while being a laudibly short period of stay, indicates that many of these sentences may be for minor offenses. Incarceration for minor offenses can often be de-emphasized with little or no danger to the community.

END