ATTACHMENT B. 2004-304

KING COUNTY
DEPARTMENT OF ADULT AND JUVENILE DETENTION

ADULT DETENTION OPERATIONAL MASTER PLAN

APPENDICES

June 2004

Christopher Murray & Associates
2016 18th Ave East
Seattle, Washington 98112

Kathleen Gookin
Criminal Justice Planning Services

Sandy Zirulnik
On-Line Electric

William C. Collins
Attorney at Law

Kathleen Alves
Healthcare Delivery Systems

12042

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APPENDIX A
Ordinance 14430

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

May 31, 2004

Ordinance 14430

Proposed No. 2002-0251.2 **Sponsors** Gossett and Hague

AN ORDINANCE approving the Adult Justice Operational Master Plan.

PREAMBLE:

King County's criminal justice system, that includes law enforcement, secure detention, prosecution, indigent defense, and adjudication of criminal matters in superior and district courts, accounts for over two thirds of the county's discretionary expenditures. While these responsibilities are mandated by constitutional, statutory, and other requirements, the county has a great deal of flexibility in establishing levels of service. In recognition of the fact that increases in criminal justice expenditures are outpacing the county's ability to pay for these increases, the county council required the development of master plan for the county's adult criminal justice system in hopes of duplicating the successes of the juvenile justice master plan that reduced juvenile crime and the need for new juvenile detention facilities. As a result, King County's adult justice system has been engaged in an intensive effort to explore alternative types of sanctions, identify justice system process improvements that will reduce costs and make the best use of limited detention resources in order to promote public safety

and preserve jail capacity for those offenders for whom jail is the only option and reduce the use of secure detention in the county.

This effort is in accordance with K.C.C. 4.04.200, which provides that an operational master plan set forth how an organization will address its workload now and in the future.

Through Motion 11001, the King County council approved the work plan for developing the Adult Justice Operational Master Plan.

The Adult Justice Operational Master Plan was directed by an advisory committee made up of elected officials and agency heads from county government, cities and state criminal justice agencies, and human and community service providers.

The recommendations of the advisory committee to the executive that are contained in the three project work group reports, the alternatives work group, the felony work group, and the Misdemeanant work group, resulted from the work of nearly one hundred participants representing local, regional and state criminal justice and health and human services agencies.

The recommendations contained in the Adult Justice Operational Master Plan Report titled King County Capacity Options: 2002 – 2010 represent recommendations on King County detention capacity options from the King County executive to the King County council.

Plans submitted for approval under K.C.C. 4.04.200 are generally followed by subsequent planning documents for the development of capital improvements. Each of these plans would also be subject to council approval. In addition, the council required in the 2002 Budget Ordinance that the district court develop plans that reduce jail utilization for offenders adjudicated in these courts. The

response and plan have been included as part of this master plan and is included as an attachment. These plans are submitted as Attachment A to this ordinance, and if implemented, would improve system efficiencies, improve public safety, avoid the need for new jail capacity and should lead to an overall reduction in the need for secure detention.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. In accordance with K.C.C. 4.04.200, the Adult Justice Operational Master Plan, Attachment A to this ordinance, dated May 2002, is hereby approved.

SECTION 2. The council ordains that, with the approval of the Adult Justice Operational Master Plan, it is the policy of King County to establish standards for the use of secure detention capacity, emphasize system and process efficiencies that reduce the utilization of jail and reduce overall criminal justice expenditures, encourage alternatives to the use the secure detention for adult offenders in order to make best use of limited detention resources and preserve public safety, and to establish as a county policy the requirement for the use of integrated and coordinated treatment of offenders whose criminal activity is related to substance abuse or mental illness in order to avoid future system costs, reduce jail utilization for these groups, and reduce future criminality.

SECTION 3. The county recognizes that the provision of secure detention for felons and some misdemeanants is a county responsibility that is subject to federal and state requirements. Nevertheless, the use of secure detention has not demonstrated effectiveness in reducing recidivism except during the time that inmates are incapacitated in jail. The Adult Justice Operational Master Plan does not identify any evidence that the use of jail has decreased recidivism in King County. Instead, the plan shows evidence shows that for certain offender groups recidivism is as high as 95 percent.

The council acknowledges that secure detention is effective for individuals who are a flight risk and must be detained. Nevertheless, data indicates that the threat of jail does not necessarily increase offender accountability when individuals have a history of failing to appear for court appearances. Rather, other process changes have been shown to be much more effective in reducing failure to appear rates. Consequently, the council intends that secure detention be used for those whose history demonstrates that they would flee the jurisdiction in order to avoid prosecution and not for those whose failure to appear history can be addressed more effectively with other process changes.

The plan does show that the use of secure detention may be necessary for those who have failed all other graduated sanctions and intermediary punishments. Consequently, it is the intent of the council that secure detention should be used in measured way to ensure compliance with other sanctions.

Federally sponsored research recommends as a best practice that counties establish policy for the use of secure detention. King County's legislative authority has not formally established a policy for the use of secure detention for adults, but has for juveniles. Consequently, the council finds that as county policy, the county's secure jail facilities should be used for:

A. Those individuals who can be objectively shown as posing a threat to public safety if not detained in secure detention;

B. Those individuals who can be objectively shown as a flight risk from the jurisdiction if not detained; and

C. Those offenders who have failed intermediary sanctions.

Therefore, the council requests that the county's criminal justice council prepare, and the King County superior and district courts adopt, jail use criteria and procedures that limit the use of the jail for those individuals who are a public safety or flight risk, or for those who require secure

detention as a graduated sanction having failed other intermediate punishments. Alternatively, the criminal justice council may wish to propose other policy options that would also limit the use of secure detention.

SECTION 4. It is the intent of the council that the courts, prosecutor, sheriff, and all other agencies involved in the criminal justice system emphasize system and process efficiencies that reduce the utilization of jail and reduce overall criminal justice expenditures. The council intends that the courts, prosecutor, sheriff, and all other criminal agencies identify areas for efficiency that benefit the system as a whole, in addition to the individual agency.

SECTION 5. The council also encourages the development and use of alternatives to the use of secure detention for adult offenders in order to make best use of limited detention resources and preserve public safety. These intermediate sanctions should be used in a graduated and measured manner, appropriate to the offense and cognizant of the cost effectiveness—measured through lower costs, or reducing the costs of future offending.

SECTION 6. It is the intent of the council that the county provide treatment options, within the constraints of existing current expense and other funding sources, for persons who are significantly impaired by substance abuse and/or mental illness and involved repeatedly or for significant duration in the criminal justice system.

The council recognizes the value of the county therapeutic courts for substance abusing and mentally ill offenders. It is the intent of the council that the successful process and programs of these courts become a regular component of the county's criminal justice system and that the courts, prosecutor and executive, consider using the successful components of these courts as the basis for planning how best to integrate adjudication, sanctioning and treatment of these significantly impaired persons. Further, it is the intent of the council that the benefit of these

courts be made available to significantly impaired offenders regardless of offense or court jurisdiction.

It is the intent of the council that treatment options for persons significantly impaired by substance abuse and/or mental illness emphasize community based alternatives to incarceration, as well as treatment in conjunction with incarceration where public safety risk or flight risk so requires, and are coordinated with on-going community care wherever possible. It is the intent of the council that existing current expense and other funding sources be used to implement these policies, but the council recognizes that because of continuing fiscal problems with the current expense fund no new current expense funding will be available to expand programs. Nevertheless, the council recognizes that the county should continue to pursue other funding sources for treatment and that as savings are achieved in the criminal justice system, that consideration be given to reallocating resources for treatment programs for these populations.

In addition, the council also recognizes the benefits of the district court's consolidated domestic violence court. Similarly, the county should develop plans for expanding and duplicating the methods and benefits from this court program for other appropriate offender populations.

It is the intent of the council that the county substance abuse, mental health, and community services programs, including veteran's programs, domestic violence and work training programs, give priority to referrals from the criminal justice system in accord with needs and to the maximum extent allowable within the parameters of their categorical funding sources and shall partner with the criminal justice system to jointly develop treatment options and screening, assessment and referral protocols.

It is the also intent of council that the county help provide access to information, treatment and other rehabilitative services for persons with other substance abuse and mental

health concerns as part of its programming both within secure detention and in community corrections options.

SECTION 7. To ensure the application of the council's adopted criminal justice policies contained in sections 3 through 6 of this ordinance and the continued implementation of the Adult Justice Operational Master Plan submitted as Attachment A to this ordinance, the King County Criminal Justice Council shall develop and submit an implementation plan to the council by September 1, 2002, for review and approval by motion. It is the intent of the council that the plan identify responsibility for implementation of criminal justice policy and master plan recommendations (including criteria and procedures identified in section 3 of this ordinance related to jail use policies), schedule for implementation, and the estimated reduction of jail utilization associated with each recommendation. In addition, the executive, in consultation with the Criminal Justice Council, shall regularly report on the status of the implementation of plan recommendations. The executive shall also prepare an annual report summarizing

the status of the population of adults in detention and in alternatives, and identifying workplan goals for the next year.

Ordinance 14430 was introduced on 5/28/2002 and passed by the Metropolitan King County Council on 7/22/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Gossett, Ms. Hague, Mr. Irons and Ms. Patterson
No: 1 - Mr. Pullen
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

APPROVED this 1st day of August, 2002.

Attachments A. Adult Justice Operational Master Plan dated May 2002

APPENDIX B
Crosswalk between OMP Scope of Work and Work Products

CROSSWALK BETWEEN CONTRACT SCOPE OF WORK AND WORK PRODUCTS

SCOPE OF WORK	WORK PRODUCT
1. DEVELOP OPERATIONAL MASTER PLAN	
a. Establish baseline for operations	
i. Identify baseline criteria for adult secure detention operation.	*Adult Detention Operational Master Plan*, Chapter 2, "Baseline Requirements."
ii. Identify criteria for best practices	*Adult Detention Operational Master Plan*, Chapter 3, "Best Practice Benchmarks."
iii. Peer review of analysis and findings of Dept of Public Health's consultant review related to identification of baseline operations.	*Peer Review: Final Report to Proviso Work Group Jail Health Services, Seattle-King County dated June 10, 2003 by Wellcon (Dr. Todd Wilcox),* Kathleen Alves, Healthcare Delivery Systems
b. Current operations and policies	
i. Review/verify criteria and practices for classification, security levels, assignment of inmates to programs and secure housing units, inmate processing, court detail, services and programs.	*Adult Detention Operational Master Plan*, Chapter 1, "Current Operations."
ii. Peer review of analysis and findings of Dept of Public Health's consultant review related to identification of current operations and practices.	*Peer Review: Final Report to Proviso Work Group Jail Health Services, Seattle-King County dated June 10, 2003 by Wellcon (Dr. Todd Wilcox),* Kathleen Alves, Healthcare Delivery Systems
c. Move from current to best practices	
i. Establish benchmarks and identify and quantify operational efficiencies for DAJD and JHS.	*Adult Detention Operational Master Plan*, Chapter 3, "Best Practice Benchmarks." *Adult Detention Operational Master Plan*, Chapter 6 "Operational Alternatives." *Adult Detention Operational Master Plan*, Appendix, "Benchmarks for Jail Health Services."
ii. Evaluate Hammer Settlement Agreement	Memorandum dated August 5, 2003 from Bill Collins to Chris Murray, re: Hammer Settlement Agreement Presentation to Advisory Committee by Bill Collins August 7, 2003. *King County Correctional Facility, Staffing Requirements & Capacity Limits Required by the Hammer Settlement Agreement*, Christopher Murray & Associates, August 2003
iii. Coordinate and confer with PAO in	Telephone and email communication between

evaluation	John Gerberding and Bill Collins
iv. Summarize constitutional and statutory minimum requirements for jail operation.	Appendix: *Jail Design and Operation and the Constitution, An Overview*, William C. Collins
d. Going forward	
i. Estimate distribution of inmates by classification for next 10 years. Evaluate how well programs and services can accommodate those inmates and security needs.	*Adult Detention Operational Master Plan*, Chapter 5, "Long-Range Needs."
ii. Identify modifications that could produce operational efficiencies; conduct analysis of whether such changes can be "self-financed."	*Adult Detention Operational Master Plan*, Chapter 6 "Operational Alternatives." Cost Benefit Analysis Model (spreadsheet)
iii. Identify benchmarks for overall operational efficiency	*Adult Detention Operational Master Plan*, Chapter 3, "Best Practice Benchmarks."
iv. Develop a decision package that will identify and quantify: changes in operation that can produce more efficient operations within existing facilities and constraints; additional changes that require removal or modification of constraints; facility/infrastructure changes that result in operational changes that might be self-financing.	*Adult Detention Operational Master Plan*, Chapter 6 "Operational Alternatives."
Illustrate existing and alternative staffing models graphically on floor plans	*Adult Detention Operational Master Plan*, Chapter 6 "Operational Alternatives."
Integrate alternatives with AJOMP and CJ Council recommendations.	*Adult Detention Operational Master Plan*, Chapter 5, "Long-Range Needs."
Take into account the King County Family Leave Act	*Adult Detention Operational Master Plan*, Chapter 2, "Baseline Requirements."

2. REVIEW AND EVALUATE ISP	
a. Evaluate feasibility and cost-effectiveness of incorporating alternative or additional technology upgrades in the ISP	*Study of Security Electronic Systems Replacement*, On-Line Electric, June 2003; Encouraged and participated in decision to change from analog to digital communication; Encouraged and participated in modification of design to enable remote operation of critical floor control functions; evaluated staffing and cost implications of alternatives to floor control.
b. Evaluate cost-effectiveness and alternatives to proposed ISP implementation plan.	*Integrated Security Project: Implementation Plan Report*, Christopher Murray & Associates, May 2004
c. Collaborate with others to produce an updated ISP scope, schedule, and budget	Participated in meetings on scope and schedule. Participated in development of ISP Cost Model. Prepared implementation cost report.

d. Coordinate with OIRM and ISP Executive Management Team in reviews	Provided technical review and advice on ISP design elements to enable addition of future applications or systems. Met with OIRM manager for the Criminal Justice Integration Project. Reviewed documents for inclusion in OMP operational alternatives discussion.
3. WORKPLAN AND SCHEDULE	
Submit workplan and schedule	Submitted workplan and schedule. Periodically updated same.

APPENDIX C
Benchmarks for Jail Health Services

BENCHMARKS FOR JAIL HEALTH SERVICES

Introduction

While concentrating mainly on functions of the Department of Adult and Juvenile Detention, this Operational Master Plan includes some analysis related to Jail Health Services. In this part of the analysis, benchmarks of similar jail facilities are discussed for the purpose of helping provide direction for decisions regarding changes in jail health services operations, practices and programming.

King County operates under several constraints in providing health care to the incarcerated population that are not commonly found in other jurisdictions. For example, the Hammer Settlement Agreement (1998) requires that King County seek and maintain accreditation by the National Commission on Correctional Health Care (NCCHC) accreditation. King County is in compliance with this requirement and attained its third renewal in 2001. In addition, there are collective bargaining agreements that pose constraints upon health services staffing that may not be found in some of the comparison jurisdictions. Finally, there are two lawsuits that were settled by King County that deal with the issue of County liability for the actions of inmates once they leave the jail, if those actions are attributable to a mental health condition. These two lawsuits resulted in many changes in the County, including the addition of Mental Health Courts and pressure on the County to ensure community safety, through proper referrals and placement of individuals with a mental illness, once they leave the jail. The effect of these settled lawsuits may be to make King County more cautious in dealing with mentally ill offenders than other jurisdictions.

In deciding what facilities to use for benchmarking purposes, it was decided to first choose facilities that were accredited by the NCCHC. Approximately 10% of jails in the United States have attained NCCHC accreditation. It was also important to pick jails that were representative of best practices. Two of the jails selected have been honored nationally as Healthcare Facility of the Year by the NCCHC.

Because King County operates a large urban jail that provides services to the City of Seattle, surrounding cities, and unincorporated areas, it was important that targeted facilities have similar characteristics.

Jail health services at the King County adult detention facilities are provided by the Seattle / King County Department of Public Health. Two of the three jails chosen as benchmarks have similar relationships with a public health agency. The three facilities are:

- Multnomah County Jail, Portland, Oregon. Health services provided by the Multnomah County Health Department. Multnomah was chosen, in part, because it is often cited by King County as being similarly situated.
- Salt Lake County Jail, Salt Lake City, Utah. Health services provided by Wellcon, a private contractor. The Salt Lake Jail was the National Commission Healthcare Facility of the Year in 2001. It was selected for its exemplary program and as an example of what is done by a private sector provider.
- Hampden County Correctional Center, Ludlow, Massachusetts. Health services are provided by Massachusetts Public Health and linkages with community providers. This program was

awarded the *Innovations in American Government Award* in 2000 by the Ford Foundation and was cited as the Healthcare Facility of the Year in 1998 by the NCCHC. It was selected as an exemplary program operated by a public health agency.

The following table summarizes some of the demographic and economic characteristics of these comparison sites.

Demographic and Economic Statistics
(Data from 2000-2001 unless otherwise indicated)

	King County Washington	Multnomah County Oregon	Salt Lake County Utah	Hampden County Mass
Population	1,741,785	613,105	898,387	455,862
2002 Consumer Price Index[1]	189.3	183.8	184.7	196.5
Median Income				
Unadjusted	$53,157	$32,732	$26,340	$39,718
CPI Adjusted	$53,157	$33,711	$26,996	$38,263
Percent Below Poverty Level	8.4%	14%	NA	14.7%
Percent White	75.7%	84.6%	79.2%	74.4%
Percent Black	5.4%	6.8%	1.9%	8.1%
Percent Native American	0.9%	1.2%	1.3%	0.3%
Percent Hispanic	5.5%	4.5%	12.8%	15.2%
Percent Other	12.5%	2.9%	4.8%	2%

As B. J. Anno, one of the leading authorities on correctional health care has noted, when determining objectives for provision of jail health services "the primary objective should be the provision of high quality, timely, and cost-effective health care."[2] NCCHC accreditation documents the necessary structure and standards the system will use to accomplish this objective. The allocation of resources needed to provide the services and documentation become of prime importance in managing systems and the provision of health care that meets community standards.

[1] U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, all urban consumers, all items, 1982-1984 = 100. King County CPI based on Seattle/Tacoma/Bremerton; Portland CPI based on Portland/Salem; Salt Lake County CPI based on all western urban areas; Hampden County based on Boston/Brocton/Nashua.
[2] Anno, B. J., Correctional Health Care: Guidelines for the Management of an Adequate Delivery System, National Commission on Health Care, December 2001.

Facility and Program Descriptions

King County, Washington

The King County Department of Adult and Juvenile Detention has two facilities:

- A high-rise jail with eleven floors located in downtown Seattle. It was opened in 1986 and is referred to as the King County Corrections Facility (KCCF).
- A two story jail located in Kent. It was opened in 1997 and is referred to as the Regional Justice Center (RJC).

The KCCF has 1,262 beds in the tower portion of the facility and 435 in the (vacated) west wing. In October 2003 the ADP was 1,257. The RJC has a single-cell capacity of 896 beds and a maximum capacity (double celling 80 percent of the cells in most housing units) of 1,457. The RJC had an ADP of 907 in October 2003. There were an additional 225 inmates in community based programs during this month.

Jail Health Services (JHS) provides the management and on-site health services at both facilities. Inmates with acute medical and psychiatric needs, and those with unstable chronic conditions, are housed at KCCF. The facility has an infirmary with two reverse flow rooms for isolation, a medical clinic, extensive psychiatric services, dental office, limited laboratory service, and x-ray on site. Inmates requiring emergent care are transported to Harborview Medical Center, which, as part of a larger agreement with the county, does not charge the jail for services. Most inmates are booked into the KCCF facility, including all those arrested in the evening, at night, or on the weekend.

JHS also provides services for the RJC, however, by design, most inmates at the RJC are generally medically stable and do not require extensive health interventions. There is a medical clinic, dental office, laboratory and x-ray service at the RJC. Inmates requiring emergent care are generally transported to Valley Medical Center locally.

The DAJD was re-accredited by the NCCHC in 2001 separately for both the KCCF and RJC.

Statistics for January 2003 indicated a total of 359 hospital transports for an average of 12 per day. Almost all of these (356 of the 359 transports) were from the KCCF.

Total health expense for 2002 was $15,956,965 with $11,115,136 spent for staffing (70%) with 148 FTE's. (This does not include the CDP's or PES's.) Cost per patient per day for medical expense was $16.51. The staffing ratio in 2002 was one JHS employee to 18 inmates. For the first 10 months in 2003, the ADP in secure detention was 2,240. The approved JHS budget for 2003 was $19,177,982 with an increase of 23 FTE's from 148 to 171. This has resulted in a 2003 ratio of one JCS employee to 13 inmates.

Pharmaceutical costs in 2002 totaled $1,173,360, or $1.21 per inmate per day. Thirty percent of this ($395,637) was for pharmacy staff wages and benefits. The remainder was for medications. Currently both sites run pharmacies with full staff. The medications are obtained on contract with the Minnesota Multistate Contracting Alliance for Pharmacy which provides medications at a significant discount.

Dental costs were approximately $214,000, which average 22 cents per inmate per day.

Multnomah County, Oregon

Multnomah County Corrections is comprised of two facilities:

- A high-rise jail with eight floors located in downtown Portland, Oregon referred to as the Multnomah County Detention Center (MCDC).
- A two-story jail located outside of downtown Portland near the airport. It is called the Multnomah County Inverness Jail (MCIJ).

The downtown facility has 676 beds and houses maximum security inmates and inmates just booked into jail. Health services are provided by the Multnomah County Health Department. There is no infirmary and inmates requiring extensive health interventions are transported to local hospitals. There is a medical clinic, dental clinic, laboratory and x-ray on site. Inmates are booked into this facility and transferred to Inverness if at all possible. The booking area has recently been remodeled and handles around 2,400 bookings a month. Nursing staff have a private and well secured area to evaluate incoming inmates and administer tuberculosis skin tests at the time of booking.

The Inverness facility has 1,014 beds and houses the majority of medium/minimum classified inmates. There is a medical clinic, infirmary with reverse airflow rooms, dental clinic, laboratory, and x-ray on site. Inmates requiring emergent care are transported to a local hospital. This facility has been a destination facility for the National Institute of Corrections (NIC) since it was built in 1988 due to the excellent design and function it offers.

Psychiatric care is also based in the Inverness facility. The facility has devised a special needs unit that has open common living space for 65 inmates on one level. It houses stable but seriously impaired mentally ill inmates and inmates with developmental disabilities. The jail also has a 10-bed acute care unit. The special needs program is staffed by a full time psychiatric ARNP who manages inmate care and provides group therapies. The jail reports an excellent response to therapy. It was reported that inmates returning to the facility often request re-assignment to the unit as it provides the necessary structure for a comfortable living environment with like inmates.

Multnomah County Corrections was accredited several years ago by NCCHC and has maintained accreditation ever since. Total health costs in 2002 were $12,293,526 with $10,339,630 for staffing costs (84%) and 106 FTE's. This provides a ratio of staff to inmate of 1:16. The cost per patient per day for medical expense was $19.93. This is well above the national average and higher than DAJD. When I spoke with corrections administration they stated that they were in the middle of a budget crisis due in large part to health services expenses. FTE's for 2003 were reduced to 98 with 65% being nursing staff.

Multnomah County spent $1,037,851 (8%) of their 2002 staffing budget for mental health services.

Pharmaceutical costs were also quite high - $1,148,983, or $1.86 per inmate per day. Psychiatric medications tend to be big ticket item that increases this budget item in all jails.

Dental costs were $203,834 which averages 33 cents per day per inmate.

Inmates are billed $10.00 per kite with the first visit free of charge. They are charged $5.00 for each grievance filed. Multnomah does not bill private insurances or Medicaid and the amount received was $151,916 in 2002 from inmate billing only.

Multnomah does not utilize telemedicine or have an electronic medical records system. Their health model and facility design is nearly identical to DAJD. They transported 1,062 inmates to local hospitals during 2002 which is an average of three inmates per day.

Salt Lake County, Utah

The Salt Lake County Jail is a two-level urban facility with an average daily population in 2002 of 1,941. Health services are provided by Wellcon LLC, a private contractor. There is a medical clinic, infirmary with IV therapy as needed, inpatient psychiatric ward with 18 acute beds and 45 stepdown beds, dental clinic, laboratory, and x-ray on site. Inmates requiring emergency care are transported to a local hospital.

The Salt Lake County Jail is accredited by NCCHC and was National Commission Healthcare Facility of the Year in 2001. Total health costs in 2002 were $7,279,173 with unspecified staffing costs. There are 66 FTE's - 50 of which are nursing staff and 3.5 FTE's are MD staff from the community. This provides a ratio of staff to inmate of 1:29. Cost per patient per day for medical expense in 2002 was $10.28.[3]

The Salt Lake facility spends $1,145,041 (16%) out of their total budget for mental health costs.

Pharmaceutical costs in 2002 totaled $706,892, or $1.00 a day per inmate. This number is low as they contract out their pharmaceuticals with Diamond Pharmacy Services and do not pay for pharmacy staff.

Inmates are billed a $10.00 co-pay for medical physician visits. This generated $38,157 in 2002.

Dental care costs were $46,050 or around seven cents per day per inmate.

Salt Lake County Jail has had an electronic medical records system (EMR) for the past two years that very effectively and efficiently manages their medical records data and provides billing functions. Imrac is the company that produces the Emerald software used at the jail. It has enabled the program to keep staff to a minimum while providing excellent documentation of health care services to inmates.

Hampden County, Massachusetts

The Hampden County Correctional Center (HCCC) is an urban facility built in 1992 and based in Ludlow, Massachusetts. It has an average daily population of 1,767. Health services are provided by the Massachusetts Public Health Association and contracted providers in the community. The model for health care was developed in response to the then Sheriff's charge to develop a community-based system of health care.[4]

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[3] The Salt Lake County Jail was later required to close its infirmary and cut positions due to budget cuts. Current operations may be different than those described here.

[4] Curran, K. (editor). A Public Health Manual for Correctional Health Care. October 2002.

The program was awarded the *Innovations in American Government Award* in 2000 from the Ford Foundation. In 1998 the HCCC was awarded Healthcare Facility of the Year by the NCCHC. The jail has been accredited by the NCCHC for several years.

As reported in *A Public Health Manual for Correctional Health Care*, "the following five elements form the basis for all services and programs in the Health Services Department at HCCC:

- Early assessment and detection
- Prompt and effective treatment at a community standard of care
- Comprehensive health education
- Prevention measures
- Continuity of care in the community upon release."[5]

Total health costs in 2002 were $5,581,222 with health staffing at $4,742,523. FTE's were requested but never received so staffing ratios are unavailable. Cost per patient per day for medical expense was $8.65 which was the lowest surveyed. The difference is even greater if costs are adjusted for differences in the consumer price index between the Boston area and the Seattle area. With costs adjusted for differences in the CPI, HCCC costs per patient per day were $8.33 in King County dollars in 2002.

Pharmaceutical expenses ran $1,136,863 with an on-site pharmacy for a cost per inmate per day of $1.76 ($1.69 with CPI adjustment).

Inmates are not charged for medical care and therefore there is no need for billing. This is in accordance with the NCCHC position on charging inmates for medical costs. Inmates are assigned a community-based team that is in their zip code of residence. Inmates are seen in the jail and on release in the community by the same team of providers.

The facility has been developing an EMR and is currently in the implementation process. When I spoke with Dr. Conklin the Medical Director, he was looking forward to using the system and felt it would meet their needs.

Dr. Conklin was also very supportive of the Public Health Model and felt that all or part of the model could be used to decrease costs by contracting with non-profit providers in the community and to increase the health care provided to inmates.

A Public Health Manual for Correctional Health Care, notes that "Key elements for successful implementation of the model include.

- Support of the model from high-level correctional administrators, including a dedication to improving inmate and community health;
- Commitment to collaborate openly with state agencies and local non-profit providers;
- Willingness to substantially change the existing correctional health care system and culture;

[5] Ibid.

- Commitment to aggressively seek new sources of funding and support to implement and sustain the model."

The same document identifies the benefits of adopting a public model of correctional health care to include:

- Improved inmate and community health
- Improved public safety
- Improved correctional staff safety
- Improved use of the health care system
- Cost savings for communities
- High quality health care at a cost no greater than the national average. [6]

Cost Comparison

Data from the previous discussion is assembled in the following table to show how each facility compares to the others. Dollar amounts have been adjusted to the 2002 cost of living index in the Seattle area.

Comparative Health Care Costs – 2002
Adjusted to King County Cost of Living

	King County Washington	Multnomah County Oregon	Salt Lake County Utah	Hampden County Mass
Average Daily Population	2,648	1,690	1,941	1,767
Total Health Care	$15,956,965[7]	$12,661,395	$7,460,463	$5,376,719
Health Staffing	$10,555,279	$ 9,097,426	NA	$4,391,862
Pharmacy Staff	$395,637	$272,774	NA - Contract	$176,889
Mental Health	$873,286	$1,068,907	$1,173,559	NA
Dental	$107,088	$209,993	$47,197	NA
Total Staffing Expense	$11,115,136	$10,649,042	NA	$4,568,751
Staff to Inmate Ratio	1:18	1:16	1:29	NA
FTE's	148	106	66	NA
Cost per Inmate per day	$16.51	$20.53	$10.53	$8.34
Drug Expense	$777,723	$910,591	$724,497	$918,318

[6] Ibid.
[7] Excludes two months of PES and CPD staff that joined JHS in November 2002.

Total Pharmacy Expense	$1,173,360	$ 1,183,365	$724,497	$1,095,207
Pharmacy Expense per Inmate per day	$1.21	$1.92	$1.02	$1.70
Charge for Sick Call	$5.00	$10.30	$10.25	No charge
Income Generated from Inmates	$4,700	$156,462	$39,107	None
NCCHC Accreditation	Yes	Yes	Yes	Yes
Health Model	Modified Public Health	Public Health	Privatized	Public Health

Adjusting for changes in the consumer price index between 2002 and the first half of 2003 resulted in a King County cost per inmate per day of $23.17, the highest per capita cost observed.

Lessons from Benchmark Sites

Partly through the OMP process, but largely through the work of JHS and confirmed by Dr. Todd Wilcox and previous consultants, a number of important issues have been raised that affect the efficiency and effectiveness of operations by Jail Health Services. A summary of major issues identified by JHS and others and listed in Dr. Wilcox's report is included at end of this report. Alternative approaches to most of these issues can be found in the practices of the benchmark sites. The following paragraphs summarize some of the lessons from these other programs that may have applicability in King County.

Multnomah County

Booking and triage staff should have confidential and secure space to provide this service. When the TB skin test is placed at booking it provides an efficient method of intake screening by RN staff as well as driving timely follow up to read the test and perform the health assessment. This helps to assure that health concerns are identified and appropriately triaged (medical, dental and psychiatric). (Applicable to issues 13, 14, 24 in summary of Dr. Wilcox's report at end of this chapter.)

The model of psychiatric care provided at Inverness should be studied for possible adaptation at KCCF - with special attention to the characteristics of those housed in the special needs unit. Mentally ill and developmentally delayed inmates admitted to correctional facilities are often preyed upon in general population. The consistent structure of the psychiatric unit and the support from known and trusted medical and corrections staff provide a therapeutic environment for their care and management. It is conceivable that the use of multiple psychotropic medications could be managed more effectively and even possibly reduced for some individuals in such an environment. (Applicable to issues 6, 16 in summary of Dr. Wilcox's report at end of this chapter.)

Transports to hospitals in King County averaged 12 per day which is costly in terms of corrections staff time and poses potential security risks. In contrast, if Multnomah County had as many inmates as King County, its hospital transport rate would translate into less than five transports per day. While hospital care at Harborview is "free" to the jail, it is not free to the

taxpayer. Inmates should be managed on-site whenever possible. Providers need to be trained and should be expected to perform all routine clinical procedures. It may be cost-effective to have inmates needing dialysis receive this service on site. Consider the purchase of a laboratory tester for Treponin to evaluate chest pain. The use of this relatively inexpensive equipment and a 12-lead EKG will determine if the inmate is having a myocardial infarction. Its use can save unnecessary transports. (Applicable to issues 5, 11, 12, 15 in summary of Dr. Wilcox's report at end of this chapter.)

Salt Lake County

An EMR system is necessary to provide medical records and data management for jail systems as large as DAJD. Medical records are necessary for communication purposes within the facility, between facilities, and as a legal reference. It has been well established that an EMR offers efficient storage, rapid access, and the best legal documentation. (Charts cannot be altered without red flags. The date and time of all entries are automatically recorded.) Billing functions are needed to maximize cost recovery. An integrated system drastically reduces staff time for data sharing and retrieval. An EMR system should conceivably reduce clerical and medical records staff and make nursing staff more efficient as chart retrieval and documentation times are cut. The EMR also facilitates data management; assists with chronic care data and discharge planning; and keeps studies, peer review, and continuous quality improvement (CQI) on track. (Applicable to issues 1, 14, 16, 28 in summary of Dr. Wilcox's report at end of this chapter.)

Consider outsourcing all or part of the pharmaceutical program. Salt Lake County uses Diamond Pharmacy Services which keeps their costs at $1.00 per inmate per day. DAJD spent $395,637 for pharmacy staff in 2002. The cost of medications was $777,723. A strict formulary updated annually with strict prescription protocols with provider training is quite effective in keeping pharmaceutical costs as low as possible. IF DAJD used prescriptive practices similar to Salt Lake, this could save nearly $203,000 annually in pharmaceutical costs. (Applicable to issues 1, 15, 29 in summary of Dr. Wilcox's report at end of this chapter.) JHS's plan to reduce the number of pharmacists from three to two will reduce costs associated with their pharmaceutical program.

Alternative staffing plans should be addressed. In 2002 DAJD had a staffing ratio of 1:18. In 2003 it was 1:13. Salt Lake County maintains an exemplary program with a staffing ratio of 1:29. This is a significant difference and can be partially explained by the presence of an EMR. As there is a national nursing shortage it behooves administration to closely evaluate the lowest level of staffing that achieves the highest level of function.

If DAJD were to function with a 1:29 staffing ratio there would be 91.3 FTE's. In 2002 there were 148 FTE's for a cost of $11,115,136. This is equal to $75,102 per FTE. If JHS operated with the same staffing ratio as Salt Lake costs would have been $4,280,814 less in 2002. With 171 FTE's in 2003 the savings would be even greater. NCCHC does not set staffing levels and stipulates only that the job be done well and within standard. This is obviously happening quite efficiently in Salt Lake County. (Applicable to issues 1, 2, 3, 4, 5, 6, 9, 12, 13, 15, 28 in summary of Dr. Wilcox's report at end of this chapter.)

Prior to March 2002, the law barred agencies and institutions from contracting for services traditionally performed by civil service employees. While changes in state law will soon make contracting out legal, privatizing all or parts of the healthcare enterprise in King County is an

unlikely proposition. Nonetheless, if privatization were possible, private contracting can often provide services or products for a significantly reduced cost. Even limited use of private resources could be useful. For example, the development and review of policies and procedures could be contracted out and it would have a finite cost and a predictable outcome. Assigning the same task to one or more employees would take them away from daily tasks and have a less predictable outcome. (Applicable to issues 3, 4, 15, 20, 21, 22, 28, 30 in summary of Dr. Wilcox's report at end of this chapter.)

Hampden County

Consider investigating the Public Health Model to increase the community involvement in the jail health program. Involving local providers by contract as members of the health care team can provide peer support as well as excellent care for the client. It should also be a cost savings. Increasing community resources can only be a benefit to the inmate and community. (Applicable to issues 3, 4, 17, 28 in summary of Dr. Wilcox's report at end of this chapter.)

Other Issues

In reviewing the data from the three facilities chosen for benchmarking, it was obvious that all facilities that have attained NCCHC accreditation possess merit and provide adequate health care for the incarcerated individual. Documenting the care becomes much better with an EMR system and provides a level of legal protection.

Telemedicine was not a tool that any of the jails used. As KCCF is in such close proximity to Harborview, it would not seem to be much monetary benefit. The most effective use of telemedicine is to keep transports for specialty care down. The majority of specialty visits historically is for orthopedic consults in the jail population. Contracting with a local orthopedist or resident from the University of Washington's Medical School to come in for scheduled clinics seems to make better use of resources.

Much staff training in a large system such as DAJD is better accomplished electronically. It is costly to have meetings which take the providers away from the clients. Providing modular classes on disks with post tests to document the learning process has worked well for other corrections systems.

Statistics and report management would be best accomplished with the implementation of an EMR. This is an item already in JHS budget request for 2004.

Summary of Major Issues Identified by Dr. Wilcox in June 2003

1. Medical records need major revision and an electronic medical record (EMR) is strongly advised with the addition of a medical records manager (RHIT).
2. Nurse staffing needs evaluation and several key positions such as CQI coordinator and an Infectious Disease Specialist need to be filled.
3. Union contracts need to be reconfigured.
4. Nurse staffing and PES staffing needs reconfiguration.
5. Training programs for health services staff are needed.
6. PES staffing and function need evaluation. Resources should be allocated according to acuity and there should be utilization review of the mental health inpatient unit with strict guidelines followed for admission and discharge.
7. Inpatient infirmary resources should be allocated according to acuity and there should be utilization review of the inpatient population with strict guidelines followed for admission and discharge to include medical isolation.
8. Restraint and seclusion of inmates needs evaluation with policy and procedure revision.
9. Medication administration needs evaluation and staff need consistent training.
10. Withdrawal management needs evaluation and development of treatment plans and protocols.
11. Laboratory services require investment of funds in equipment.
12. Inmate health management needs review and updating of protocols and staff training.
13. Intake screening would be best performed by RN staff,
14. Implement a TB program to meet CDC guidelines.
15. Continue to review and update policy and procedures and provide staff training.
16. Implement a discharge program for inmates to provide continuity of care.
17. Assure inmate access to care.
18. Implement a suicide screening and management program.
19. Provide OSHA protection for inmate workers.
20. Contract out Employee Health services.
21. Contract out inmate haircuts.
22. Contract out biomedical engineering services on all medical devices that has patient contact.
23. Purchase adequate AED's.
24. Dental services need review and definitive guidelines for treatment. Train staff to triage dental.
25. Increase radiology to meet facility needs.
26. Reconfigure physical plant.
27. Substance abuse program to be evaluated and other options reviewed.
28. Physician staffing to be evaluated for on-site clinics and peer review.
29. Modify pharmacy practices.
30. Consider privatizing all or parts of the healthcare enterprise.

APPENDIX D
WASP Guidelines for Local Correctional Facilities

WASPC GUIDELINES FOR LOCAL CORRECTIONAL FACILITIES

Each local correctional facility shall:

1. Provide staff to perform all audio and visual functions involving security, control, custody and supervision of all confined detainees and prisoners, with personal inspection at least once each hour. Such supervision may include the use of electronic surveillance equipment.
2. Have a written policy covering:
   a. Legal confinement authority.
   b. Admissions.
   c. Telephone calls.
   d. Admission and release medical procedures.
   e. Medication and prescriptions.
   f. Personal property accountability.
   g. Vermin and communicable disease control.
   h. Releases.
   i. Inmate correspondence and visitations.
3. Develop and maintain emergency plans.
4. Not administer any physical punishment to any prisoner at any time.
5. Provide for emergency and non-emergency health care.
6. Prohibit unauthorized weapons from the security area of the facility except in times of emergency as determined by the sheriff, jail director or designee.
7. Ensure that confined detainees and prisoners:
   a. Will be fed daily at least three meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other such purposes.
   b. Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered dietician or the Health Division.
   c. Be provided special diets as deemed necessary.
   d. Shall have food procured, stored, prepared, distributed and served under sanitary conditions.
8. Ensure that the facility be clean, and provide each confined detainee or prisoner:
   a. Materials to maintain personal hygiene.
   b. Clean clothing weekly.
   c. Fire-retardant mattresses and clean bedding.
9. Allow each prisoner to shower at least twice weekly.
10. Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections, or the attorney of the prisoner.
11. Keep the facility safe and secure in accordance with the applicable Fire and Safety Code.
12. Have and provide each prisoner with written rules for inmate conduct and disciplinary procedures. If a prisoner cannot read, or is unable to understand the written rules, the information should be conveyed to the prisoner orally.
13. Allow the free exercise of religion except where such exercise will cause a threat to facility order.
14. Allow the prisoner's access to the courts.

APPENDIX E
Inmate Supervision Requirements by Custody Level

INMATE SUPERVISION REQUIREMENTS BY CUSTODY LEVEL

Adapted from *Idaho Department of Corrections, Correctional Staffing Model*, Christopher Murray & Associates, 1999

JOB FUNCTION: **SEARCHES**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
CONDUCT PAT SEARCHES	Search upon suspicion. Routine search upon return from out-of-housing unit activities.	Search upon suspicion. Routine search upon return to housing unit or exiting out-of-cell/room activity or work location.	Search upon suspicion. Search after each out-of-cell movement or activity.	Same as Close/Max
CONDUCT STRIP SEARCHES	Search upon reasonable cause. Search upon each contact with the public.	Same as Minimum	Same as Medium.	Search upon suspicion. Search upon each exit from cell and return from indirect supervised activities.
CONDUCT CELL/ROOM SEARCHES	Search each 60-day period to include assigned living area, personal property, fixtures, furnishings and hardware.	Search each 30-day period to include assigned room/cell, personal property, fixtures, furnishings and hardware.	Same as Medium	Search each 7-day period.
SEARCH COMMON AREAS AND BUILDINGS	As required or as scheduled to include contraband search in all inmate occupied areas plus visual inspections of all security and safety systems	Same as Minimum	Same as Medium	Same as Close/Max except search to be conducted at least once every 30 days
SEARCH VISITORS ENTERING SECURITY PERIMETER	Visual Scan and random search of items carried into the facility	Visual Scan, search of items carried into facility, random electronic scan and/or pat search.	Visual and electronic scan, search of items carried into the facility, and/or pat search.	Same as Close/Max

JOB FUNCTION: **INSPECTIONS**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
CONDUCT VISUAL CELL-FRONT CHECKS	Hourly living area walk-through and visual observation of condition and activity of occupants.	Hourly visual scans to check on condition and activity of cell/room occupants.	Same as Medium	Each 30 minute period to include visual observation of condition and activity of cell occupants
CONDUCT CELL SAFETY, SANITATION INSPECTIONS	Daily general observation of living unit areas to verify cleanliness, check for safety and fire hazards and overall condition.	Daily general observation of room/cell to ensure for cleanliness, check for safety and fire hazards and overall condition.	Same as Medium	Same as Close/Max
CONDUCT CELL/UNIT PHYSICAL SECURITY INSPECTIONS	Every 30 days, intense inspection of security hardware to include doors, walls, floors, locks, fixtures and ceilings.	Same as Minimum	Same as Medium except conducted each 14 day period	Same as Close/Max except conducted each 7 day period
INSPECT COMMON AREAS	Daily to include visual inspections of security systems, potential fire and safety hazards.	Daily to include visual inspections of security systems, possible security breaches, potential fire and safety hazards.	Same as Medium except conducted during each shift	Same as Close/Max
INSPECT FACILITY STAFF	Visual recognition. Subject to random pat search.	Visual recognition with approved identification. Visual scan of all items carried into the facility. Subject to random pat search and/or electronic scan.	Same as Medium	Same as Close/Max

JOB FUNCTION: **MOVEMENT CONTROL**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
SUPERVISE IN UNIT, OUT-OF-CELL ACTIVITIES	Limited movement restrictions within unit, intermittent visual supervision by Custody staff.	Movement outside of cell/room limited with frequent staff supervision required. Staff supervision may be substituted with video monitoring.	Direct visual observation by staff required during all movement outside of cell. Direct observation may be substituted on a limited and discretionary basis by video monitoring.	Direct visual observation by staff required during all movement outside of cell.
MONITOR MOVEMENT INSIDE THE FACILITY	Limited restrictions. Special or emergency moves may require staff escort.	Frequent observation of all movement with movement authorization required. Staff observation can be substituted where appropriate with video monitoring. Special or emergency moves require minimum of one custody staff escort. Designated locations such as an activity observation post may be used during conduct of activities only.	Direct visual observation of all routine group and individual movement. Group movement requires escort or designated visual supervision. Individual movement requires authorization. Special or Emergency moves require two Custody staff on one inmate. Activity observation post may be used during conduct of activity.	All movement out of cell requires one on one staff escort. Special or emergency moves require two Custody staff on one inmate.
CONDUCT OFF-GROUNDS ESCORT	One staff escort per 10 inmates during routine transports. Emergency transports may require at least one staff per inmate.	Two Custody staff escorts, one who is armed. Restraints required. Two inmate maximum per escort.	Same as Medium	Same as Close/Max. Special /Emergency moves may require second vehicle with armed officer(s)
CONTROL AND OPERATE SECURITY DOORS	Staff requirement limited to designated security doors and designed limited access areas.	Staff required to operate all security doors, cell/room doors and designated limited access areas.	Required operation by staff from secure control room location for designated buildings, exits and entries, cell doors. Limited access doors to be controlled by designated staff in proximity.	All entrance, exit and cell doors operated by Custody staff from a secure location.

JOB FUNCTION: **INMATE MANAGEMENT**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
SUPERVISION OF INMATE WORKERS	Frequent staff supervision and presence.	Frequent supervision by assigned work supervisor with intermittent supervision and presence by Custody staff.	Direct supervision by assigned work supervisor with frequent supervision and presence by Custody staff.	Not normally assigned to work details, if assigned then direct Custody staff supervision is required w/visual observation of activity from a secure location.
SUPERVISION DURING RECREATIONAL ACTIVITIES	Frequent staff supervision and presence or intermittent supervision by Custody staff.	Frequent visual supervision by Custody staff with emergency response capability.	Direct and constant Custody supervision from both vicinity and secure location with emergency response capability.	Direct visual Custody supervision from secure area with emergency response capability.
SUPERVISION AT MEALS	Staff presence	Custody staff supervision and presence with emergency response capability	Visual Custody staff supervision from both vicinity and secure location with emergency response capability.	Deliveries by Custody staff to cell front under direct supervision from a secure area.
SUPERVISE NON-CONTACT VISITING	Intermittent visual monitoring by Custody staff or by electronic means.	Frequent visual monitoring by Custody staff or by electronic means.	Same as Medium	Same as Close/Max
SUPERVISE ON-SITE MEDICAL, INFIRMARY ACTIVITIES	Staff observation as required or directed by medical staff	Frequent visual supervision by assigned staff with emergency response capability.	Constant supervision by assigned staff visually or by video when outside of secure cell/room with emergency response capability.	Direct visual supervision from a secure location with emergency response capability.
CONDUCT OFF-GROUNDS HOSPITAL WATCH	Staff supervision and presence.	Staff supervision and presence. Normally one Custody staff utilizing restraints as indicated.	Same as Medium	Staff supervision and presence. Restraints in all cases. Up to two Custody staff as indicated.

JOB FUNCTION: **CONDUCT OF COUNTS**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
CONDUCT FORMAL COUNT	At least once each shift	Same as Minimum	Same as Medium	Same as Close/Max
CONDUCT INFORMAL COUNT	At least once per shift, if off grounds then continuous but not less than once per two hour period.	Upon each cell or room-front check or inspection or if in work areas continuous but not less than once per hour.	Same as Medium	Continuous at each cell front check and/or inspection.
CONDUCT I.D. COUNT	As required due to miscounts or need to positively identify inmates not accounted for during formal or informal count.	Same as Minimum	Same as Medium.	Same as Close/Max

JOB FUNCTION: **PROPERTY CONTROL**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
ISSUE SUPPLIES, MAIL & PERSONAL ITEMS	Issued by staff from designated locations in the facility.	Same as Minimum	Same as Medium	Issued by Custody staff at the cell-front or shower stall.
ISSUE OF LAUNDRY	Issued by staff or made available to inmates from area which represents the least staff intensive requirements.	Issued by staff from designated or centralized location in facility or unit.	Same as Medium	Issued by Custody staff at the cell-front or shower stall.

JOB FUNCTION: **INCIDENT RESPONSE**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
RESPOND TO FIGHTS	Required of all staff. Notification to other staff, presence, immediate verbal intervention and implementation of intervention and use of force continuum as indicated.	Same as Minimum	Same as Medium although the frequency and intensity of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
RESPOND TO FIRES	Required of all staff. Detect & report. Assess & respond as indicated. Evacuate & control movement as necessary.	Same as Minimum	Same as Medium	Same as Close/Max
RESPOND TO MEDICAL EMERGENCIES	Required of all staff. Detect and report. Secure area for safety and security, render first aid and assist medical personnel as necessary.	Same as Minimum	Same as Medium although the frequency and intensity of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
HANDLE INFECTIOUS WASTE	Required of all Custody staff. Handles, processes and disposes of items contaminated by blood and body fluid spills such as clothing, personal items and cleaning materials. Uses protective gear and documents any exposure.	Same as Minimum	Same as Medium although the frequency and intensity of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
RESPONDS TO DRILLS, DISTURBANCES AND OTHER EMERGENCIES	Required of all staff. Assess emergent situation, notify other staff, contains the incident and assists other staff in resolution and documents events.	Same as Minimum	Same as Medium although the frequency and intensity of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
CRIME SCENE PRESERVATION & EVIDENCE HANDLING	Required of all Custody and designated staff. Secure the scene and report. Assists responding or investigating staff as necessary and documents events.	Same as Minimum	Same as Medium although the frequency of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max

JOB FUNCTION: **USE OF EQUIPMENT**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
USE OF RADIOS	Receives and transmits communications for routine and emergency purposes by use of portable or fixed two-way radio. Conducts routine maintenance.	Same as Minimum, facility requires secure base station location and operation.	Same as Medium	Same as Close/Max
USE OF TELEPHONE	Required to communicate effectively by use of telephone during conduct of routine and emergency related post duties.	Same as Minimum	Same as Medium	Same as Close/Max
USE OF VIDEO CAMERAS AND MONITORS	Required to operate video equipment as part of designated, routine, or emergency related post duties.	Same as Minimum	Same as Medium	Same as Close/Max

JOB FUNCTION: **USE OF RESTRAINTS**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
APPLY WRIST RESTRAINTS	All Custody staff are required to apply wrist restraints when necessary during routine/emergency post assignments.	Same as Minimum	Same as Medium although the frequency of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
APPLY ANKLE RESTRAINTS	All Custody staff are required to apply ankle restraints when necessary during routine or emergency post assignments.	Same as Minimum	Same as Medium although the frequency of the requirement may be greater due to type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max

JOB FUNCTION: **ADMINISTRATION**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
CONDUCT SHIFT CHANGE BRIEFINGS	All shift staff are required to check in with the Shift Management staff prior to assuming post, review current activities with the off-going officer, perform operational checks and assume operation of the post.	Same as Minimum	Same as Medium	Same as Close/Max
READ POST ORDERS	All staff assigned to a post or position are required to read their post orders monthly or as changed and discuss any questions or need for clarification with the supervisor.	Same as Minimum	Same as Medium	Same as Close/Max
CONDUCT EQUIPMENT INVENTORY	All staff assigned equipment as part of their post responsibilities are required to conduct a routine equipment inventory at the beginning of each shift and randomly during the shift to verify location and condition.	Same as Minimum with the exception that there may be greater quantities of equipment due to the custody level of the inmates supervised.	Same as Medium	Same as Close/Max
MAINTAIN KEY CONTROL	All staff must account for and control all keys assigned to them or their post. This accounting may include documentation and issuance or receipt and management of key chits or receipts.	Same as Minimum with the exception that there may be additional numbers of keys to manage due to the custody level of the inmates supervised	Same as Medium	Same as Close/Max
MAINTAIN TOOL CONTROL	All staff who are assigned tools as a part of their regular post duties, or who are responsible for a work area where hazardous tools or tools of security concern are used, must account for them at all times. This accounting may require routine inventories, direct supervision and documentation of issue and use.	Same as Minimum with the exception that greater quantities and variety of tools will require control or supervision due to the type, behavior and custody classification of the inmates supervised.	Same as Medium	Same as Close/Max with the exception that fewer if any tools will be made available due to the behavior and security risks associated with inmates housed in these areas.

JOB FUNCTION: **REPORTS & DOCUMENTATION**

JOB TASK	MINIMUM	MEDIUM	CLOSE/MAX	RESTRICTED HOUSING
WRITE REPORTS AND MEMOS	All staff are required to document activities, inmate behavior and other incidents that occur during their shift. All reports are required to be accurate, complete, legible, grammatical, and clearly written.	Same as Minimum although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Medium although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max
MAINTAIN LOG BOOKS	All staff are required to maintain a record of activities of their assigned area, unit or post.	Same as Minimum although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Medium although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max except these housing areas require comprehensive documentation of all activities of both staff and inmates.
WRITE INFRACTION REPORTS	All staff are required to manage inmate behavior problems and prevent and/or report violations of rule.	Same as Minimum although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Medium although the frequency of the requirement may be greater due to the type of inmates supervised and the number of behavioral problems and other incidents likely to occur.	Same as Close/Max

APPENDIX F
Jail Design and Operation and the Constitution

[Excepts from]

JAIL DESIGN AND OPERATION

and

THE CONSTITUTION

An Overview

William C. Collins

Attorney at Law

[The document from which this material is extracted was prepared under Technical Assistance event # 96-J1052 from the National Institute of Corrections, U.S. Department of Justice. Contact the National Institute of Corrections to obtain the complete report.]

Chapter II. History of Court Involvement

[Chapter I and material related to court involvement prior to 1980 is omitted here. For complete text consult the source document, *Jail Design and Operation and the Constitution, An Overview.* This document may be obtained through the National Institute of Corrections.]

One Hand On, One Hand Off -1980 to Date

The Supreme Court stemmed the tide of court involvement and judicial activism in 1979, with its first double-bunking decision, *Bell v. Wolfish, 441 U.S. 520 (1979).* In that decision, the Court strongly indicated that it felt lower courts had often gone too far in the name of inmate rights. Since that time, court involvement with correctional issues has retreated somewhat. This is due to several factors.

- Improved jail and prison operations.
- A conservative Supreme Court, which sent the clear message in several decisions that lower courts were going too far in defining and enforcing inmate rights.
- Increased professionalism among persons working in corrections.
- More staff, with better pay and more training.
- Better facilities.
- Development and general acceptance of professional standards from groups such as the American Correctional Association and state agencies. Enforcement of state standards, where done, is also important.
- Improved funding, without which most of the above improvements could not have occurred. But the ultimate motivator for the improvements, more than any other factor, was litigation or the threat of litigation: "If we don't (improve in some way), we'll get sued." The history of corrections in the last third of the 20th Century is, more than any other single thing, the history of court involvement.

Inmate Rights: What Are The Issues?

Major areas of constitutional rights for inmates come from four constitutional amendments.

First Amendment To what extent may authorities restrict inmates' rights of religion, speech, press, and in general, the right to communicate with persons outside the jail?

Fourth Amendment What types of searches are reasonable or unreasonable for inmates, visitors, and staff? What privacy protections do persons retain when entering the jail?

Eighth Amendment What conduct, such as the use of force and conditions of confinement, amount to cruel and unusual punishment?

Fourteenth Amendment (due process and equal protection)

- What types of procedural steps (notice, hearing, etc.) must accompany the decision to discipline an inmate to better assure the decision is made fairly?

- What other types of decisions require some form of due process, and what form must that process take?

- Due process also protects/regulates conditions of confinement for pretrial detainees, who are not protected by the cruel and unusual punishment clause of the Eighth Amendment. The requirements of the Eighth and Fourteenth Amendments in this context are essentially the same. • What are the institution's *affirmative* obligations to assure inmates' access to the courts and assist them in preparing legal papers? This is a resource and physical plant issue, which is often overlooked at the jail level.

- Regarding equal protections: are there legitimate reasons for treating different groups of inmates differently? What justifies providing programs and facilities for female inmates that are typically of lesser quality and quantity than programs and facilities provided for men ("parity")? Some courts that have examined this question have found no adequate justification for such differences McCoy *v. Nevada Department of Prisons, 776* F. Supp. 521 (D. Nev., 1991). Others have reached the opposite conclusion, *Klinger v. Dept. of Corrections,* 31 F. 3d *727 (8th* Cir. 1994).

Scope of Court Involvement: You Name It!

It is simple to summarize the constitutional amendments that affect the operation of a jail. The specific areas of jail operation touched by one or more of those amendments are considerably more complicated. Few areas of jail operation have not been the subject of at least one (if not many) lawsuits over the years. Some of the issues that courts have addressed (with varying results) include:

- Inmate safety, classification;
- Quality of and access to medical care;
- Searches of inmates, visitors, and staff,
- Religious practices, clothing, hair and beards, wearing of medallions, attending services, access to religious literature, "what is a religion," sincerity of beliefs;
- Cross-gender staffing, observation and searches of one sex by the other;
- Diets, both medical and religious;
- Access to reading materials or limitations on what inmates can read;
- Access to the courts and legal materials;
- Basic facility sanitation;
- Personal hygiene, e.g., toilet paper, toothbrushes, hot water;
- Out-of-cell time and exercise;
- Disciplinary sanctions and due process;
- Administrative segregation procedures for entry and conditions in segregation units;
- Censorship of incoming and outgoing mail, handling of legal mail;
- Diet and nutrition;
- Clothing;
- Overall physical environment, including such things as lighting, heating, cooling, ventilation, noise levels;
- Protection against suicide;
- Use of force, when, how much;

- Smoking and smoke-free jails;
- Abortions;
- HIV, disclosure, treatment, segregation;
- Employee training and qualifications.

Chapter III. Corrections and the Constitution as the Century Ends

Certain principles must be recognized about jails, the courts, and the Constitution. The Constitution protects inmates, and courts will hold jail administrators, county commissioners or supervisors, and even counties accountable for violation of inmates' rights. While these principles may stir heated argument among government officials as they are applied in particular ways, the reality of the principles is no longer a subject for debate.

The Constitution protects inmates. "Prison walls do not form a barrier separating prison (or jail) inmates from the protections of the Constitution" *Turner v. Safley, 107* S.Ct. *2254, 2259 (1987).* "There is no iron curtain drawn between the Constitution and the prisons of this country" *Wolff v. McDonnell, 418 U.S. 539 (1974).* Though specific interpretations of the Constitution have ebbed and flowed over the last *25* years, the principle that the *Constitution protects inmates* has not changed.

Officials are accountable. Federal courts will hold government officials and agencies accountable for knowing and meeting the obligations the Constitution imposes. Neither ignorance of the law nor lack of funds is going to be an acceptable excuse for violating the rights of someone in jail.

Government officials may balk when faced with a court order. An elected or appointed official who tells the federal court to "go to hell" and ignores the court's order may provoke great media coverage and short-term voter approval, but in the end the will of the court will prevail. Resistance to the order will simply add to the taxpayer's bill and, if anything, increase the level of court intervention.

Believing that "the federal judge has no business telling us how to run our jail and spend our money" may translate to "by fighting a lost cause, the size of the fee the county will have to pay to the inmates' lawyers will dramatically increase and the county will get nothing in return."

Correctional law then is a fact of life for governments operating jails and the people who run those jails. Remember the admonition from one of the earliest inmate rights cases: If the government is going to run a jail, "it is going to have to be a system that is countenanced by the Constitution of the United States."

The Future of Corrections and the Courts

For the last several years, court intervention in corrections has been shrinking. It appears this trend will continue. The conservative Supreme Court, which has been checking the growth of inmate rights and in some cases reducing those rights for the better part of *20* years, re emphasized that courts should take a limited role in corrections cases in a *1996* decision, *Lewis v. Casey, 116* S.Ct. *(1996).* In *1996* Congress passed the Prison Litigation Reform Act (discussed below), which is also intended to limit the power of the federal court in corrections cases.

If the threat of court intervention continues to diminish, funding sources may feel more comfortable in reducing correctional budgets. Where funding is decreased, the trend of growing professionalism in corrections may be set back. Lack of funds may lead to more crowded jails,

fewer staff, less training, decreased emphasis on self-evaluation and improvement, and the abandonment of state standards and their enforcement. The public's get tough on inmates attitude, reflected in such things as the movement to take away television, weights, and other things perceived as "perks," may contribute to a harsher attitude toward inmates from staff. If these things occur, serious problems in the operation of jails and prisons will inevitably reappear. These in turn may lead to a re-emergence of a hands-on era of increased court intervention.

Congress Becomes Involved in Inmate Rights

Since its beginning, the inmate rights movement has almost entirely been the result of courts interpreting and applying several amendments to the U.S. Constitution to the operation of jails and prisons. Legislative activity has played a very minor role. In the second half of the 1990s, this is changing as Congress has passed laws that directly affect inmates and their rights.

Prison Litigation Reform Act seeks to limit powers of courts. In the Spring of 1996, Congress acted in dramatic fashion to restrict the power of the federal courts over state and local corrections agencies in major conditions cases and to make it more difficult for inmates to file suits under section 1983. Highlights of the Prison Litigation Reform Act (PLRA) follow.

- Court injunctions in virtually all types of "inmate rights" cases, and certainly in large conditions of confinement cases, will presumptively end after two years upon request of the defendants unless it can be shown constitutional violations continue. This provision includes consent decrees. This is intended to end court orders that seem to run forever and where haggling between the parties and the court continues over relatively minor items that may not, in and of themselves, be of constitutional importance.

- Sharp limitations are placed on the powers of Special Masters and on the fees they can be paid. PLRA also requires that a Master's fees be paid by the court appointing the Master, not by the defendants as has been the custom.

- Limitations are placed on circumstances under which inmates' lawyers may be paid attorneys fees and on the amount of fees that can be paid. Fee awards based on hourly rates of $250 to $300 per hour or more should become a thing of the past.

- The practice of completely waiving court filing fees for indigent inmates has been changed. While payment of fees may be postponed, inmates with almost any money on their institution books are required to pay the full amount of the fee over time and the jail is permitted to send money to the court as it may appear in the inmate's trust account. Fee waivers now, in essence, are more like loans than gifts.

- Inmates are required to exhaust any administrative remedies available to them prior to filing a section 1983 claim in federal court. Previously such a requirement could be imposed only if an institution grievance process was certified by either a jurisdiction's local federal court or by the U.S. Justice Department as meeting standards for grievance procedures set under the Civil Rights of Institutionalized Persons Act.

- Inmates who have had three previous cases dismissed as frivolous, malicious, or failing to state a claim for relief are barred from filing additional section 1983 actions unless they claim they are in imminent danger of bodily harm.

PLRA is intended to apply retroactively and may provide the basis for many jurisdictions currently operating a jail under the provisions of a consent decree to go back to court to have the decree terminated.

PRLA is a very controversial law and is certain to be attacked as being unconstitutional for various reasons. For instance, there is a very serious question whether the Separation of Powers Doctrine in the Constitution allows Congress to impose limits on the power of the court as PLRA purports to do, especially with regard to court orders in effect when the law was passed.

Much, if not most, of PLRA probably will survive constitutional attack, at least as the law applies prospectively. The law will substantially change the nature of litigation by and on behalf of inmates. Only time will determine what these changes will be and whether they are beneficial or not.

Americans with Disabilities Act protections extend to inmates. A relatively new area of legal involvement with both program and physical plant implications is the Americans with Disabilities Act (ADA) of 1990. This comprehensive and complex federal statute and accompanying regulations address government programs and services and the entire employment process and generally make it illegal to discriminate against someone on the basis of a disability, unless very good reasons exist to justify such discrimination. ADA's requirements go far beyond such things as building ramps and installing wheelchair lifts. The basic requirement of ADA is that persons with disabilities be reasonably accommodated so they can participate in employment or government services or programs.

ADA's protections extend throughout the employment process and also to participants or beneficiaries of government services and programs. Thus, for the first several years of ADA's existence, it has been generally assumed that ADA protects inmates and visitors to the jail, as well as employees and job applicants. Now at least one court has questioned this assumption *Bryant v. Madigan,* 84 F.3d 246 (7th Cir., 1996). Until this issue is resolved, jail administrators need to understand both the procedural and substantive requirements of ADA and be sensitive to inmate claims of discrimination on the basis of a disability.

Chapter IV. The Constitution and Physical Plant

Understanding and complying with constitutional requirements are of major importance in facility design. Following are some of the physical plant issues with potential constitutional significance that should be considered in either remodeling an existing facility or designing a new one.

- Crowding.
- Capacities of physical plant (HVAC, plumbing, kitchen, etc.).
- Safety -- blind spots, staff access to inmates, staffing requirements dictated by the design.
- Exercise areas.
- Medical and mental health services -- what is in the jail, what is not and how the jail will handle the increasing number of mentally disturbed inmates.
- Heating, cooling, and ventilation.
- Sanitation and hygiene toilets, showers, etc.
- Life Safety Code.
- Staff supervision of and contact with inmates. A direct-supervision jail improves contact and interaction between staff and inmates compared to earlier designs, which isolate staff from inmates.
- Privacy and cross-gender supervision.
- Library and law library.
- Access for the disabled (ADA).

Constitutional requirements are not precise and written down in one place, like the Building Code. It is very difficult to say with precision what the minimum physical plant requirements are for a jail because, when conditions of confinement are reviewed under the Constitution, the question is "what are the *effects* of the conditions on the inmates?" A specific physical plant characteristic, such as inmate exercise areas, is rarely analyzed in isolation. A court may order "outdoor exercise one hour a day, five days a week" because of a unique set of facts that does not exist in another facility. Should the second facility allow the same level of exercise? Likewise, crowding may or may not produce very serious problems, depending on a variety of other factors, such as the quality of management and number of staff. The result is no constitutionally mandated square footage requirements.

Another problem that can develop is a false sense of complacency due to a "we haven't been sued up to now, therefore we must be OK" philosophy. The risk is that the jail is not okay, but no one has filed a lawsuit. Ignoring problems and letting them get worse only invites larger lawsuits later. "Pay me now or pay me later." The potential for legal problems developing because of a "pay me now or pay me later" approach can be reduced through well- formulated programs of audits and inspections.

Prudence, if not legal mandate, says that physical plant issues that have caught the attention of courts in the past should be addressed both in prioritizing improvements for existing jails and in planning and designing new facilities.

[Chapter V, "Understanding Section 1983 Lawsuits" and Chapter VI, "How Courts Evaluate Claims - The Balancing Act," are omitted. For complete text consult the source document, *Jail Design and Operation and the Constitution, An Overview*. This document may be obtained through the National Institute of Corrections.]

Chapter VII. The First Amendment

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press ... (U.S.* Constitution, Amendment I).

Common issues under the First Amendment include religious questions and censorship or rejection of publications and correspondence (with special attention to "legal mail" from courts, lawyers, and government officials). To a lesser extent other issues around communications between inmates and free people arise, including telephone and visiting, but these have not been litigated often. Most First Amendment issues are "balancing test" questions that involve day-to-day operational issues.

Religion

Several different issues have arisen around religion.

- Restrictions on religious practices. They include such restrictions as attendance at religious services (for instance, when temporarily segregated), wearing religious clothing or medallions, ability to keep long hair or beards, access to religious reading material (for instance, when jail staff feel the material is racist or otherwise likely to create unrest in the jail), participation in special ceremonies (Ramadan, sweat lodge), and religious diets, etc. Lawsuits over religious restrictions are the most common type of First Amendment religious claim.

- Determination of what is a religion. A witchcraft sect? Satanism? Religious groups that ask one to send in $10 and receive a Doctor of Divinity degree in the return mail? Or other sects/cults that claim religious protections? This very complicated issue must be addressed at times. If a group claiming special privileges or accommodations because of religious status is not in fact a religion, the institution is under no obligation to make any accommodations.
- Sincerity of belief. If an inmate is not sincere in his/her religious beliefs, the institution has no duty to try to accommodate the inmate's special demands.

- Equality of opportunity to practice, especially for small religious groups.

- Expenditure of government funds, such as paying for chaplains.

Restrictions on religious practices are evaluated by courts under the *"Turner* test" described in the previous chapter. Examples of the sorts of restrictions which might be examined in this type of litigation include refusals to allow an inmate in segregation to attend group religious services, prohibitions on inmates wearing special religious clothing or jewelry, or refusals to provide special meals which complied with an inmate's religious dietary restrictions. From 1993 to mid-1997, such religious claims were evaluated by courts under a more rigorous legal standard, one mandated by a statute passed by Congress known as the Religious Freedom Restoration Act. However, the Supreme Court struck down this law as exceeding the constitutional powers of Congress. *City of Boerne v. Flores,* 117 S.Ct. 2157 (1997).

Other First Amendment Issues

Correspondence When may incoming or outgoing mail be read and censored, or rejected? Must postage and writing materials be provided? How rapidly must mail be delivered? What special precautions must be taken for "legal mail" from lawyers, courts, or other government officials? What due process procedures must be followed when a letter is rejected?

Publications What type of content justifies not allowing a publication into a jail? Personal taste of the jail administrator is not an acceptable reason for not allowing a publication, which can sometimes create controversy regarding sexually oriented publications. A particularly difficult issue arises regarding publications that are religious but may also be racist.

Visiting What restrictions may be placed on visiting and visitors? Are contact or conjugal visits required? The answer is "no" to both. Neither are constitutionally required, but contact visits are very common and a small but increasing number of state institutions allow conjugal visits. Courts have been slow to intervene with regard to visiting.

Chapter VIII. The Fourth Amendment

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . "* (U.S. Constitution, Amendment IV)

The Fourth Amendment protects a person's reasonable expectations of privacy by prohibiting the government from conducting "unreasonable" searches and seizures. The reasonableness of a type of search varies, depending on its intrusiveness and the government's reasons for conducting the search. Jail, by definition, reduces the "expectation of privacy" of all entering, including inmates, visitors, and staff. The question in many lawsuits is how much the expectation of privacy is lowered or, conversely, how intrusive a search may be in jail, given the government's heightened need for security.

Arrestee strip searches are a unique jail search issue. Federal appeals courts across the country have uniformly condemned the traditional practice of strip searching everyone booked into the jail, regardless of the reason for arrest or actual suspicion that the person might be carrying contraband.

In the strip search cases, the government could not show that any significant amount of contraband, undetectable in a pat search, entered the jail via persons arrested for minor offenses such as unpaid parking tickets. Without such a showing, jails could not justify the dramatic privacy intrusion that accompanies a strip search. Courts require that "reasonable suspicion" has to exist to justify strip searching an arrestee. Reasonable suspicion could be based on the reason for the arrest (drug offenses, felonies, or violent felonies), a person's current behavior, or perhaps his/her past arrest record, *Weber v. Dell, 804* F.2d *796* (2d Cir., *1986). Weber* lists many other circuit courts of appeal that have adopted a similar rule. Courts have not retreated from this rule since the *Weber* decision.

Other major search issues, past and present, include:

Cross-Gender Supervision. What privacy-related limitations exist with regard to one sex supervising, observing, or pat searching the opposite sex? This issue is unresolved. Some caselaw supports female officers pat searching male inmates and tolerates "casual, incidental" observation of male inmates showering, using the toilet, or changing clothes. Probably very few posts or tasks exist in a male facility that women could not fill. There is not corresponding caselaw regarding male officers and female inmates. A *1993* decision said men pat searching women was cruel and unusual punishment, a violation of the Eighth Amendment, Jordan v. *Gardner, 986* F.2d 1521 (9th Cir., *1993).* Judicial uncertainty about this issue reflects society's difficulties in reaching a consensus on the relations between the sexes in the workplace and society at large.

Cross-gender supervision and inmate privacy issues have obvious implications for facility design. By putting up various types of privacy screens around showers and toilets, the jail can eliminate many of the "invasion of privacy" complaints inmates may have.

Activities such as strip searches, which require close examination of inmates in states of undress, should only be done by staff members of the same sex, except in emergency situations. Cross-gender supervision presents a three-sided conflict, instead of the typical two-sided dispute between the interests of the inmate and of the institution. Now inmate privacy and institutional security needs must be weighed with the equal opportunity rights of employees.

Some cross-gender search cases have raised claims under the First Amendment, with the inmate asserting that his or her religious beliefs prohibit being touched in relatively intimate ways by persons of the opposite sex (such as in a thorough pat search) or seen in states of undress by persons of the opposite sex.

Many jail administrators speak very highly about female correctional officers and use them virtually everywhere, for nearly every task, with few reservations. Except for tasks involving relatively direct observation of male inmates in the nude, it is doubtful a jail post today could be justified as "male only." It is not clear that the same could be said for male officers supervising female inmates because of a lack of court decisions addressing the issue of female inmates' privacy interests in terms being seen in states of undress by male *officers.*

Urine Testing. May inmates or staff be subjected to random urine tests? "Yes" for inmates, and "probably yes" for staff, at least when they work in direct contact with inmates. This issue was litigated many times when urine testing first became common.

Cell Searches. Must the jail have specific justifications for conducting cell searches and do inmates have the right to be present during cell searches? The Supreme Court said that no "cause" was required for cell searches, and the inmate had no right to be present, *Block v. Rutherford, 104* S.Ct. *3227 (1984).*

Strip Searches. Could inmates be strip searched without particular cause after contact visits or trips outside the secure perimeter of the jail? Yes *(Bell v. Wolfish, 441 U.S. 520 [1979].* Questions remain as to whether inmates in the general population of a jail or prison may be strip searched without some level of cause, such as reasonable suspicion.

Body Cavity Searches. What level of cause must exist before an inmate may be required to submit to a body cavity probe search? (Reasonable suspicion, although many jurisdictions prefer to use the slightly more demanding standard of probable cause.)

How Searches are Conducted. How staff conduct searches is often important. A generally reasonable type of search may violate the Fourth Amendment if done unreasonably, so as to unnecessarily humiliate or degrade the inmate.

Searches of Visitors and Staff. In general, each has more privacy protections than inmates, but less than they would have on the street.

Chapter IX. The Eighth Amendment

"... *nor cruel and unusual punishments inflicted" (U.S.* Constitution, Amendment VIII)

Overview and Use of Force

Cruel and unusual punishment is a vague, subjective concept now commonly defined in the jail context as the "wanton and unnecessary infliction of pain." Previous court attempts to define cruel and unusual punishment have included such vague, subjective phrases as "shock the conscience of the court" or "violate the evolving standards of decency of a maturing society."

While the Supreme Court has generally now settled on "wanton and unnecessary infliction of pain" as its definition of cruel and unusual punishment in the jail and prison context, it defines the phrase differently in different situations. In the medical context (and other situations involving the basic human needs of inmates), the phrase is defined in terms of "deliberate indifference" to the serious (medical, safety, sanitation, etc.) needs of the inmates. By contrast, if use of force is being evaluated, wanton and unnecessary infliction of pain is defined by whether force was used "maliciously and sadistically for the very purpose of causing harm."

The Eighth Amendment has had greater impact on jail operations than other amendments because conditions of confinement are subject to Eighth Amendment scrutiny.' It is through this amendment that courts enter sweeping orders, which have required such things as population caps, release of inmates, improvements to the jail's physical plant, and other costly and dramatic changes. As noted earlier, the power of federal courts to enter such orders has been recently limited to some degree by the Prison Litigation Reform Act.

- ***Use of Force***

Use of force, the most common subject of Eighth Amendment claims, does not involve sweeping institutional reform issues. (Use of force claims brought by pretrial detainees are analyzed under the Due Process Clause of the Fourteenth Amendment.) Most force issues involve one inmate and one or two officers.

Jail staff are permitted to use force in many circumstances, including protecting themselves or others, protecting property, enforcing orders, and maintaining jail safety and security. But force, if excessive enough, violates the Eighth Amendment. Force becomes cruel and unusual punishment when it involves "the wanton and unnecessary infliction of pain,"

Hudson v. McMillian, 112 S. Ct. *995 (1992). Hudson* further defined this phrase as meaning force that is applied "maliciously and sadistically for the very purpose of causing harm," instead of being used "in a good faith effort to maintain or restore discipline," 112 S.Ct. at *998.*

In deciding whether force meets this standard, the Supreme Court said lower courts should consider five factors:

1. The need for the use of any force,
2. The amount of force actually used,
3. The extent of any injuries sustained by the inmate,
4. The threat perceived by a reasonable correctional official,
5. Efforts made to temper the use of force.

It is not hard for a legitimate use of force (such as an officer responding to an attack by an inmate or a group of officers removing a recalcitrant inmate from a cell) to cross the line and become an impermissible form of punishment, especially when an officer loses his/her temper. Therefore, training and supervision are of great importance in avoiding excess force problems. Officers need to understand **WHEN** force is appropriate, **WHAT** types of force to use, **HOW TO** use force properly, and **HOW MUCH** force is enough. Courts will not second guess most uses of force too closely, but the officer who does not know "when to say when" may be a lawsuit waiting to happen.

Avoiding Use of Force. Knowing how to accomplish a necessary goal (such as removing a disturbed and violent inmate from a cell) without using force is a vital skill for a correctional officer. Sometimes overlooked, interpersonal skills training helps officers defuse some potential force situations without resorting to force, can avoid potential litigation and, more importantly, can enhance the safety of both officers and inmates. Poor verbal and interpersonal skills can add to the natural antagonism between officers and inmates and thus provoke potentially physical confrontations.

In addition to training in the use of force, close supervisory review of uses of force is very important in assuring that force is used properly.

Force cases usually involve only a few individuals and arise from a single incident. However, frequent use of force in a jail maybe an indicator of larger problems. Administrators then need to evaluate individual incidents of force as well as watch trends in force usage.

Facility design and the operating philosophy dictated by that design can also affect staff inmate relationships and have an impact on the number of force situation that arise in the jail. Good training, good supervision, and well written reports can be useful in defending force claims. Many institutions now routinely videotape force incidents whenever feasible. Many say that the taping not only provides good evidence in court, but can deter inmates from provoking force incidents and staff from using excessive force.

Medical Care

The quality and quantity of medical care is also a common subject of Eighth Amendments lawsuits. As with most inmate litigation, the great majority of such suits are resolved in favor of the defendant institution administrators and medical staff. However, many decisions over the years, have favored inmates. These have had a significant effect on the nature of medical care provided in correctional facilities and have put a hefty price on inadequate medical care.

Some early medical cases involved the following situations.

- Medical care for an 1800-bed prison was provided by one doctor and several inmate assistants in a substandard hospital. *Gates v. Collier*, 501 F.2d 1291 (5th Cir., 1975).

- An inmate's ear was cut off in a fight. The inmate retrieved the ear, hastened to the prison hospital, and asked the doctor to sew the ear back on. Medical staff, it was alleged, looked at the inmate, told him "you don't need your ear," and tossed the ear in the trash, *Williams v. Vincent*, 508 F.2d 541 (2d Cir., 1974).

- Medical services were withheld by prison staff as punishment. Treatments, including minor surgery, were performed by unsupervised inmates. Supplies were inadequate and few trained medical staff were available in a prison the court termed "barbarous." Twenty days passed before any action was taken for a maggot-infested wound, festering from an unchanged dressing, *Newman v. Alabama*, 503 F.2d 1320 (5th Cir., 1974).

The barbaric issues of the early cases rarely arise in medical cases in the 1990s, but some old issues repeat themselves and new issues continue to develop. AIDS presents many complex legal and operational issues. The dramatic upsurge in tuberculosis (TB), especially new drug resistant strains of TB, creates problems of screening, testing, and protection for both staff and inmates, since TB bacteria are airborne.

Getting Medical Cases to Court. Issues concerning inadequate medical care can be presented to courts through two different legal vehicles: tort cases brought in state court, and civil rights actions brought under 42 USC section 1983, in either federal or state court.

Inmates, like any other recipient of medical services, can sue providers of care for malpractice in a tort suit. Such suits attempt to show that the provider was in some way negligent in providing the care, i.e., that the care failed to meet a reasonable standard of care as measured by prevailing medical practice in the community. Tort suits seek only damages as relief and typically focus on individual conduct. Relatively few inmates present their medical claims to the courts through tort actions.

By far the preferred means of suing over institutional medical care is to bring a civil rights suit under section 1983, even though the legal test a plaintiff must meet in a civil rights case is more difficult than in a tort case. Since the typical inmate medical lawsuit is a civil rights suit, the balance of this discussion focuses on constitutional issues and medical care.

The Constitution and Medical Care

The Supreme Court decided its first inmate medical case in 1976, announcing a test for evaluating the constitutional adequacy of medical care that remains in place today:

> "We therefore conclude that *deliberate indifference to serious medical needs* (emphasis added) of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment," *Estelle v. Gamble*, 429 U.S. 97, 105.

In reaching its conclusion, the Court emphasized that the inmate must rely on the government to treat his/her medical needs since the fact of incarceration prevents the inmate from obtaining

his/her own treatment: "If the authorities fail (to treat medical needs), those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death" 420 U.S. at 103.

The test from *Estelle* is not an easy one for an inmate to meet. In *Estelle*, the Court made it clear that deliberate indifference requires more than a showing of simple negligence --medical malpractice does not violate the Constitution. In subsequent cases, the Court moved the definition of deliberate indifference to beyond even gross negligence. In very simple terms, an "oops" in medical care does not violate the Constitution (although it may be a tort). However, "who gives a damn" violates the Constitution.

What is "Deliberate Indifference?" Although the Supreme Court first used the phrase "deliberate indifference" in 1976, it did not try to define the phrase for nearly 20 years. Then, in *Farmer v. Brennan*, 114 S.Ct. 1970 (1994), the Court finally revisited "deliberate indifference." At issue in *Farmer* was the question of whether an institution official could be deliberately indifferent in a situation in which the official did not know of a problem (such as a serious threat to an inmate's safety or a serious medical need) but reasonably "should have known" about the problem. Various lower courts had said that under some circumstances, an official could be liable for what he/she should have known.

In *Farmer,* the Supreme Court disagreed, saying that an official must have *actual knowledge* of a problem before the official can be deliberately indifferent. ". . . a prison official cannot be found liable... for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety," 114 S.Ct. at 1979.

In saying that actual knowledge of a problem is part of the deliberate indifference test, the Court adopted the same subjective test as courts use to determine criminal recklessness. This is a difficult test for plaintiffs to meet and should reduce the overall liability exposure of correctional officials, especially supervisory officials. In cases that involve one inmate and only a single incident, it will be very difficult to show a supervisory official, such as a jail administrator, had actual knowledge of the inmate's problem. One negative aspect of the ruling may be that more suits are directed at line staff, since they are more likely to have direct knowledge about a problem.

It is difficult to say whether *Farmer* will have an impact on medical *systems* cases or other large conditions cases, which are typically class actions. For example, while the jail administrator may have no knowledge of medical problems an individual inmate has encountered, the administrator is more likely to have knowledge of systemic deficiencies in the medical system that may be the result of serious crowding, underfunding, or poor administration. These systemic problems and their causes would be the focus of a conditions case.

Although decided before *Farmer*, a Ninth Circuit decision provides some guidance as to what deliberate indifference means in the medical context, *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir., 1992). The court said that a simple accident cannot be deliberate indifference. Delaying treatment does not show deliberate indifference, *unless the delay is harmful*. Harm, said the court, could be shown from continuing pain, not just that the condition worsened. Budget limitations may often create strong pressure to delay expensive treatment but, any time treatment is delayed, doctors should evaluate the medical consequences of that delay.

In *McGuckin*, over three years passed between an injury to the inmate's back and corrective surgery. Several months elapsed after the surgery was finally recommended and the plaintiff was in pain during the entire time. No one offered an explanation to justify the delay between diagnosis and treatment. To the court, the care the inmate received clearly violated the Eighth Amendment. However, the defendants won the case because the plaintiff sued the wrong people, none of the defendants was responsible for the inadequate care.

- ***Individual Cases***

The ear case mentioned above is an example of individual litigation -- the medical care given a single inmate. Other examples include an institution's refusal to change an inmate's job assignment after being advised the assignment aggravated the inmate's allergies, *McDaniel v. Rhodes*, 512 F.Supp. 117 (S.D. Ohio, 1981). Delay (or refusal) in providing prescribed medical treatment has been the subject of numerous cases. Often the underlying problem is a conflict between concerns of the institution's custody staff and the medical staff. Custody staff may override a doctor's order for treatment out of fear that the treatment will threaten security. For instance, crutches given to an inmate could be used as weapons by the inmate or others in the cell block. In other instances, budgetary needs may cause the delayed treatment. Given that custody/medical conflicts are not uncommon, a facility needs a process by which such conflicts are resolved carefully.

Suicides Lawsuits and sometimes substantial liability commonly follow suicides. The issues in a suicide case often arise around (1) identification of possible suicidal inmates, (2) protecting and monitoring them once identified, and (3) responding to suicide attempts. Proactive efforts to prevent suicides in jails through such steps as improved screening at booking can be very successful and can be implemented with minimal cost.

Suicide cases may be brought as tort cases under state law, in which the claim is generally that officials were simply negligent, or as civil rights cases. In the latter situation, the claim will be that officials were deliberately indifferent to the medical or safety needs of the potentially suicidal inmate. The trend over the last several years has been for civil rights claims arising from suicides to be harder for plaintiffs to win. Addition of the "actual knowledge" requirement from the *Farmer* case will continue this trend. However, even though such cases may be increasingly difficult for plaintiffs to win, lawsuits over suicides are likely to remain common.

- ***Systems Cases***

The fundamental questions in a medical systems case can be stated simply: **TIMELY**

Access May *any* inmate who feels he/she has a medical problem obtain timely access ("timely" varying with the nature of the medical problem) to ...

Qualified Staff Are the staff providing medical care qualified to do so? Are they practicing within the scope and limitations of their licenses? And do these staff provide . . .

Diagnosis Is the medical staff equipped with adequate resources for diagnosis and treatment and, at least where a "serious medical need" exists ("serious" is also a relative term), does the inmate receive ...

Treatment Generally appropriate care in a timely fashion.

It is one thing to develop a medical system of Access - Qualified Staff - Diagnosis - Treatment for readily treatable short-term medical problems, but it is something else again to meet treatment demands that may be very expensive and of indefinite duration. Although most inmates are in and out of the jail in a matter of days or weeks, some may remain well over a year. Many of these long-term inmates have serious medical problems, either of a chronic or acute nature. The costs of treating these problems may be huge, yet delaying or denying treatment to save money places the jail at grave liability risk.

Many factors may be evaluated when the adequacy of an entire medical service delivery system is attacked. Here are some of the more common factors that courts have reviewed in this type of litigation:

- Adequate numbers of properly qualified medical staff (including dental and mental health staff);
- Medical records;
- Sanitation;
- Intake screening (particularly important in the jail setting, where a disproportionate number of suicide attempts occur within the first few hours after admission);
- Adequacy of the physical plant (this may include questions about what is available for both physical and mental illnesses);
- Special diets;
- Access to medical staff, i.e., the sick call system;
- Emergency response systems;
- Overall policies and procedures;
- Training;
- Medications and medication delivery systems;
- Delayed or denied treatment (a very real problem with budget shortages).

In short, every part of a medical service delivery system is subject to review in a case that claims the medical system is deliberately indifferent to the medical needs of the inmates. Inquiries will begin with intake medical screening for new arrivals at the jail and will continue through the most elaborate medical procedures.

• *Non Medical Staff is Important*

Medical litigation is not limited to acts or omissions of medical staff or the adequacy of the medical department. Issues often arise from the actions of custody staff.

- The sick call system often depends on custody staff conveying written (or sometimes oral) requests for medical care to the medical department.

- Custody staff may be responsible for escorting inmates to the medical department and for treatment outside the confines of the institution.

- Custody staff can impede or facilitate access to medical staff in emergency situations, e.g., the inmate with an emergency during the night depends on custody staff to forward a request for help to medical personnel.

- Custody staff may be in a position to impede or even prevent prescribed treatment from being delivered, such as ignoring a medical order for bed rest or light duty for an inmate and instead requiring the inmate to resume a strenuous workload.

Conflicts between competing interests and concerns of custody and medical departments are not uncommon in a prison or jail. It is essential that mechanisms exist that allow a thoughtful resolution of such disagreements quickly enough to prevent harm to the inmate from delayed or denied care or treatment.

Consider the following situation, which is a classic example of the medical/custody conflict: An inmate injures his arm in some way. A nurse at the jail sees the inmate, orders that he be taken to a local hospital for additional treatment, and directs that his arm be kept elevated during transport. The transportation lieutenant notes that institution policy requires all inmates being moved outside the facility be shackled. Following this policy to the letter, the lieutenant orders the inmate shackled, overruling the nurse's order to keep the inmate's arm elevated. If the arm injury is worsened as a result of not being elevated during the move, the inmate would have an excellent claim for deliberate indifference to his serious medical needs. The claim would name the lieutenant and might also name the facility head or even the county for being responsible for the policy the lieutenant followed.

Serious Medical Need. Unfortunately, court decisions do not provide a "bright line" between serious and non-serious medical needs. Determining whether a need is "serious" may involve consideration of various factors. Will a delay in treatment result in further significant injury or the "wanton and unnecessary infliction of pain?" Is the injury one which "a reasonable doctor or patient would find important and worthy of comment or treatment?" Does the condition significantly affect the person's daily activities? Is there "chronic and substantial pain." *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir., 1992)?

While there are many examples of medical needs that are not serious and, therefore, a jail has no obligation to treat, many other conditions fall into a gray area where is it very difficult to decide with assurance that a particular need is not serious. An arbitrary policy stating certain medical conditions will be treated and others will not can be problematic. While attempts to draw lines between what will and will not be treated are legitimate, such lines should be drawn with care and should be flexible.

• *Medical Issues of the Late 1990s*

Perhaps the simplest way to predict what the main legal issues in correctional medicine will be in the next decade is to ask what the main medical problems will be. If an operational problem

exists, it is safe to assume it may wind up in court. The following are some likely candidates for lawsuits.

Medical Co-Pay Plans. More and more jails have begun charging inmates a small fee ($5 - $10) for using the medical system. There is usually no charge for medical visits scheduled by the medical staff, only for visits initiated by the inmate. There also may be a small charge for drugs. The goal of such co-pay plans is not to recoup the cost of providing medical service, but rather to discourage inmates from overusing medical services. Early, anecdotal reports from jails with such programs indicate they do result in a significant reduction of usage and hence, a reduction in cost.

A co-pay plan that is flexible and contains broad exceptions (e.g., no charges for emergency services, routine health assessments, follow-up treatments, etc.) was approved - indeed praised - by a court in *Johnson v. Department of Public Safety and Correctional Services*, 885 F.Supp. 817 (D. Md., 1995).

Co-pay plans must assure the inmate retains access to the system on demand, with payment concerns addressed independently from access issues. A "no-pay, no-care" policy would present major liability concerns. Furthermore, the inmate should have notice of the co pay plan and some opportunity to challenge fees imposed. The normal inmate grievance system probably would suffice for this purpose. There is some question whether state law or local ordinances must specifically authorize charging for services.

Adequacy of Systems. As long as crowding remains the dominant problem in jails, suits over the adequacy of medical service delivery systems will continue. Increases in medical staff that match increases in the inmate population may reduce liability exposure. Unfortunately, such staffing increases often do not occur. Even when they do, population increases may outstrip the physical plant's capacity to meet the increased medical needs -- there simply are not enough examination rooms, infirmary beds, etc.

Increases in population also increase the likelihood of individual claims as more inmates drop through the ever-widening cracks created by too many inmates and not enough money, staff, and resources. In addition to systems claims driven by overcrowding, systems claims will be brought on behalf of inmates with chronic medical and/or mental health problems.

Mental Health Care. Mental health needs of inmates are subject to the same "deliberate indifference to serious medical needs" test as are physical medical problems. The number of mentally ill inmates in jails continues to climb, increasing the demand on treatment resources.

Many jail administrators complain of the difficulty in obtaining mental health treatment for an inmate from the traditional mental health system. The mentally ill inmate can be a danger to him/herself, to staff, and to others, and in danger from others. Consistent with both the safety and treatment needs of this group, separate housing must often be provided. The result is the creation of small mental hospitals within the jail. This presents a physical plant issue for the jail as well as challenging staffing issues relating to both treatment and custody staff.

Mentally ill inmates, like other inmates, have the right to refuse treatment, but the jail has the power to override an inmate's refusal of care and involuntarily medicate the inmate. However,

due process concerns must be addressed to assure that there is proper cause for involuntarily medicating the inmate and that proper procedures are followed in making the decision to medicate, *Washington v. Harper*, 110 S.Ct. 1028 (1990). Pretrial detainees also can be involuntarily medicated, although this decision may be complicated because of pending trials, *Riggins v. Nevada*, 112 S.Ct. 1810 (1992).

In general, to involuntarily medicate an inmate, the inmate must have a serious mental illness, must be a danger to self or others, and the treatment must be in the inmate's best medical interest.

AIDS. While there are many possible legal issues that can arise around AIDS, and while commentators expected a substantial amount of litigation and court concern over AIDS issues in correctional facilities, courts seem generally willing to leave choices on AIDS issues to correctional administrators.

Thus, courts neither require nor prevent segregation of inmates who are HIV positive, even though segregating HIV positive inmates has the effect of identifying them as such. *Tokar v. Armontrout*, 97 F.3d 1078 (8th Cir., 1996). *Harris v. Thigpen*, 941 F.2d 1495 (11th Cir. 1991). Similarly, courts have neither prevented nor required mandatory testing of inmates, *Harris, Doe v Wigginton*, 21 F.3d 733 (6th Cir., 1994) (inmate not meeting agency's criteria for testing had no right to be tested) *Dunn v. White*, 880 F.2d 1188 (10th Cir., 1989).

Other courts looking at issues around disclosure have said that at least there is no clearly established constitutional right which prohibits disclosure of information regarding HIV status. *Tokar, Anderson v Romero*, 72F.3d 518 (7th Cir., 1995). Where disclosure of HIV status has been upheld, it typically is recognized as coming as a result of the exercise of some legitimate concern of the institution, such as segregation. State statutes may also address HIV disclosure and confidentiality issues. Agencies still need carefully drawn policies on disclosure and should generally treat HIV status, as any other medical condition, as generally confidential.

Exclusion of HIV positive inmates from participating in programs may raise legal concerns under the Americans With Disabilities Act, *Harris, Gates v. Rowland*, 39 F.3d 1439 (9th Cir., 1994). Although the ADA does not specifically recognize security concerns as a justification for discriminating against someone who is HIV positive, the Ninth Circuit in the *Gates* case said that security concerns could justify discrimination. In *Gates*, the court upheld a prison rule prohibiting HIV positive inmates from working in food services.

As a serious medical need, inmates with AIDS are entitled to medical treatment, although courts have yet to explore how such treatment is required. *Hawley v. Evans*, 716 F.Supp. 601 (N.D.Ga., 1989).

While AIDS litigation may not have developed to the extent anticipated when AIDS first began to emerge as a serious problem for correctional agencies, it continues to raise issues of potential legal concern under both the federal Constitution and under state law. Carefully drawn and enforced policies remain very important in this area.

Tuberculosis. While TB does not present the life-threatening risk or the hysteria of HIV infection, the lifestyle of many people who end up in jail puts them at high risk of contracting

TB. The resurgent threat of TB raises a major public health concern for all who live or work in a jail. With those public health threats comes the potential for litigation. What precautions must a jail take to detect TB and prevent its spread to avoid being deliberately indifferent to what is clearly a serious medical need?

Because TB is spread through the air, agencies need to be concerned about protecting staff as well as inmates. In this regard, state or federal laws relating to workplace safety must be considered.

The Aging Inmate Population. Due to a variety of factors, there is and will continue to be an increasing number of elderly inmates. Many other inmates are physically far older than their chronological age due to drug use, lack of health care, personal lifestyle, etc. While issues related to elderly inmates are generally more prevalent in prisons than in jails, they do appear at the jail level.

Treating the chronic needs of this population will put increasing demands on jail medical resources. Like AIDS inmates, providing medical care for elderly inmates will raise the question of "how much *must* we do for this population, when society may do less for them when they leave the jail?"

Abortion and Other Women's Issues. A court of appeals held in late 1987 that a New Jersey jail's policy of allowing female inmates to obtain elective abortions only pursuant to court order was unconstitutional. Moreover, the county had the affirmative duty to provide abortion services to all inmates requesting such services. The court did not require the county to assume the full cost of inmate abortions, but seemed to be saying that if the county could not find anyone else to pay for the abortion, the county would have to pay for it. *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3rd Cir., 1987).

The court reasoned that the county's obligations arose from two sources. First was the Eighth Amendment duty to provide care for serious medical needs (elective abortions were seen as such and the county's policy of not assisting inmates in obtaining abortions was seen as deliberate indifference). Secondly, the county policy impermissibly interfered with the female inmate's fundamental constitutional right to obtain an abortion, guaranteed by previous Supreme Court decisions.

Aside from the abortion issue, increasing numbers of women entering jail bring a variety of unique medical problems, not the least of which relate to pregnancy.

Disabled Inmates. As noted earlier, the Americans with Disabilities Act probably protects inmates. Even if it does not, the Eighth Amendment certainly does and courts have found violations of the Eighth Amendment arising from treatment given to disabled inmates.

In one case, a paraplegic inmate confined in a wheelchair was forced to live for nearly eight months in conditions that made virtually no accommodations for the handicap. The court's opinion described many problems the inmate encountered in using the toilet in his cell and in getting to a toilet from where he was assigned to work in the institution. *LaFaut v. Smith*, 834 F.2d 389 (4th Cir., 1987). See also *Bonner u Arizona Department of Corrections*, 714

F.Supp. 420 (D. Ariz., 1989), holding that the provisions of Sec. 504 of the Rehabilitation Act of 1973 (prohibiting discrimination against the handicapped) protected a prison inmate.

The lower court had also found the situation, which involved a federal institution, violated the Rehabilitation Act. This result was reversed as moot by the appellate court because the inmate had been transferred to another prison and later released altogether during the litigation.

Retrofitting an entire institution to accommodate the disabled could be tremendously expensive, but the *LaFaut* case shows that ignoring the needs of a paraplegic inmate can result in liability. Until prisons and jails are fully equipped for the disabled, extraordinary attention needs to be paid to the occasional handicapped inmate entering the institution.

The Eighth Amendment offers some protections for persons suffering from serious disabilities, and the Americans with Disabilities Act offers far more. The ultimate impact of the ADA on correctional operation is yet to be determined. At least one court has questioned the extent to which ADA applies to inmates. *Bryant v. Madigan*, 84 F.3d 246 (7th Cir., 1996).

Chapter X. Conditions of Confinement

A conditions of confinement lawsuit, which claims that some or all of the living conditions in the jail are so bad that they violate the minimal requirements of the Constitution, may be one of the biggest lawsuits a local jurisdiction can face.

The lawsuit, from the service of the complaint through pretrial discovery, trial, and formal appeal, can demand large amounts of time and money. Literally thousands of hours of lawyer's time may be needed, as well as large amounts of time of those who run the jail. Experts will have to be hired to review conditions in the jail and testify at trial.

A county attorney's office may not have the time or legal expertise to adequately defend a major conditions case. If the case is lost, the county will be required to pay the plaintiffs' attorneys' fees, which can reach well into six figures even with the limitations imposed by the Prison Litigation Reform Act. Various factors, not the least of which is the potential cost of litigating a major conditions case, may create major pressures to settle the case. Many jurisdictions have learned the hard way however, that a hastily drawn settlement agreement (a "consent decree," see Ch. XII) can create almost never-ending problems. In some ways it becomes a greater burden on the county than if the case had been fought through trial and lost.

As significant as the time and financial consequences of the conditions lawsuit can be, they pale in comparison to the suit's potential operational consequences for the jail and the county's entire criminal justice system. Prior to passage of the Prison Litigation Reform Act in 1996, the relief phase of a conditions case could last for years. It could involve more court hearings, more attorney fees, a court-appointed Special Master, paid by the county, to oversee implementation of the decree, and more extraordinary demands on county staff's s time. Continuing controversy could revolve around issues of compliance with the court order or consent decree, which, if seen in isolation, did not rise to the level of constitutional importance,

The Prison Litigation Reform Act is intended to reduce the scope of the court's power in the relief phase of a major case. The PLRA does not attempt to change any of the substantive rights inmates have, but only the way a court may address violations of those rights. For instance, defendants may return to court every two years to ask that a decree be terminated. Unless it can be shown that constitutional violations continue, the court must terminate the decree. Population caps can be ordered only by a three judge court after less intrusive forms of relief have been tried and failed. The powers of Special Masters are sharply limited and the fees and costs of a Master must be paid by the court, not by the defendants.

There are serious questions about the constitutionality of the PLRA, but, if most of the law withstands constitutional attack, it certainly will change the way courts approach ordering relief in major conditions cases. While the law is intended to curb the powers of the federal court in certain ways, the court still retains the ultimate power to require defendants to bring conditions in jails up to constitutional levels. How this will be done in light of PLRA remains to be seen.

The public may not be interested in what goes on in a jail and will give few accolades to government officials for running a good jail. But a poorly run jail, which ignores legal

restrictions on how a jail must function, creates potentially huge monetary, legal, and operational consequences for the county.

- ***What Are The Issues?***

The issues in conditions cases have changed over the years. Conditions cases are sometimes referred to as overcrowding cases, although, technically, levels of crowding are no longer a direct measure of whether a jail meets constitutional requirements.

The ultimate question is whether the conditions in the jail amount to "cruel and unusual punishment." For pretrial detainees, who have not yet been convicted of a crime, the basic legal question is whether conditions amount to "punishment" in violation of the Due Process Clause of the Fourteenth Amendment. The distinction between the requirements of the Eighth and Fourteenth Amendments probably exists more in the minds of legal theoreticians and scholars than anywhere else. As a practical matter, there is no significant difference in conditions cases.

Since 1991, cruel and unusual punishment occurs when conditions are so bad as to amount to the "wanton and unnecessary infliction of pain" and evidence shows the responsible officials (which typically include the county commissioners) are "deliberately indifferent" to those bad conditions, Wilson *v. Seiter,* 111 S.Ct. 2321 (1991). The requirement that officials be deliberately indifferent to poor conditions was not previously part of the legal equation used to evaluate jail conditions. Prior to the *Wilson* decision, the focus was exclusively on the objective question of "how bad were the conditions," not on a subjective inquiry into the state-of-mind of the defendant officials. It is too early to tell what the addition of a state of mind requirement means in conditions litigation. Particularly at the local government level (where the county itself can be sued), many experts doubt that adding the deliberate indifference requirement will have much effect, if any, on whether a court finds a particular facility unconstitutional.

Wilson also made another change from earlier caselaw. Most earlier decisions evaluated the quality of a jail under a "totality of conditions" approach, in which all poor conditions (or at least certain categories of conditions) would be considered together as a totality. In *Wilson,* the Supreme Court said this was improper: *"Some* conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise - for example, a low cell temperature at night combined with a failure to issue blankets ... Nothing so amorphous as overall conditions can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists," 115 L.Ed.2d 271, 283 (emphasis in original).

So Wilson tossed the phrase "totality of conditions," so common to those working with conditions cases, on the legal trash heap. What then are the particular conditions a court will focus on? As *Wilson* indicates, the fundamental question in a conditions case is what the *effects* are on inmates from deficiencies in the jail's provision of basic human needs. Is the jail adequately providing for these needs, identified in *Wilson* and other cases as including:

- **Personal Safety** What are the levels of violence in the institution? This is one of the most common issues, especially in jails plagued with serious overcrowding, since maintaining

adequate safety becomes increasingly difficult as the inmate population rises, the classification system breaks down, tempers get shorter because of the lack of privacy, etc. While a jail can be double-bunked without becoming unconstitutional *per se,* double-bunking dramatically increases the potential for violence, especially when staffing levels are not increased along with the population.

- **Medical Care** Medical care is often the subject of a separate lawsuit, which attacks the health care delivery system alone. Medical suits are described in greater detail in Chapter X. As with personal safety, medical care can be compromised to a constitutionally significant extent when the population is allowed to increase without some corresponding increase in medical staff and resources.

- **Food** Do inmates receive a nutritionally adequate diet, prepared and served in a sanitary way? Some dietary issues are linked to medical services. Other dietary issues may raise First Amendment questions about religion (e.g., pork-free diets required by various religions), although these would not normally be part of a conditions case.

- **Shelter** This is a broad category, relating to the overall physical environment in the institution. Fire safety is an important issue here, given the tremendous threat to life that can be created when fire protections are inadequate. Other shelter issues can include such diverse areas as heating, cooling, ventilation, lighting, and noise levels.

- **Exercise** Identified specifically in *Wilson,* the effects of the lack of exercise vary directly with how long the inmate must live without it.

- **Sanitation** Do the sanitary conditions in the jail threaten the health of the inmates? Does the plumbing work adequately? How clean is the facility, especially showers and bathrooms?

- **Clothing** Is the clothing adequate for the temperatures in which the inmates will be living, and does it provide adequate privacy? This is seldom an issue anymore.

While it is relatively easy to identify the areas of theoretical concern, it becomes very difficult to decide how bad problems must be in a given area before a court will intervene. That a condition does not comply with a given professional standard does not make it unconstitutional. However, the more a particular condition falls short of a professional standard (such as the fire code or recognized public health standards for sanitation), the more likely a court will find a constitutional violation.

The plaintiffs will attempt to show that (1) a bad condition exists, (2) inmates have actually suffered from the condition, and/or (3) harm to inmates is inevitable unless the condition is remedied. Defendants will, of course, try to contest all of these factors.

What About Crowding? Note that none of the factors relating to basic human needs speaks directly to crowding. In two cases, decided in 1979 and 1981, the Supreme Court made it clear that there is no "one man - one cell principle lurking" in the Constitution. *Bell v. Wolfish, 4412 U. S. 520 (1079), Rhodes v. Chapman,* 101 S.Ct. 2392 (1981). Instead of counting beds and bodies, a court must evaluate the *effects* of *poor conditions* on the inmates, said the Court in each of these cases.

Obviously, crowding can be the major factor behind unconstitutional conditions, such as excessively high levels of violence in a jail or a poor medical system. As more inmates are packed into a jail, adequately providing for their basic human needs becomes more difficult, especially if staffing levels are not increased along with the inmate population. For instance, the staff and physical plant of a medical service delivery system designed to treat 500 inmates may be incapable of treating 750 - there just is not enough time and space. A classification system, intended in part to assure inmate safety, may break down when crowding makes it impossible to relocate inmates in a jail. As crowding increases, tensions go up, leading to increased violence. One custody officer may be overwhelmed when expected to monitor twice the intended number of inmates jammed into a housing unit.

One can easily imagine how other key service delivery systems in a seriously overcrowded jail can break down when expected to serve populations perhaps twice as large as they were designed to serve. So, while crowding *per se* may not make a jail unconstitutional, it is often the reason a jail is found unconstitutional. Prior to passage of the Prison Litigation Reform Act, when a court decided that (a) conditions in a facility violate the Constitution and (b) crowding is the primary cause of the conditions, the court was free to address crowding issues in its relief order. PLRA demands that other forms of relief, presumably less dramatic and controversial, be attempted before a court may directly address crowding through such mechanisms as inmate release orders or population caps. However, while PLRA postpones the court's ability to address crowding directly, it does not remove the ability altogether. Facilities with major constitutional violations that are the product of overcrowding still will have to face the reality that the solution to the constitutional problems lies in reducing the number of inmates in the jail.

Other Factors of Concern. Various other factors, while not of direct constitutional importance, can work for or against a jail. An overcrowded jail is not necessarily unconstitutional, and factors such as the ones below can easily make the difference between a crowded jail that will withstand constitutional attack and one that will not.

- **Quality of Management**. Enlightened, innovative, creative, responsive jail management is very important. Not only can good managers often find solutions to problems, they can set a tone in the jail that can positively affect relations between staff and inmates. While a court rarely criticizes jail management directly, it is obvious that the quality of management is a major contributor to a good (or bad) jail.

- **Management philosophy**. A management philosophy that encourages rigid staff-inmate relations with limited direct interaction between staff and inmates can make dealing with other problems more difficult. Facility design can *affect* staff- inmate relations.

- **Activities and Out-of-Cell Time**. Even when a jail is very crowded, meaningful activities that occupy the inmates' time can mitigate the negative effects of crowding and idleness. The old adage that "idle hands are the devil's plaything" is true in a jail, and it is important that the jail keep inmates busy. Activities include exercise, classes, programs, library, etc.

- **Numbers of Staff**. Although the Supreme Court said that double celling in an institution is not necessarily unconstitutional, one should not read too much into that statement. Allowing a jail's population to increase far beyond its design capacity without increasing the custody

and other support staff invites problems that could be avoided or at least reduced if more staff is present.

- **Classification System**. The classification system must be able to separate predatory inmates from potential victims. This may be impossible in a very crowded jail.

- **Training and Supervision of Staff**. Crowding only increases the stresses on both inmates and staff. A well trained and well supervised staff should be better able to handle this stress and help defuse its potentially negative effects.

Is Television a Constitutional Requirement? The trend that began in the mid-1990s to remove some of the amenities from jails, such as weights and other exercise equipment, TVs, and other recreational "perks," is not inherently unconstitutional -- there is no constitutional right to lift weights or to watch television. However, a policy of getting tougher on inmates may worsen operational problems if it leaves a crowded jail full of inmates with nothing to do. County policymakers who view stripping the jail of activities as getting tough on criminals and deterring crime by making jail as unattractive as possible may in turn make it more difficult for jail administrators and staff to control inmates and operate the jail at a constitutional level. An unintended consequence of running a "stripped-down" jail may be litigation and an increased likelihood of court intervention.

• *Relief - Where the Going Gets Tough*

To understand the potential impact of a conditions case, recall the discussion in Chapter VI regarding the power of the federal court to order relief in a civil rights case once it finds a violation of the Constitution.

Public officials often decry what they believe is the improper and excessive intrusion of the federal court into matters that are "not the court's business". While there are examples of appellate courts reversing lower court relief orders for being too excessive, one must recognize and yield to the reality that the federal court has tremendous power to enter and enforce orders necessary to remedy constitutional violations, even in light of the Prison Litigation Reform Act.

As perhaps the ultimate example of this power, the Supreme Court has said that as a last resort a district court has the power to order local officials to raise taxes in order to comply with a court order, even though state law may prohibit such action, Missouri v. *Jenkins,* 110 S.Ct. 1651 (1990). *Jenkins* was a school desegregation case and at issue was a consent decree local officials had voluntarily entered into. However, its rationale could be applied in a corrections case. For instance, at least one federal court endorsed the notion that a federal court could order local officials to violate state law, if necessary, to correct constitutional problems. In *Stone v. City* and County of San *Francisco,* 968 F.2d 865 (9th Cir., 1992), the district court ordered the sheriff to release inmates who had served half of their sentence in order to comply with population caps even though applicable state laws did not permit such releases. Although the court of appeals reversed this order under the circumstances of the case, it did "not rule out the possibility that such action may be necessary in the future," 968 F.2d at 864. The court said that before an override order could be imposed in the case, the lower court should see if the threat of sanctions (i.e., fines for contempt of court) would result in compliance with the order.

Where a court finds cruel and unusual conditions in a jail, the court is empowered to issue an injunction that will require the offending conditions to be corrected by addressing their causes. Typically, a court finding a constitutional violation will order the defendants to develop and present a plan for its cure, leaving as much continuing power and control in the defendants' hands as is reasonably possible. As noted earlier, the Prison Litigation Reform Act delays the court's power to impose population controls and tries to assure that a relief order is the least intrusive remedy. Until PLRA has been applied by a number of courts and interpreted by courts of appeal, it is impossible to say what effect it will have on local jurisdictions trying to correct constitutional deficiencies in a jail.

An all-too-common problem in conditions cases is that defendants fail to comply with the court's initial order, which often simply incorporate the defendants' own plans for correcting problems. When this occurs, the court will begin to flex its relief powers. The court enters a more demanding order. The sequence of non-compliance followed by more intrusive, demanding orders can continue until the court is satisfied that defendants are complying with the mandates it issued. This sequence of events remains possible under PLRA.

A court generally will not accept lack of funds as an excuse for not complying with previously entered orders.

Chapter XI. The Fourteenth Amendment

> "... *nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,* " *U.S.* Constitution, Amendment XIV.

- ***Due Process***

The Fourteenth Amendment is the basis of several, quite different, obligations for jail administrators.

Substantive Due Process: Conditions of Confinement, Use of Force, and Pretrial Detainees. As discussed previously, the adequacy of conditions of confinement of pretrial detainees is judged through the Due Process Clause of the Fourteenth Amendment. Technically, the Eighth Amendment (cruel and unusual punishment) protects only sentenced offenders, so a court may not judge conditions for pretrial detainees under the Eighth Amendment. Instead, the Fourteenth Amendment is used, under the theory that the concept of Due Process prohibits the "punishment" of inmates and that in some circumstances bad conditions can amount to punishment. Fourteenth Amendment *substantive* due process (as the concept is called in this context) and Eighth Amendment cruel and unusual punishment are two legal routes to virtually the same destination.

Prior to *Bell* v *Wolfish*, some courts said the "presumption of innocence" required more for detainees than the Eighth Amendment demanded for convicted persons. But this distinction was laid to rest in *Bell.*

Due process then may be used to evaluate major conditions cases, but due process also plays a very important role in the day-to-day operation of a jail. Excess force claims brought by pretrial detainees are also evaluated under the Fourteenth Amendment. Again, the difference between review of excess force under the Fourteenth Amendment and the Eighth Amendment is not significant.

Procedural Due Process: Inmate Discipline. Most due process claims are concerned with the process used in making certain decisions. Inmate discipline is the most obvious area affected by procedural due process. Since the Supreme Court's 1974 decision in *Wolff v. McDonnell,* 418 U.S. 539 (1974), inmates facing major disciplinary charges are entitled to a hearing with certain other minimal procedural protections as part of the disciplinary process. In a 1995 decision, the Court indicated that the procedural protections required by Wo*lf* may apply only if the disciplinary hearing puts the inmate's release date at risk, but do not apply if the maximum sanction the inmate can receive is a term in segregation, *Sandin v. Conner,* 115 S.Ct. 2293 (1995).

Included in the rights that *Wolf* requires are a hearing, a limited right to call witnesses, assistance in certain situations (but no right to legal counsel), an impartial hearing officer or committee, and a written decision that indicates the evidence relied on and the reason for the sanction chosen. The Supreme Court said inmates have no right to confront or cross-examine witnesses against them in disciplinary hearings. This allows for hearing decisions based on information from informants whose identity (and sometimes whose testimony) is not given to the

charged inmate. Courts have imposed various procedural protections around the use of informant information, intended to assure that the information is reliable.

Staff conducting the hearings must understand what the procedural rules are and how to apply them in a hearing. For instance, what circumstances justify denying an inmate's request that a certain witness be called to testify at a hearing and what sort of a record must be made of that and other decisions in the disciplinary hearing process that are of constitutional dimension. Prior to *Sandin,* the assumption was that if a disciplinary infraction carried the possible sanction of either loss of good time or time in segregation, the full Wow procedures were required. *Scnadin* held that the *Wolff* procedures were not required when the maximum penalty the inmate could receive was only 30 days in segregation. Since *Sandin,* most courts have said that segregation sanctions considerably longer than 30 days are not governed by Woffeither, although some courts have said that if the disciplinary segregation lasts long enough, (perhaps more than a year), it is so serious that *Wolff* procedures still apply.

Sandin then does not impose any new requirements on jails, but gives jails the opportunity to limit their exposure to lawsuits and liability from civil rights suits dealing with inmate disciplinary hearings, although some restructuring of inmate disciplinary rules may be necessary to take advantage of this opportunity. As long as an infraction carries with it the possible loss of good time, Woowill continue to apply.

While *Sandin* may *offer* jails an opportunity to reduce their liability exposure regarding inmate discipline and to revise their disciplinary rules, there is a yet undecided question as to whether the *Sandin* decision applies to pretrial detainees. One federal appeals court has held specifically that it does not, but that *Wolff* still governs disciplinary proceedings for this group of inmates, *Mitchell v. Dupnik,* 75 F.3d 517 (9th Cir., 1996). Another suggested in dicta that *Sandin* did not apply to pretrial detainees, *Whitford v. Boglino,* 63 F.3d 527 (7th Cir., 1995).

State-Created Liberty Interests. In some situations, an agency can create "liberty interests" protected by due process. Prior to the *Sandn* decision, the test for deciding if a liberty interest had been created focused on the language of the agency's rules. The more the rules imposed mandatory limits on the discretion of *officials* in making a particular type of decision, the more likely a court would find the rules created a liberty interest and that the inmate had some limited due process rights in regard to the decision. For example, rules that said an inmate would only be put in administrative segregation under certain specified circumstances were held to trigger limited due process protections, *Hewitt v. Helms,* 459 U.S. 460 (1983).

In its *Sandin* decision in mid-1995, the Supreme Court abandoned its language-oriented "state-created liberty interest" test and replaced it with a test that focuses on the nature of the deprivation. Under the revised state-created liberty interest test, if an institutional decision imposes an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," a liberty interest and limited due process protections are created. As this is written (nearly a year after the *Sandin* decision), it is still too early to tell what sorts of deprivations will meet this test.

The new test is welcome in one respect as it will end the federal courts scrutinizing the "shalls," "musts," and "mays" of institution rules to determine if liberty interests had been created. However, the new rule will result in a period of uncertainty because the Supreme Court gave little guidance as to what an "atypical and significant hardship" might be.

Involuntary Medication. More and more mentally ill persons are entering America's jails. These increasing numbers present various management and legal problems for jail administrators. Deliberate indifference to serious mental health needs violates the Eighth Amendment, so the jail has constitutionally mandated treatment obligations. Many mentally ill individuals are reluctant to accept treatment, so the jail may face a dilemma. Treatment may be necessary and appropriate both in the inmate's interest and in the interest of operating the jail in a safe and humane way. However, it is the inmate's constitutional right to refuse treatment.

Compounding the treatment/refusal dilemma is a problem faced by many jails in accessing the traditional mental health treatment system. Many traditional sources of mental health treatment (including involuntary civil commitment) refuse, or are very reluctant, to accept referrals from the jail. This lack of coordination between the criminal justice and mental health systems puts pressure on jails to create their own internal mental health treatment system.

A key to such a system may be the ability to override an inmate's refusal to accept treatment. In 1990, the Supreme Court held that the Constitution permits a correctional institution to make a decision to treat an inmate without a court order. The Court indicated that due process requires an internal administrative hearing process to assure that proper grounds for involuntarily medicating an inmate exist, *Washington v. Harper, 110* S.Ct. 1028 (1990). A 1992 Supreme Court decision indicates that the *Harper* case probably extends to and includes pretrial detainees, *Riggins v. Nevada, 112* S.Ct. 1810 (1992). State law, however, may preclude the jail from implementing an involuntary medication program.

Access to the Courts. In a society and government such as ours, which recognizes various individual rights, the individual must have access to the agency or arm of government charged with enforcing those rights. It is one thing to say someone has the right to free speech or to practice a religion, but if the government can prevent someone from exercising those rights and the individual cannot obtain redress for that violation, then the right becomes an illusion. The body in our society charged with enforcing rights is the courts.

The Supreme Court over the years has recognized that while the Constitution does not speak specifically of a "right of access to the courts," that right must be an inherent part of the Constitution if that document is to guarantee any rights at all. For most persons, exercising the right of access to the courts is not difficult and the government does not impose insurmountable barriers between the individual and the court system. But when the person is in prison or jail, there is literally a physical barrier between the inmate and the courts.'

Over the years the Supreme Court decided several access to the courts cases involving inmates. The most important came in 1977, when the Court said that prison administrators have the affirmative duty to provide inmates with assistance or resources to allow them to meaningfully exercise their right of access to the courts, *Bounds v. Smith, 430* U.S. 817 (1977). Assistance could take the form of persons trained in the law (such as lawyers, paralegals, or law students), adequate law libraries, or some combination of these. A 1996 Supreme Court decision dealing with access to the courts reaffirmed the core principle *in Bounds, i.e.,* that the institution has an affirmative duty to provide some form of assistance (libraries or persons trained in the law) sufficient to give inmates the capability of filing nonfrivolous lawsuits challenging their sentence or the conditions of their confinement, *Lewis v. Casey,* 64 USLW 4587 (June 24, 1996).

The principle from *Bounds* (and now *Lewis)* has been extended to jails, although application of the principle may be slightly different in the jail context depending in part on how long inmates remain in the jail. The longer an inmate remains in a jail, the more the right of "access to the courts" places the same demands on the jail as it does on the prison.

Most jails have opted to provide some form of a law library rather than assistance from persons trained in the law. However, an "adequate" law library is quite extensive, expensive, and expansive. One or two shelves of state laws, court rules, and a few-out-of date legal texts donated by local attorneys is woefully insufficient, yet this describes the law library in many jails.

Many jails try to follow some sort of book paging/delivery system, relying on the county law library. In these systems, the inmate must request, or page, a particular item from the law library. If the item is available, it, or a copy, is delivered to the inmate. These book paging and delivery systems have almost always been found to be unconstitutional, (see *Abdul Akbar v.* Watson, 775 F. Supp. 735 [D.Del., 1991] and cases cited therein). The Supreme Court in the *Lewis* case said that an inmate complaining about inadequate access to the courts must show he/she has in fact been harmed in some way because of the lack of resources in an institution. This requirement may make it more difficult for inmates to successfully complain about paging and delivery systems.

Finding space for a complete law library in an existing jail can be difficult, given the amount of shelf space required for the hundreds, if not thousands, of books required. By the mid-1990s, many of the largest sets of law library materials were available on CD-ROM. In this form, the materials are somewhat less expensive to buy and collapse an entire wall of books into less than two feet of shelf space. Design of a new jail should address the access to the courts and law library issue.

Beyond the problems of providing an adequate law library, the Supreme Court's opinion in the *Lewis* case recognized that a law library alone would not necessarily be adequate for inmates incapable of using it. Prior to *Lewis,* at least one court said that a prison system must at a minimum provide inmates trained in the use of legal materials to assist other inmates, Knop *v. Johnson,* 977 F.2d 996 (6th Cir., 1992). Whether this is required after *Lewis* is uncertain. However, Lewis makes it clear that, in at least some circumstances, something more than a library will be necessary to assist inmates unable to use the library.

Inmates have not been shy about filing lawsuits since the courts abandoned the hands-off doctrine. Inmates in state and local correctional facilities filed nearly 38,000 civil rights cases in 1994, almost 14,000 more than they filed in 1990 and a nearly five-fold increase from 1977. Well over 90% of these cases resulted in a judgment for the defendants without even a trial.

The Prison Litigation Reform Act contains provisions that may stem the rising tide of inmate lawsuits. Traditionally, courts have waived filing fees for indigent prisoners. PLRA allows courts to defer payment of these fees ($120), but sets a requirement that the fees be paid over time from moneys the inmate may accumulate while in custody. This cost burden may make some inmates think twice before filing a lawsuit.

If the newly imposed filing fee requirements deter inmates generally from filing lawsuits, another section of the PLRA attempts to cut off the "frequent filer," the inmate who continuously files suits. If the inmate has had three previous cases dismissed as frivolous, malicious, or failing to state a claim, the inmate is barred from filing additional suits unless he/she can show imminent danger of serious physical harm. One of the first courts to consider this section of the PLRA found it unconstitutional, *Lyon v. VandeKrol,* 940 F. Supp. 1433 (S.D. Iowa, 1996).

- ***Equal Protection***

The Equal Protection Clause of the Fourteenth Amendment demands that groups or individuals similar to one another be treated equally by the government, unless the government can demonstrate sufficient reason for discriminating against one group over another. Historically, the most common equal protection issue has been racial segregation. While racial segregation remains a concern, it is no longer the major equal protection issue confronting correctional institutions. Instead, the major issue deals with discrimination against female inmates. This discrimination is usually not intentional. It shows itself in the often major differences in the quality and quantity of programs, services, and facilities available to male inmates vs. those available to women. The cases that deal with this area are known as "parity" cases.

Parity. Parity is an issue with major implications for facility design. In general, parity cases have questioned, and often condemned, the differences in the quality and quantity of programs and facilities that commonly exist between men's and women's institutions. The name "parity" comes from the relief sought, which is not that programs or facilities must be identical, but that they be at a level of parity between men and women. Most courts that have addressed the question have agreed that treating men and women differently must be justified as "serving important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives," *McCoy v. Nevada Department of Prisons,* 776 F. Supp. 521 (D. Nev., 1991). The judge in this case noted differences in such areas as educational and vocational programs and in many privileges. For instance, women could not kiss visitors, men could; women could not get candy from visitors, men could; phone access was different; men had better recreation. The court said the defendants had the obligation of justifying those differences.

In the early parity cases, the government typically failed to justify the differences between men's and women's programming. leading to a finding of an equal protection violation and a long period of court oversight, *Glover v Johnson,* 478 F. Supp. 1075 (E.D.Mich., 1979). More recently, courts have said male and female inmates are not "similarly situated,: e.g., alike, for purposes of comparison under the Equal Protection Clause and even if they are, it is not proper to as exacting a comparison as was typical in the earlier cases such as *Glover* and *McCoy. Klinger v. Department of Corrections* 31 F.3d 727 (8th Cir., 1994), *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia,* 93 F.3d 910 (D.C. Cir., 1996). The result of these recent cases is that a legal theory that had the capacity to be the basis for challenging conditions and facilities provided for female inmates in many jurisdictions may be almost entirely blunted.

Despite the changing trends in case law in this area, the goal of equal programming and facilities for male and female inmates should remain a strong concern in facility planning and design as well as in the evaluation of existing jail programming.

APPENDIX G
Washington State Jails - Selected RCWs

RCW 9.94A.734
Home detention -- Conditions. *(Effective July 1, 2004.)*

(1) Home detention may not be imposed for offenders convicted of:
(a) A violent offense;
(b) Any sex offense;
(c) Any drug offense;
(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
(e) Assault in the third degree as defined in RCW 9A.36.031;
(f) Assault of a child in the third degree;
(g) Unlawful imprisonment as defined in RCW 9A.40.040; or
(h) Harassment as defined in RCW 9A.46.020.
Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.
(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:
(a) Successfully completing twenty-one days in a work release program;
(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;
(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;
(d) Having no prior charges of escape; and
(e) Fulfilling the other conditions of the home detention program.
(3) Participation in a home detention program shall be conditioned upon:
(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;
(b) Abiding by the rules of the home detention program; and
(c) Compliance with court-ordered legal financial obligations. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

[2003 c 53 § 62; 2000 c 28 § 30; 1995 c 108 § 2. Formerly RCW 9.94A.185.]

RCW 9.92.130
City jail prisoners may be compelled to work.

When a person has been sentenced by any municipal or district judge in this state to a term of imprisonment in a city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city.

[1987 c 202 § 144; Code 1881 § 2075; RRS § 10189.]

NOTES:

Intent -- 1987 c 202: See note following RCW 2.04.190.

RCW 9.92.140
County jail prisoners may be compelled to work.

When a person has been sentenced by a district judge or a judge of the superior court to a term of imprisonment in the county jail, whether in default of payment of a fine, or costs or otherwise; such person may be compelled to work eight hours, each day of such term, in and about the county buildings, public roads, streets and grounds: PROVIDED, This section and RCW 9.92.130 shall not apply to persons committed in default of bail.

[1987 c 202 § 145; Code 1881 § 2076; 1867 p 56 § 24; 1858 p 10 § 1; RRS § 10190.]

NOTES:
Intent -- 1987 c 202: See note following RCW 2.04.190.
Employment of prisoners: RCW 36.28.100.Working out fine: Chapter 10.82 RCW.

RCW 10.88.310
Confinement of prisoner.

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping: PROVIDED, HOWEVER, That such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

[1971 ex.s. c 46 § 12.]

RCW 10.98.130
Local jail reports.

Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release.

The office of financial management may contract with a state or local governmental agency, or combination thereof, or a private organization for the information collection and transmittal under this section.

[1988 c 152 § 1; 1987 c 462 § 3; 1984 c 17 § 13.]

NOTES:
Effective dates -- 1987 c 462: See note following RCW 13.04.116.

RCW 13.04.116
Juvenile not to be confined in jail or holding facility for adults, exceptions -- Enforcement.

(1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen

years who has not been transferred previously to adult courts.

(3) The department of social and health services shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles.

[1987 c 462 § 1; 1985 c 50 § 1.]

NOTES:
Effective dates -- 1987 c 462: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Sections 15 and 21 of this act shall take effect immediately. Sections 1 through 11 and sections 16, 17, 22 and 23 of this act shall take effect January 1, 1988." [1987 c 462 § 24.]
Places of detention: Chapter 13.16 RCW.Transfer of juvenile to department of corrections facility: RCW 13.40.280.

RCW 36.28A.040
Statewide city and county jail booking and reporting system -- Standards committee.

(1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system shall be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and

(vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5) By January 1, 2001, the standards committee shall complete the initial standards described in subsection (4) of this section, and the standards shall be placed into a report and provided to all Washington state city and county jails, all other criminal justice agencies as defined in RCW 10.97.030, the chair of the Washington state senate human services and corrections committee, and the chair of the Washington state house of representatives criminal justice and corrections committee.

[2001 c 169 § 3; 2000 c 3 § 1.]

NOTES:
Contingent expiration date -- 2000 c 3: "If the Washington association of sheriffs and police chiefs does not receive federal funding for purposes of this act by December 31, 2000, this act is null and void." [2000 c 3 § 4.] According to the Washington association of sheriffs and police chiefs, federal funding for the purposes of chapter 3, Laws of 2000, was received by December 31, 2000.

RCW 36.28A.050
Statewide city and county jail booking and reporting system -- Grant fund.

(1) The Washington association of sheriffs and police chiefs shall establish and manage a local jail booking system grant fund. All federal or state money collected to offset the costs associated with RCW 36.28A.040(2) shall be processed through the grant fund established by this section. The statewide jail booking and reporting system standards committee established under RCW 36.28A.040(4) shall distribute the grants in accordance with any standards it develops.

(2) The Washington association of sheriffs and police chiefs shall pursue federal funding to be placed into the local jail booking system grant fund.

[2000 c 3 § 2.]

NOTES:
Contingent expiration date -- 2000 c 3: See note following RCW 36.28A.040.

Jail Industries Program

RCW 36.110.010
Finding -- Purpose, intent.

Cities and counties have a significant interest in ensuring that inmates in their jails are productive citizens after their release in the community. The legislature finds that there is an expressed need for cities and counties to uniformly develop and coordinate jail industries technical information and program and public safety standards statewide. It further finds that meaningful jail work industries programs that are linked to formal education and adult literacy training can significantly reduce recidivism, the rising costs of corrections, and criminal activities. It is the purpose and intent of the legislature, through this chapter, to establish a statewide jail industries program designed to promote inmate rehabilitation through meaningful work experience and reduce the costs of incarceration. The legislature recognizes that inmates should have the responsibility for contributing to the cost of their crime through the wages earned while working in jail industries programs and that such income shall be used to offset the costs of implementing and maintaining local jail industries programs and the costs of incarceration.

[1993 c 285 § 1.]

RCW 36.110.020
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the statewide jail industries board of directors.

(2) "City" means any city, town, or code city.

(3) "Cost accounting center" means a specific industry program operated under the private sector prison industry enhancement certification program as specified in 18 U.S.C. Sec. 1761.

(4) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior, district, or municipal court of the state of Washington for payment of restitution to a victim, a statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court appointed attorneys' fees and costs of defense, fines, and other legal financial obligations that are assessed as a result of a felony or misdemeanor conviction.

(5) "Free venture employer model industries" means an agreement between a city or county and a private sector business or industry or nonprofit organization to produce goods or services to both public and private sectors utilizing jail inmates whose compensation and supervision are provided by the private sector business or entity.

"Free venture customer model industries" means an agreement between a city or county and a private sector business or industry, or nonprofit organization to provide Washington state manufacturers or businesses with products or services currently produced, provided, or assembled by out-of-state or foreign suppliers utilizing jail inmates whose compensation and supervision are provided by the incarcerating facility or local jurisdiction.

(6) "Jail inmate" means a preconviction or postconviction resident of a city or county jail who is determined to be eligible to participate in jail inmate work programs according to the eligibility criteria of the work program.

(7) "Private sector prison industry enhancement certification program" means that program authorized by the United States justice assistance act of 1984, 18 U.S.C. Sec. 1761.

(8) "Tax reduction industries" means those industries as designated by a city or county owning and operating such an industry to provide work training and employment opportunities for jail inmates, in total confinement, which reduce public support costs. The goods and services of these industries may be sold to public agencies, nonprofit organizations, and private contractors when the goods purchased will be ultimately used by a public agency or nonprofit organization. Surplus goods from these operations may be donated to government and nonprofit organizations.

[1995 c 154 § 1; 1993 c 285 § 2.]

RCW 36.110.030
Board of directors established -- Membership.

A statewide jail industries board of directors is established. The board shall consist of the following members:

(1) One sheriff and one police chief, to be selected by the Washington association of sheriffs and police chiefs;

(2) One county commissioner or one county councilmember to be selected by the Washington state association of counties;

(3) One city official to be selected by the association of Washington cities;

(4) Two jail administrators to be selected by the Washington state jail association, one of whom shall be from a county or a city with an established jail industries program;

(5) One prosecuting attorney to be selected by the Washington association of prosecuting attorneys;

(6) One administrator from a city or county corrections department to be selected by the Washington correctional association;

(7) One county clerk to be selected by the Washington association of county clerks;

(8) Three representatives from labor to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide labor organizations representing a cross-section of trade organizations;

(9) Three representatives from business to be selected by the governor. The representatives may be chosen from a list of nominations provided by statewide business organizations representing a cross-section of businesses, industries, and all sizes of employers;

(10) The governor's representative from the employment security department;

(11) One member representing crime victims, to be selected by the governor;

(12) One member representing on-line law enforcement officers, to be selected by the governor;

(13) One member from the department of community, trade, and economic development to be selected by the governor;

(14) One member representing higher education, vocational education, or adult basic education to be selected by the governor; and

(15) The governor's representative from the correctional industries division of the state department of corrections shall be an ex officio member for the purpose of coordination and cooperation between prison and jail industries and to further a positive relationship between state and local government offender programs.

[1995 c 399 § 45; 1993 c 285 § 3.]

(there is no .040. BC)

RCW 36.110.050
Local advisory groups.

The board shall require a city or a county that establishes a jail industries program to develop a local advisory group, or to use an existing advisory group of the appropriate composition, to advise and guide jail industries program operations. Such an advisory group shall include an equal number of representatives from labor and business. Representation from a sheltered workshop, as defined in RCW 82.04.385, and a crime victim advocacy group, if existing in the local area, should also be included.

A local advisory group shall have among its tasks the responsibility of ensuring that a jail industry has minimal negative impact on existing private industries or the labor force in the locale where the industry operates and that a jail industry does not negatively affect employment opportunities for people with developmental disabilities contracted through the operation of sheltered workshops as defined in RCW 82.04.385. In the event a conflict arises between the local business community or labor organizations concerning new jail industries programs, products, services, or wages, the city or county must use the arbitration process established pursuant to RCW 36.110.060.

[1993 c 285 § 5.]

RCW 36.110.060
Board of directors -- Duties.

The board, in accordance with chapter 34.05 RCW, shall:

(1) Establish an arbitration process for resolving conflicts arising among the local business community and labor organizations concerning new industries programs, products, services, or wages;

(2) Encourage the development of the collection and analysis of jail industries program data, including long-term tracking information on offender recidivism;

(3) Determine, by applying established federal guidelines and criteria, whether a city or a county jail free venture industries program complies with the private sector prison industry enhancement certification program. In so doing, also determine if that industry should be designated as a cost accounting center for the purposes of the federal certification program; and

(4) Provide technical assistance with product marketing.

[1993 c 285 § 6.]

RCW 36.110.070
Board of directors may receive funds, establish fee schedule.

The board may receive funds from local, county, state, or federal sources and may receive grants to support its activities. The board may establish a reasonable schedule of suggested fees that will support statewide efforts to promote and facilitate jail industries that would be presented to cities and

counties that have established jail industries programs.

[1993 c 285 § 7.]

RCW 36.110.080
Board of directors -- Meetings -- Terms -- Compensation.

The board shall initially convene at the call of the representative of the correctional industries division of the state department of corrections, together with the jail administrator selected from a city or a county with an established jail industries program, no later than six months after July 25, 1993. Subsequent meetings of the board shall be at the call of the board chairperson. The board shall meet at least twice a year.

The board shall elect a chairperson and other such officers as it deems appropriate. However, the chairperson may not be the representative of the correctional industries division of the state department of corrections nor any representative from a state executive branch agency.

Members of the board shall serve terms of three years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

The members of the board shall serve without compensation but may be reimbursed for travel expenses from funds acquired under this chapter.

[1993 c 285 § 8.]

RCW 36.110.085
Board of directors -- Immunity.

Any member serving in their official capacity on the Washington state jail industries board, in either an appointed or advisory capacity, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith.

[1995 c 154 § 5.]

RCW 36.110.090
City or county special revenue funds.

A city or a county that implements a jail industries program may establish a separate fund for the operation of the program. This fund shall be a special revenue fund with continuing authority to receive income and pay expenses associated with the jail industries program.

[1993 c 285 § 9.]

RCW 36.110.100
Comprehensive work programs.

Cities and counties participating in jail industries are authorized to provide for comprehensive work programs using jail inmate workers at worksites within jail facilities or at such places within the city or county as may be directed by the legislative authority of the city or county, as similarly provided under RCW 36.28.100.

[1993 c 285 § 10.]

RCW 36.110.110
Deductions from offenders' earnings.

When an offender is employed in a jail industries program for which pay is allowed, deductions may be made from these earnings for court-ordered legal financial obligations as directed by the court in reasonable amounts that do not unduly discourage the incentive to work. These deductions shall be disbursed as directed in *RCW 9.94A.760.

In addition, inmates working in jail industries programs shall contribute toward costs to develop, implement, and operate jail industries programs. This amount shall be a reasonable amount that does not unduly discourage the incentive to work. The amount so deducted shall be deposited in the jail industries special revenue fund.

Upon request of the offender, family support may also be deducted and disbursed to a designated family member.

[1993 c 285 § 11.]

NOTES:
***Reviser's note:** This RCW reference has been corrected to reflect the reorganization of chapter 9.94A RCW by 2001 c 10 § 6.

RCW 36.110.120
Free venture industries, tax reduction industries -- Employment status of inmates -- Insurance coverage.

(1) A jail inmate who works in a free venture industry or a tax reduction industry shall be considered an employee of that industry only for the purpose of the Washington industrial safety and health act, chapter 49.17 RCW, as long as the public safety is not compromised, and for eligibility for industrial insurance benefits under Title 51 RCW, as provided in this section.

(2) For jail inmates participating in free venture employer model industries, the private sector business or industry or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW. Local jurisdictions shall not be responsible for obligations under Title 51 RCW in a free venture employer model industry except as provided in RCW 36.110.130.

(3) For jail inmates participating in free venture customer model industries, the incarcerating entity or jurisdiction, the private sector business or industry, or the nonprofit organization that is party to the agreement, shall provide industrial insurance coverage under Title 51 RCW dependent upon how the parties to the agreement choose to finalize the agreement.

(4) For jail inmates incarcerated and participating in tax reduction industries:

(a) Local jurisdictions that are self-insured may elect to provide medical aid benefits coverage only under chapter 51.36 RCW through the state fund.

(b) Local jurisdictions, to include self-insured jurisdictions, may elect to provide industrial insurance coverage under Title 51 RCW through the state fund.

(5) If industrial insurance coverage under Title 51 RCW is provided for inmates under this section, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary total disability or permanent total disability under RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any jail inmate who is not employed in a free venture industry or a tax reduction industry.

[1995 c 154 § 2; 1993 c 285 § 12.]

RCW 36.110.130
Free venture industry agreements -- Effect of failure.

In the event of a failure such as a bankruptcy or dissolution, of a private sector business, industry, or nonprofit organization engaged in a free venture industry agreement, responsibility for obligations under Title 51 RCW shall be borne by the city or county responsible for establishment of the free venture industry agreement, as if the city or county had been the employing agency. To ensure that this obligation can be clearly identified and accomplished, and to provide accountability for purposes of the department of labor and industries, a free venture jail industry agreement entered into by a city or county and private sector business, industry, or nonprofit organization should be filed under a separate master business application, establishing a new and separate account with the department of labor and industries, and not be reported under an existing account for parties to the agreement.

[1995 c 154 § 3; 1993 c 285 § 13.]

RCW 36.110.140
Education and training.

To the extent possible, jail industries programs shall be augmented by education and training to improve worker literacy and employability skills. Such education and training may include, but is not limited to, basic adult education, work towards a certificate of educational competence following successful completion of the general educational development test, vocational and preemployment work maturity skills training, and apprenticeship classes.

[1993 c 285 § 14.]

RCW 36.110.150
Department of corrections to provide staff assistance.

Until sufficient funding is secured by the board to adequately provide staffing, basic staff assistance shall be provided, to the extent possible, by the department of corrections.

[1993 c 285 § 15.]

RCW 36.110.160
Technical training assistance.

Technical training assistance shall be provided to local jurisdictions by the board at the jurisdiction's request. To facilitate and promote the development of local jail industries programs, this training and technical assistance may include the following: (1) Delivery of statewide jail industry implementation workshops for administrators of jail industries programs; (2) development of recruitment and education programs for local business and labor to gain their participation; (3) ongoing staff assistance regarding local jail industries issues, such as sound business management skills, development of a professional business plan, responding to questions regarding risk management, industrial insurance, and similar matters; and (4) provision of guidelines and assistance for the coordination of basic educational programs and jail industries as well as other technical skills required by local jails in the implementation of safe, productive, and effective jail industries programs.

[1995 c 154 § 4.]

RCW 36.110.900
Severability -- 1993 c 285.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1993 c 285 § 17.]

RCW 39.34.180
Criminal justice responsibilities -- Interlocal agreements -- Termination.

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998.

[2001 c 68 § 4; 1996 c 308 § 1.]

NOTES:

Effective date -- 1996 c 308: "This act shall take effect January 1, 1997." [1996 c 308 § 2.]

Chapter 70.24 RCW
CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES
(Formerly Control and treatment of venereal diseases)

RCW SECTIONS

Regional plans -- University of Washington, center for AIDS education.
70.24.410 AIDS advisory committee -- Duties, review of insurance problems -- Termination.
70.24.420 Additional local funding of treatment programs not required.
70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.
70.24.450 Confidentiality -- Reports -- Unauthorized disclosures.
70.24.900 Severability -- 1988 c 206.
NOTES:
Center for volunteerism and citizen service: RCW 43.150.050.

RCW 70.24.107
Rule-making authority -- 1997 c 345.

The department of health and the department of corrections shall each adopt rules to implement chapter 345, Laws of 1997. The department of health and the department of corrections shall cooperate with local jail administrators to obtain the information from local jail administrators that is necessary to comply with this section.

[1999 c 372 § 14; 1997 c 345 § 6.]

NOTES:
Findings -- Intent -- 1997 c 345: See note following RCW 70.24.105.

RCW 70.24.070
Detention and treatment facilities.

For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions.

[1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

RCW 70.24.340
Convicted persons -- Mandatory testing and counseling for certain offenses -- Employees' substantial exposure to bodily fluids -- Procedure and court orders.

(1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court.

[1997 c 345 § 3; 1988 c 206 § 703.]

NOTES:
Findings -- Intent -- 1997 c 345: See note following RCW 70.24.105.

RCW 70.24.360
Jail detainees -- Testing and counseling of persons who present a possible risk.

Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing, and posttest counseling for persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a possible risk to the staff, general public, or other persons. Approval of the local public health officer shall be based on RCW 70.24.024(3) and may be contested through RCW 70.24.024(4). The administrator shall establish, pursuant to RCW 70.48.071, a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the board in rule. Documentation of the behavior, or threat thereof, shall be reviewed with the person to try to assure that the person understands the basis for testing.

[1988 c 206 § 706.]

Chapter 70.48 RCW
CITY AND COUNTY JAILS ACT

RCW SECTIONS

70.48.020 Definitions.
70.48.060 Capital construction -- Financial assistance -- Rules -- Oversight -- Cost estimates.
70.48.071 Standards for operation -- Adoption by units of local government.
70.48.090 Interlocal contracts for jail services -- Responsibility for operation of jail -- Departments of corrections authorized.
70.48.095 Regional jails.
70.48.100 Jail register, open to the public -- Records confidential -- Exception.
70.48.130 Emergency or necessary medical and health care for confined persons -- Reimbursement procedures -- Conditions -- Limitations.
70.48.140 Confinement pursuant to authority of the United States.
70.48.160 Post-approval limitation on funding.
70.48.170 Short title.
70.48.180 Authority to locate and operate jail facilities -- Counties.
70.48.190 Authority to locate and operate jail facilities -- Cities and towns.
70.48.210 Farms, camps, work release programs, and special detention facilities.
70.48.220 Confinement may be wherever jail services are contracted -- Defendant contact with defense counsel.
70.48.230 Transportation and temporary confinement of prisoners.
70.48.240 Transfer of felons from jail to state institution -- Time limit.
70.48.270 Disposition of proceeds from sale of bonds.
70.48.280 Proceeds of bond sale -- Deposits -- Administration.
70.48.310 Jail renovation bond retirement fund -- Debt-limit general fund bond retirement account.
70.48.320 Bonds legal investments for public funds.

70.48.380 Special detention facilities -- Fees for cost of housing.
70.48.390 Fee payable by person being booked.
70.48.400 Sentences to be served in state institutions -- When -- Sentences that may be served in jail -- Financial responsibility of city or county.
70.48.410 Financial responsibility for convicted felons.
70.48.420 Financial responsibility for persons detained on parole hold.
70.48.430 Financial responsibility for work release inmates detained in jail.
70.48.440 Office of financial management to establish reimbursement rate for cities and counties -- Rate until June 30, 1985 -- Re-establishment of rates.
70.48.450 Local jail reporting form -- Information to be provided by city or county requesting payment for prisoners from state.
70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450.
70.48.470 Sex, kidnapping offenders -- Notices to offenders, law enforcement officials.
70.48.480 Communicable disease prevention guidelines.

70.48.010 Legislative declaration. [1977 ex.s. c 316 § 1.]
Repealed by 1987 c 462 § 23, effective January 1, 1988.

RCW 70.48.020
Definitions.

As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(5) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(6) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(7) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(8) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(9) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(10) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(11) "Office" means the office of financial management.

[1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

NOTES:
Effective dates -- 1987 c 462: See note following RCW 13.04.116.
Legislative finding, intent -- Effective dates -- Severability -- 1983 c 165: See notes following RCW 46.20.308.
Effective date -- 1981 c 136: See RCW 72.09.900.
Severability -- 1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.]

70.48.030 State jail commission--Created--Composition--Qualifications--Vacancies--Meetings--Termination. [1979 ex.s. c 232 § 12; 1977 ex.s. c 316 § 3.] Repealed by 1986 c 118 § 18.

70.48.035 Corrections standards board to replace commission. [1981 c 136 § 24.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

70.48.040 Commission members--Travel expenses--Reimbursement. [1977 ex.s. c 316 § 4.] Repealed by 1986 c 118 § 18.

70.48.050 Board--Powers and duties. [1986 c 118 § 2; 1981 2nd ex.s. c 12 § 4; 1981 c 276 § 1; 1979 ex.s. c 232 § 13; 1977 ex.s. c 316 § 5.] Repealed by 1987 c 462 § 23, effective January 1, 1988.

70.48.060 Capital construction--Financial assistance--Rules--Oversight--Cost estimates. [1986 c 118 § 3; 1982 c 87 §1; 1979 ex.s. c 232 § 9; 1979 c 151 § 170; 1977 ex.s. c 316 § 6.] Repealed by 1987 c 462 § 23, effective January 1, 1988.

NOTES:
Reviser's note: RCW 70.48.060 was amended by 1987 c 505 §59 without reference to its repeal by 1987 c 462 § 23, effective January 1, 1988. It has been decodified for publication purposes under RCW 1.12.025.

70.48.061 Jail construction and remodeling funding program--Continuation--Expiration of section. [1987 c 462 § 16.] Expired July 1, 1990.

70.48.070 Jails--Compliance with chapter, rules, regulations, and standards directed--Variances. [1986 c 118 § 4; 1979 ex.s. c 232 § 14; 1979 c 147 § 2; 1977 ex.s. c 316 § 7.] Repealed by 1987 c 462 § 23, effective January 1, 1988.

RCW 70.48.071
Standards for operation -- Adoption by units of local government.

All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards.

[1987 c 462 § 17.]

NOTES:
Effective dates -- 1987 c 462: See note following RCW 13.04.116.

RCW 70.48.090
Interlocal contracts for jail services -- Responsibility for operation of jail -- Departments of corrections authorized.

(1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or

remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the *corrections standards board or office when it authorized disbursal of state funds for the remodeling or construction under **RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(3) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein.

[2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

NOTES:
Reviser's note: *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.
**(2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.
Effective dates -- 1987 c 462: See note following RCW 13.04.116.
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

RCW 70.48.095
Regional jails.

(1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090.

[2002 c 124 § 1.]

RCW 70.48.100
Jail register, open to the public -- Records confidential -- Exception.

(1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsection (3) of this section the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

(3)(a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated as provided in RCW

4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and **section 401, chapter 3, Laws of 1990.

[1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

NOTES:
Reviser's note: *(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.
**(2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.
Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.110 Costs of new construction or remodeling--Approval--Conditions--Board's duties--Payments. [1986 c 118 § 7;1977 ex.s. c 316 § 11.] Repealed by 1987 c 462 § 23, effective January 1, 1988.

70.48.120 Local jail improvement and construction account. [1987 c 462 § 8; 1986 c 118 § 8; 1981 c 276 § 2; 1977 ex.s. c 316 § 12.] Repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

RCW 70.48.130
Emergency or necessary medical and health care for confined persons -- Reimbursement procedures -- Conditions -- Limitations.

It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

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

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or

otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided.

[1993 c 409 § 1; 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

NOTES:
Effective date -- 1993 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 409 § 2.]
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

RCW 70.48.140
Confinement pursuant to authority of the United States.

A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required.

[1977 ex.s. c 316 § 14.]

NOTES:
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.150 Temporary committee--Created--Membership--Duties--Report to legislature. [1977 ex.s. c 316 § 15.] Repealed by 1986 c 118 § 18.

RCW 70.48.160
Post-approval limitation on funding.

Having received approval pursuant to *RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that instance, initially funded components do not constitute full funding within the meaning of *RCW 70.48.060(1) and **70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act.

[1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

NOTES:
Reviser's note: *(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.
**(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.
Effective dates -- 1987 c 462: See note following RCW 13.04.116.
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

RCW 70.48.170
Short title.

This chapter shall be known and may be cited as the City and County Jails Act.

[1977 ex.s. c 316 § 17.]

NOTES:
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

RCW 70.48.180
Authority to locate and operate jail facilities -- Counties.

Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional

facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder.

[1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

NOTES:
Legislative finding, intent -- Effective dates -- Severability -- 1983 c 165: See notes following RCW 46.20.308.

RCW 70.48.190
Authority to locate and operate jail facilities -- Cities and towns.

Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder.

[1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

NOTES:
Legislative finding, intent -- Effective dates -- Severability -- 1983 c 165: See notes following RCW 46.20.308.
Severability -- 1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.200 Planning jail facility capacity, funding. [1986 c 118 § 11; 1979 ex.s. c 232 § 10.] Repealed by 1987 c 462 § 23, effective January 1, 1988.

RCW 70.48.210
Farms, camps, work release programs, and special detention facilities.

(1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used

to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay.

[1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

NOTES:
Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.
Application -- 1989 c 248: See note following RCW 9.92.151.
Legislative finding, intent -- Effective dates -- Severability -- 1983 c 165: See notes following RCW 46.20.308.

RCW 70.48.220
Confinement may be wherever jail services are contracted -- Defendant contact with defense counsel.

A person confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

[2002 c 125 § 2; 1979 ex.s. c 232 § 19.]

RCW 70.48.230
Transportation and temporary confinement of prisoners.

The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board.

[1979 ex.s. c 232 § 18.]

RCW 70.48.240
Transfer of felons from jail to state institution -- Time limit.

A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in

accordance with the procedure prescribed under this chapter.

[1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

NOTES:
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

70.48.250 Legislative declaration. [1979 ex.s. c 232 § 1.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

70.48.260 General obligation bonds authorized for jail construction, improvement, and related costs. [1986 c 118 § 12;1980 c 143 § 1; 1979 ex.s. c 232 § 2.] Repealed by 1987 c 462 §22, effective January 1, 1988.

RCW 70.48.270
Disposition of proceeds from sale of bonds.

The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds.

[1979 ex.s. c 232 § 3.]

RCW 70.48.280
Proceeds of bond sale -- Deposits -- Administration.

The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the office subject to legislative appropriation.

[1987 c 462 § 10; 1986 c 118 § 13; 1979 ex.s. c 232 § 4.]

NOTES:
Effective dates -- 1987 c 462: See note following RCW 13.04.116.

70.48.290 Bonds--Terms and other particulars. [1979 ex.s.c 232 § 5.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

70.48.300 Anticipation notes. [1979 ex.s. c 232 § 6.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

RCW 70.48.310
Jail renovation bond retirement fund -- Debt-limit general fund bond retirement account.

The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the jail renovation bond retirement fund.

[1997 c 456 § 26; 1979 ex.s. c 232 § 7.]

NOTES:
Severability -- 1997 c 456: See RCW 43.99L.900.
Effective date -- 1997 c 456 §§ 9-43: See RCW 43.99M.901.

RCW 70.48.320 Bonds legal investments for public funds.

The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body.

[1979 ex.s. c 232 § 8.]

70.48.330 Jails to meet board standards--Exception. [1986 c 118 § 14; 1981 c 276 § 5.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

No current .340

70.48.350 Review and modification of jail standards--Legislative finding. [1981 2nd ex.s. c 12 § 1.] Expired June 30, 1984.

70.48.355 Review and modification of jail standards—Duty of commission. [1981 2nd ex.s. c 12 § 2.] Expired June 30, 1984.

70.48.360 Review and modification of jail standards—Repor tto legislature. [1981 2nd ex.s. c 12 § 3.] Expired June 30, 1984.

70.48.370 Special detention facilities--Mandatory custodialcare standards--Restrictions. [1983 c 165 § 35.] Repealed by 1987 c 462 § 22, effective January 1, 1988.

RCW 70.48.380
Special detention facilities -- Fees for cost of housing.

The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay.

[1983 c 165 § 36.]

NOTES:
Legislative finding, intent -- Effective dates -- Severability -- 1983 c 165: See notes following RCW 46.20.308.

RCW 70.48.390
Fee payable by person being booked.

A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records.

[2003 c 99 § 1; 1999 c 325 § 3.]

RCW 70.48.400
Sentences to be served in state institutions -- When -- Sentences that may be served in jail -- Financial responsibility of city or county.

Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county.

[1987 c 462 § 11; 1984 c 235 § 1.]

NOTES:
Effective dates -- 1987 c 462: See note following RCW 13.04.116.
Effective dates -- 1984 c 235: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 27, 1984]. The remainder of this act shall take effect July 1, 1984." [1984 c 235 § 10.]

RCW 70.48.410
Financial responsibility for convicted felons.

Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period

not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court.

[1984 c 235 § 2.]

NOTES:
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.420
Financial responsibility for persons detained on parole hold.

A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county.

[1984 c 235 § 3.]

NOTES:
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.430
Financial responsibility for work release inmates detained in jail.

Inmates, as defined by *RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections.

[1984 c 235 § 4.]

NOTES:
***Reviser's note:** RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.440
Office of financial management to establish reimbursement rate for cities and counties -- Rate until June 30, 1985 -- Re-establishment of rates.

The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the *corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall re-establish these rates each even-numbered year beginning in 1986.

[1984 c 235 § 5.]

NOTES:
***Reviser's note:** The corrections standards board no longer exists. See 1987 c 462 § 21.
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.450
Local jail reporting form -- Information to be provided by city or county requesting payment for prisoners from state.

The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections.

[1984 c 235 § 6.]

NOTES:
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.460
Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450.

Nothing in RCW 70.48.400 through 70.48.450 precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incarceration services of prisoners not covered by RCW 70.48.400 through 70.48.450.

[1984 c 235 § 7.]

NOTES:
Effective dates -- 1984 c 235: See note following RCW 70.48.400.

RCW 70.48.470
Sex, kidnapping offenders -- Notices to offenders, law enforcement officials.

(1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense as defined in RCW 9.94A.030 or a kidnapping offense as defined in RCW 9A.44.130 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or a person convicted of a kidnapping offense as defined in RCW 9A.44.130 under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside.

[2000 c 91 § 4. Prior: 1997 c 364 § 3; 1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

NOTES:
Severability -- 1997 c 364: See note following RCW 4.24.550.
Findings -- 1997 c 113: See note following RCW 4.24.550.
Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.

RCW 70.48.480
Communicable disease prevention guidelines.

(1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

[1997 c 345 § 5.]

NOTES:
Findings -- Intent -- 1997 c 345: See note following RCW 70.24.105.

RCW 72.01.415
Offender under eighteen confined to a jail -- Segregation from adult offenders.

An offender under the age of eighteen who is convicted in adult criminal court of a crime and who is committed for a term of confinement in a jail as defined in RCW 70.48.020, must be housed in a jail cell that does not contain adult offenders, until the offender reaches the age of eighteen.

[1997 c 338 § 42.]

NOTES:
Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.
Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

RCW 72.09.300
Local law and justice council, plan -- Rules -- Base level of services -- Juvenile justice services.

(1) Every county legislative authority shall by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council shall develop a local law and justice plan for the county. The council shall design the elements and scope of the plan, subject to final approval by the county legislative authority. The general intent of the plan shall include seeking means to maximize local resources including personnel and facilities, reduce duplication of services, and share resources between local and state government in order to accomplish local efficiencies without diminishing effectiveness. The plan shall also include a section on jail management. This section may include the following elements:

(a) A description of current jail conditions, including whether the jail is overcrowded;

(b) A description of potential alternatives to incarceration;

(c) A description of current jail resources;

(d) A description of the jail population as it presently exists and how it is projected to change in the future;

(e) A description of projected future resource requirements;

(f) A proposed action plan, which shall include recommendations to maximize resources, maximize the use of intermediate sanctions, minimize overcrowding, avoid duplication of services, and effectively manage the jail and the offender population;

(g) A list of proposed advisory jail standards and methods to effect periodic quality assurance inspections of the jail;

(h) A proposed plan to collect, synthesize, and disseminate technical information concerning local criminal justice activities, facilities, and procedures;

(i) A description of existing and potential services for offenders including employment services, substance abuse treatment, mental health services, and housing referral services.

(4) The council may propose other elements of the plan, which shall be subject to review and approval by the county legislative authority, prior to their inclusion into the plan.

(5) The county legislative authority may request technical assistance in developing or implementing the plan from other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(6) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(7) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to the department. The secretary may also appoint an advisory committee of local and state government officials to recommend policies and procedures relating to the state and local correctional systems and to assist the department in providing technical assistance to local governments. The committee shall include representatives of the county sheriffs, the police chiefs, the county prosecuting attorneys, the county and city legislative authorities, and the jail administrators. The secretary may contract with other state and local agencies and provide funding in order to provide the assistance requested by counties.

(8) The department shall establish a base level of state correctional services, which shall be determined and distributed in a consistent manner statewide. The

department's contributions to any local government, approved pursuant to this section, shall not operate to reduce this base level of services.

(9) The council shall establish an advisory committee on juvenile justice proportionality. The council shall appoint the county juvenile court administrator and at least five citizens as advisory committee members. The citizen advisory committee members shall be representative of the county's ethnic and geographic diversity. The advisory committee members shall serve two-year terms and may be reappointed. The duties of the advisory committee include:

(a) Monitoring and reporting to the sentencing guidelines commission on the proportionality, effectiveness, and cultural relevance of:

(i) The rehabilitative services offered by county and state institutions to juvenile offenders; and

(ii) The rehabilitative services offered in conjunction with diversions, deferred dispositions, community supervision, and parole;

(b) Reviewing citizen complaints regarding bias or disproportionality in that county's juvenile justice system;

(c) By September 1 of each year, beginning with 1995, submit to the sentencing guidelines commission a report summarizing the advisory committee's findings under (a) and (b) of this subsection.

[1996 c 232 § 7; 1994 sp.s. c 7 § 542; 1993 sp.s. c 21 § 8; 1991 c 363 § 148; 1987 c 312 § 3.]

NOTES:
Effective dates -- 1996 c 232: See note following RCW 9.94A.850.
Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.
Application -- 1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.
Effective dates -- 1993 sp.s. c 21: See note following RCW 82.14.310.
Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.
Purpose -- 1987 c 312 § 3: "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

RCW 72.64.100
Regional jail camps -- Authorized -- Purposes -- Rules.

The secretary [of DOC BC] is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility.

[1979 c 141 § 272; 1961 c 171 § 4.]

RCW 72.64.110
Contracts to furnish county prisoners confinement, care, and employment -- Reimbursement by county -- Sheriff's order -- Return of prisoner.

(1) The secretary may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanant in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp.

[1980 c 17 § 1. Prior: 1979 c 147 § 1; 1979 c 141 § 273; 1961 c 171 § 5.]