County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

December 24, 2024

Safety of Inmates

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Safety of Inmates

Reference Number: CTAS-1384

Under the common law the sheriff and his jailer have a duty to treat prisoners "kindly and humanely." *See State ex rel. Morris v. National Surety Co.,* 39 S.W.2d 581 (Tenn. 1931); *Hale v. Johnston,* 203 S.W. 949 (Tenn. 1918). *See also Wisconsin Dept. of Corrections v. Kliesmet*, 564 N.W.2d 742, 746 (Wis. 1997) (The duty of sheriffs to maintain a safe jail was recognized at common law.). Moreover, the sheriff has a constitutional duty to protect inmates from violence at the hands of other inmates and guards. "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200, 109 S.Ct. 998, 1005, 103 L.Ed.2d 249 (1989).

Facilities shall provide for regularly scheduled disposal of liquid, solid, and hazardous material complying with applicable government regulations. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(4).

Facilities shall provide for control of vermin and pests and shall remove inmates from treatment areas if there is a risk of illness. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(5).

Inmate housing and temporary holding area walls shall be kept clean and free of pictures or other objects which provide hiding places for vermin or create a fire hazard. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(6).

All walls, ceilings, floors, showers, and toilets shall be kept free from mold and mildew. Rules of the Tennessee Corrections Institute, Rule 1400-1-.09(7).

Employment of Guard

Reference Number: CTAS-1385

In all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant or the defendant's safekeeping requires a guard, it is the duty of the sheriff to employ a sufficient guard to protect the defendant from violence and to prevent the defendant's escape or rescue. T.C.A. § 41-4-118.

While the United States Constitution "does not mandate comfortable prisons," neither does it permit inhumane ones. *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811 (1994) *quoting Rhodes v. Chapman*, 452 U.S. 337, 349, 101 S.Ct. 2392, 2400, 69 L.Ed.2d 59 (1981). Under the Eighth Amendment's prohibition of "cruel and unusual punishments," prison officials must "take reasonable measures to guarantee the safety of the inmates." *Id*., *quoting Hudson v. Palmer*, 468 U.S. 517, 526-527, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984). They "have a duty ... to protect prisoners from violence at the hands of other prisoners." *Id*. at 833, *quoting Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir.), *cert. denied*, 488 U.S. 823, 109 S.Ct. 68, 102 L.Ed.2d 45 (1988). "It is not, however, every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials responsible for the victim's safety." *Farmer* at 834. *See Clark v. Corrections Corp. of America*, 98 Fed.Appx. 413 (6th Cir 2004) (In the prison context, the Eighth Amendment imposes a duty on prison officials to take reasonable measures to guarantee the safety of inmates. "[D]eliberate indifference of a constitutional magnitude may occur when prison guards fail to protect one inmate from an attack by another.") (citations omitted); *Dellis v. Corrections Corp. of America*, 257 F.3d 508 (6th Cir. 2001) (Prison officials have a duty to protect prisoners from violence suffered at the hands of other prisoners.) (citations omitted).

In *Buckner v. Hollins,* 983 F.2d 119, 122-123 (8th Cir.1993), the Eighth Circuit Court of Appeals held that a prison official was not entitled to qualified immunity when he allowed fellow corrections officers to attack a prisoner and he possessed the only set of keys to the prisoner's holding cell. The court concluded the official could be found liable because he deliberately ignored a prisoner's serious injury and failed to protect the prisoner from a foreseeable attack or otherwise guarantee the prisoner's safety. The court concluded the officer had a duty to intervene. And in *McHenry v. Chadwick,* 896 F.2d 184, 188 (6th Cir. 1990), the Sixth Circuit Court of Appeals held that a prison official has "a duty to try and stop another officer who summarily punishes a person in the first officer's presence." Accordingly, a correctional officer who observes an unlawful beating may be held liable without actively participating in the unlawful beating. *See also Walker v. Norris*, 917 F.2d 1449 (6th Cir. 1990) (prison guard's failure to prevent inmate's stabbing by another inmate violated inmate's Eighth Amendment rights where the guards had the opportunity to prevent the stabbing but failed to do so and instead looked on while the inmate was

attacked); *Roland v. Johnson*, 856 F.2d 764, 769-70 (6th Cir. 1988); *McGhee v. Foltz*, 852 F.2d 876, 880-81 (6th Cir. 1988).

Sufficient Jails

Reference Number: CTAS-1386

The sheriff has authority, when the jail of the county is insufficient for the safekeeping of a prisoner, to convey the prisoner to the nearest sufficient jail in the state. T.C.A. § 41-4-121(a). This authority is subject to the securing of a court order. *State v. Grey*, 602 S.W.2d 259 (Tenn. Crim. App. 1980). In all cases, also, where it is shown to the committing magistrate, judge or court that the jail of the county in which the commitment should be made is insufficient for the safekeeping of the prisoner, the commitment shall be by mittimus or warrant stating the fact to the nearest sufficient county jail. T.C.A. § 41-4-121(b). In all cases where the jail in which a prisoner is confined becomes insufficient from any cause, any circuit or criminal judge, upon application of the sheriff and proof of the fact, may order the prisoner, by mittimus or warrant, to be removed to the nearest sufficient jail. T.C.A. § 41-4-121(c).

In *Chisom v. State*, 539 S.W.2d 831, 833 (Tenn. Crim. App. 1976), the Court of Criminal Appeals held that the trial judge acted within his authority in ordering the removal of a convicted rapist, for safekeeping reasons, from the county jail to the state penitentiary pending his appeal. However, in *State v. Grey*, 602 S.W.2d 259 (Tenn. Crim. App. 1980), the court held that the statute providing authority for a criminal judge to order a prisoner to be removed to the nearest sufficient jail, upon proof that jail in which prisoner was confined was insufficient, did not justify an order transferring the defendant, who was being detained in a local jail prior to trial, to the state penitentiary for safekeeping upon finding that defendant was an escape risk. The court found that the term "jail" was not intended to include the state penitentiary, and there was no showing that there was no nearby jail sufficient to contain defendant safely.

Guard for Removal of Prisoner

Reference Number: CTAS-1387

The sheriff is authorized to employ as many as two guards, if necessary, in removing a prisoner under T.C.A. § 41-4-121, and they shall each be allowed for such services as are provided for similar services in conveying convicts to the penitentiary. T.C.A. § 41-4-122. On demand made immediately preceding or during the term at which the prisoner is triable, the prisoner must be delivered to the sheriff or deputy sheriff of the county from which the prisoner was sent. T.C.A. § 41-4-123. When the court orders the prisoner to be carried to the jail of another county for safekeeping for want of a sufficient jail in the county where the case is pending, it may make a reasonable allowance to the sheriff and necessary guard, including expenses for conveying the prisoner to the jail so ordered by the judge. T.C.A. § 41-4-124. If the court directs the sheriff to summon more than two guards in order to carry safely any prisoner charged with a crime from one county to another for trial or safekeeping, the commissioner of finance and administration shall allow such additional guards ordered by the court the same compensation that is allowed by law to the two guards, and give a warrant for the same to the sheriff. T.C.A. § 41-4-126. *See also* T.C.A. § 8-26-108.

The jailer in such case may prove costs in the circuit or criminal court of the county and obtain the certificate of the district attorney general of that court thereto. The clerk of the court shall forward the same to the court where the cause is pending to be taxed in the bill of costs. T.C.A. § 41-4-125.

Jail Crowding

Reference Number: CTAS-1388

The Tennessee Supreme Court has held that an "insufficient" jail under T.C.A. § 41-4-121 includes one that is so overcrowded that it violates the prisoner's rights under the Eighth Amendment to the United States Constitution. *State v. Walker*, 905 S.W.2d 554, 557 (Tenn. 1995).

> If a sheriff is of the opinion that he is being asked to house too many inmates at his facility, he can request the committing judge or any circuit or criminal judge to order prisoners removed to the nearest sufficient jail. Under T.C.A. § 41-4-121(c), the court may order such a transfer "[i]n all cases where the jail in which the prisoner is confined becomes insufficient from any cause ..." The population level is relevant to the determination of sufficiency, but is not conclusive as to this issue.
>
> With regard to the sheriff's legal obligations under the Eighth Amendment, it is important to bear in mind that insufficiency under the statute is not the same thing as unconstitutionality. The jail is not necessarily unconstitutionally overcrowded simply because it houses more inmates than its

> Tennessee Corrections Institute (TCI) capacity. *Feliciano v. Barcelo*, 497 F.Supp. 14, 35 (D.P.R.1979). TCI and American Correctional Association (ACA) standards do not establish the constitutional standard. *Grubbs v. Bradley*, 552 F.Supp. 1052, 1124 (M.D. Tenn. 1982). Overcrowding is not a per se constitutional violation. *Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981).

Op. Tenn. Atty. Gen. 89-65 (April 28, 1989). *See also* Op. Tenn. Atty. Gen. 02-015 (February 6, 2002) (This office has maintained "that insufficiency under the statute is not the same thing as unconstitutionality. The jail is not necessarily unconstitutionally overcrowded simply because it houses more inmates than its Tennessee Corrections Institute (TCI) capacity.").

"It is ... beyond dispute that county officials have a duty to maintain their jails to minimize the risks resulting from overcrowding, *i.e.*, conflicts among and injury to those individuals incarcerated in the jail, lest they violate the prisoners' constitutional rights (and subject themselves to liability under 42 U.S.C. § 1983.)." *Patrick v. Jasper County*, 901 F.2d 561, 569, n. 16 (7th Cir. 1990), *citing Carver v. Knox County*, 887 F.2d 1287 (6th Cir. 1989); *Union County Jail Inmates v. DiBuono,* 713 F.2d 984 (3d Cir. 1983), *cert. denied*, 465 U.S. 1102, 104 S.Ct. 1600, 80 L.Ed.2d 130 (1984).

However, overcrowding is not a *per se* constitutional violation. *Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). A claim alleging that the "overall conditions" of confinement are inadequate cannot give rise to an Eighth Amendment violation when no specific deprivation of a single human need exists. *Wilson v. Seiter*, 501 U.S. 294, 305, 111 S.Ct. 2321, 2327, 115 L.Ed.2d 271 (1991) ("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.").

In *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), the Supreme Court held that "double-bunking" pretrial detainees in cells that have a total floor space of approximately 75 square feet did not violate the pretrial detainees' due process rights. "[W]e are convinced as a matter of law that 'double-bunking' as practiced at the MCC did not amount to punishment and did not, therefore, violate respondents' rights under the Due Process Clause of the Fifth Amendment." *Id*. at 541, 99 S.Ct. at 1875. In *Bell*, the Court noted that the respondents' "reliance on other lower court decisions concerning minimum space requirements for different institutions and on correctional standards issued by various groups was misplaced." *Id*. at 543, n. 27, 99 S.Ct. at 1876, n. 27. The Court stated that "while the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question." *Id*.

In *Rhodes v. Chapman*, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981), the United States Supreme Court considered whether double-bunking inmates in 63 square foot cells was cruel and unusual punishment in violation of the Eighth Amendment. The Supreme Court found no Eighth Amendment violation.

The court found that the double-celling made necessary by an unanticipated increase in the prison population (38 percent over design capacity) did not lead to deprivations of essential food, medical care, or sanitation. The court found no evidence that double-celling under the circumstances of the case either inflicted unnecessary or wanton pain or was grossly disproportionate to the severity of crimes warranting imprisonment. The court noted that the Constitution does not mandate comfortable prisons. *Id*. at 348, 101 S.Ct. at 2400.

In finding a constitutional violation, the lower court had relied on, among other considerations, square footage standards promulgated by the American Correctional Association (60-80 square feet); the National Sheriffs' Association (70-80 square feet); and the National Council on Crime and Delinquency (50 square feet). The Supreme Court stated that the lower court had "erred in assuming that opinions of experts as to desirable prison conditions suffice to establish contemporary standards of decency." As the court noted in *Bell v. Wolfish*, such opinions may be helpful and relevant with respect to some questions, but "they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question." *Id*. at 350, n. 13, 101 S.Ct. at 2401, n. 13, *citing Bell v. Wolfish*, 441 U.S. 520, 543-544, n. 27, 99 S.Ct. 1861, 1876, n. 27, 60 L.Ed.2d 447 (1979).

In *Stevenson v. Whetsel*, 52 Fed.Appx. 444 (10th Cir. 2002), the Tenth Circuit Court of Appeals held that the county's placement of three pretrial detainees in a jail cell designed for two did not violate the detainee's due process rights. The court held that the detainee could not recover damages for injuries allegedly sustained due to prison overcrowding absent a showing that the overcrowding resulted in the denial of the minimal civilized measure of life's necessities, or that prison officials were aware that overcrowding created excessive risks to inmate safety.

> [O]vercrowding alone is not "sufficiently serious" to establish a constitutional violation. Stevenson has not demonstrated that placing three inmates in a cell designed for two denied him the minimal

> civilized measure of life's necessities. He has not alleged that the situation led to "deprivations of essential food, medical care, or sanitation." Nor has he alleged facts allowing an inference that conditions rose to the level of "conditions posing a substantial risk of serious harm."

Id. at 446. *See also Kennibrew v. Russell*, 578 F.Supp. 164, 168 (E.D. Tenn. 1983) (The United States Supreme Court has held that double-celling of prison inmates in cells containing 63 square feet of floor space (31.5 square feet per inmate) does not constitute cruel and unusual punishment.).

"The constitutional standard on overcrowding cannot be expressed in a square footage formula. Rather, whether a particular institution is unconstitutionally overcrowded depends on a number of factors including the size of the inmate's living space, the length of time the inmate spends in his cell each day, the length of time of his incarceration, his opportunity for exercise and his general sanitary and living conditions." *Carver v. Knox County*, 753 F.Supp. 1398, 1401 (E.D. Tenn. 1990) (citations omitted). The correct legal standard recognizes that the issue is not overcrowding *per se*, rather, it is *unconstitutional* overcrowding. In other words, a prison facility is not unconstitutional simply because it is overcrowded. In order to ascertain whether a particular facility is unconstitutionally overcrowded, the court must review "...a number of factors including the size of the inmates' living space, the length of time the inmate spends in his cell each day, the length of time of his incarceration, his opportunity for exercise and his general sanitary and living conditions...". *Id*. However, even though the court is required to consider all of the prison's conditions and circumstances in evaluating the sentenced inmates' Eighth Amendment claims, the court must find a specific condition on which to base an Eighth Amendment claim, *i.e.*, it must amount to a deprivation of "life's necessities." *Id*. at 1400 (citations omitted).

See Roberts v. Tennessee Dept. of Correction, 887 F.2d 1281 (6th Cir. 1989) and *Carver v. Knox County*, 887 F.2d 1287 (6th Cir. 1989), for cases dealing with the court ordered removal of state inmates from county jails.

Fire Safety

Reference Number: CTAS-1389

If the jail is not fireproof and any person is confined in the jail, it is the duty of the sheriff to be constantly at the jail or to constantly have a jailer at the jail with all the keys necessary to liberate all the prisoners in the jail in case of fire. T.C.A. § 41-4-112. Facilities shall have a written and graphic evacuation plan posted in the housing area, as well as any other specified locations. The plan shall be approved by a contractor or local fire inspector trained in the application of fire safety codes and shall be reviewed annually. Rules of the Tennessee Corrections Institute, Rule 1400-1-.05(7). Facilities shall maintain a written policy and procedure to provide for fire drills every three months for all staff members on every shift and document dates of said drills. Rules of the Tennessee Corrections Institute, Rule 1400-1-.05(5).

Courts have held that adequate shelter must include adequate provisions for fire safety**.** *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122-1123 (M.D. Tenn. 1982) *citing Leeds v. Watson,* 630 F.2d 674, 675-76 (9th Cir.1980); *Ruiz v. Estelle,* 503 F.Supp. 1265, 1383 (S.D. Tex. 1980), *aff'd in part, rev'd in part and remanded,* 679 F.2d 1115 (1982); *Gates v. Collier,* 349 F.Supp. 881, 888 (N.D. Miss. 1972), *aff'd,* 501 F.2d 1291 (5th Cir. 1974).

Inmates "have the right not to be subjected to the unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief from such conditions." *Jones v. City and County of San Francisco*, 976 F.Supp. 896, 908 (N.D. Cal. 1997) (finding that county failed to reasonably respond to fire safety risks in the jail and holding that the risks constituted punishment in violation of pretrial detainees' 14th Amendment rights) *citing Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985). *See also Nicholson v. Choctaw County*, 498 F.Supp. 295, 308 (S.D. Ala. 1980) (County officials' failure to correct the fire safety violations as ordered by the state fire marshal violated inmates' Eighth and 14th Amendment rights.); *Dawson v. Kendrick*, 527 F.Supp. 1252, 1289-1290 (S.D. W.Va. 1981) ("Prisoners likewise have the right not to be subjected to the unreasonable threat of injury or death by fire. Prisoners need not wait until they are actually injured by an assault or a fire in order to obtain relief from such conditions.") (citations omitted).

Pursuant to T.C.A. § 68-102-130, the state fire marshal may at all hours enter the county jail for the purpose of making an inspection or investigation. The State Fire Marshal's Office will inspect a county jail upon the written complaint of any citizen or whenever the state fire marshal or his or her deputies or assistants deem it necessary. T.C.A. § 68-102-116. The officer shall order remedies to be made if the officer finds that the jail is especially liable to fire or is in a dangerous or defective condition and is situated so as to endanger life or property due to:

1. A lack of repairs;
2. A lack of sufficient fire escapes;

3. A lack of automatic or other fire alarm apparatus;
4. A lack of fire-extinguishing equipment;
5. Age or dilapidated condition; or
6. Any other cause.

If the officer finds any combustible or explosive matter or inflammable conditions dangerous to the safety of the jail, the officer shall order the same removed. Such orders must be immediately complied with by the county. T.C.A. § 68-102-117(a)(1). If compliance with such order is not expedient and does not permanently remedy the condition, after giving written notice, then the officer has the authority to issue a citation for the violation, requiring the person found to be responsible for the dangerous or defective conditions to appear in court at a specified date and time. T.C.A. § 68-102-117(a)(2). (NOTE: It is the duty of the county legislative body to keep the jail in order and repair. T.C.A. §§ 5-7-104 and 5-7-106.) If the person cited fails to appear in court on the date and time specified, the court shall issue a bench warrant for such person's arrest. T.C.A. § 68-102-117(a)(4).
