County Technical Assistance Service
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Pretrial Detainees

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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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Pretrial Detainees

Reference Number: CTAS-1391

"Requiring a pretrial detainee to work or be placed in administrative segregation is punishment. Requiring a pretrial detainee to perform general housekeeping chores, on the other hand, is not." *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992), *cert. denied*, 507 U.S. 1009, 113 S.Ct. 1658, 123 L.Ed.2d 277 (1993). *See also Channer v. Hall*, 112 F.3d 214, 218-19 (5th Cir. 1997) (recognizing the existence of a judicially created "housekeeping-chore" exception to the prohibition against involuntary servitude). The Rules of the Tennessee Corrections Institute, Rule 1400-1-.12(9) state that written policy shall provide that pretrial detainees shall not be required to work, except to do personal housekeeping.

"[T]he pretrial detainee, who has yet to be adjudicated guilty of any crime, may not be subjected to *any* form of 'punishment.' But not every inconvenience encountered during pre-trial detention amounts to 'punishment' in the constitutional sense. To establish that a particular condition or restriction of his confinement is constitutionally impermissible 'punishment,' the pretrial detainee must show either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate non-punitive governmental objective, in which case an intent to punish may be inferred." *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988) (citations omitted).

The Fourth Circuit Court of Appeals has held that requiring pretrial detainees to perform "general housekeeping responsibilities" does not violate the 13th Amendment. *Hause v. Vaught,* 993 F.2d 1079, 1085 (4th Cir. 1993) (requiring pretrial detainee to participate in cleaning cell block was not inherently punitive and was related to legitimate governmental objective of prison cleanliness, and was not in violation of detainee's right not to be punished prior to conviction for some crime). *See also Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (Inmate's status as pretrial detainee does not necessarily mean that he cannot be compelled to perform some service in the prison.).

In *Bijeol v. Nelson*, 579 F.2d 423, 424 (7th Cir. 1978), the Seventh Circuit Court of Appeals held that a pretrial detainee may constitutionally be compelled to perform simple housekeeping tasks in his or her own cell and community areas.

> A pretrial detainee has no constitutional right to order from a menu or have maid service. Daily general housekeeping responsibilities are not punitive in nature and for health and safety must be routinely observed in any multiple living unit. In this case, the affidavit of a unit manager at the Metropolitan Correctional Center stated that the approximate daily time required for the assigned housekeeping chores was between 45 and 120 minutes, that the assignments were rotated weekly, and that inmates were required to clean up areas which became unusually messy prior to the regularly scheduled cleaning (in this case Bijeol was requested to clean up some cigarette butts outside the door to his room and adjacent to the television room). The arrangement seems as fair and equitable as is possible when you have groups of people living together, some of whom may tend to be neater than others.

Id. "The work must not be overly burdensome in the time or labor required. In addition, such work must not be assigned so as to preclude a pretrial detainee from effectively participating in his or her defense to pending criminal charges." *Id*. at 425.

In Ford v. Nassau County Executive, 41 F.Supp.2d 392 (E.D. N.Y. 1999) the district court found that requiring a pretrial detainee to work without payment as a food cart worker did not deprive the detainee of liberty without due process of law.

> Ford's being required to distribute food cannot, by itself, be considered punishment. The work involved, helping to feed other inmates, is clearly the type that may be classified as serving a legitimate government purpose. Furthermore, as Ford himself testified, he was rewarded for his assistance by being given extra food. Compensation, even minimal compensation, is not in keeping with an intent to punish. Moreover, the kinds of chores Ford did, handing out food, mopping and sweeping, more closely resemble those that have been held to be allowable reasonable "housekeeping duties" than those held to be forced labor.

Id. at 397.

> It is important to add that certain types of required labor might indicate an intent to punish and, therefore, would constitute a interference with the liberty interest under Bell v. Wolfish. While help with the "chores" around the detention center is a reasonable requirement of those who live there, tasks which carry with them demeaning connotations might amount to punishment-for instance, requiring a detainee to clean a toilet with a toothbrush. Alternatively, even non-demeaning tasks may be unduly strenuous for a particular detainee and, therefore, exceed what is acceptable.

> Although this type of case-by-case review may appear to force courts to engage in unwarranted supervision of prison institutions, in fact, it should be fairly obvious to any professional warden what are acceptable "chores" and what are not. Here, there is no evidence that Ford's chores, despite his medical status, were overly burdensome to him. Under any standard, the tasks assigned to plaintiff were reasonable, appropriate, and not punishment.

Id. at 398-399.

In addition to dismissing Ford's due process claim, the court dismissed Ford's 13th Amendment claim. "In the present case, Ford does not allege that a burdensome work schedule was imposed upon him. Instead, he asserts that while a detainee he could be called upon at any time to help distribute food. This does not smack of the kind of evil prohibited by the Thirteenth Amendment." *Id*. at 401.

In *Brooks v. George County*, 84 F.3d 157 (5th Cir. 1996), the county held Brooks as a pretrial detainee.

> In March 1991, during the time period in which he was confined in the George County jail, Brooks requested and was granted trusty status. Brooks specifically asked that he be made trusty. As a trusty, Brooks was not locked down in his cell, but was, instead, allowed the freedom to roam in and out of his cell, Sheriff Howell's office, the jail and the surrounding grounds area.
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> While incarcerated, Brooks performed, at his own request, various services for Sheriff Howell, George County and others, including several charitable and benevolent organizations. Brooks performed these services on public property as well as private property. Brooks performed these services for two reasons: (1) he was able to secure his release from jail during the day and (2) Brooks earned extra money by working on the outside. Brooks was not compensated for those services he performed on public property, but on several occasions, was paid money or received goods in exchange for the services he rendered on private property.

Id. at 161.

The Fifth Circuit Court of Appeals held that Brooks was not subject to involuntary servitude and thus presented no claim under the 13th Amendment. The court noted that as a pretrial detainee, Brooks was entitled only to be confined until trial. The sheriff was under no obligation to allow Brooks the freedom he enjoyed.

> Brooks made the request for trusty status. He desired to leave the jail and chose to work as the price for that right. Since Brooks was not being punished by being detained until trial, the choice between this confinement and work as a trusty cannot be considered coercive because the benefits he received for working were not benefits for which he was otherwise entitled. Admittedly, the choice described might have been a painful one, but it was nonetheless a choice.

Id. at 162-163. *See also Watson v. Graves*, 909 F.2d 1549, 1552-1553 (5th Cir. 1990) (Inmates who voluntarily request work have no 13th Amendment claim.).
