

OREGON STATE SHERIFFS' ASSOCIATION

OSSA Jail Command Council



OREGON STATE SHERIFFS' ASSOCIATION JAIL STANDARDS

*Best Practices and Guidelines for the
Operation of Jails in the State of Oregon*

Eighth Edition

(Rev. 8.0 May 2019)

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OSSA JAIL STANDARDS

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INTRODUCTION

PURPOSE OF OSSA STANDARDS

General

The *Oregon State Sheriffs' Association (OSSA) Jail Standards* represent best practices and guidelines for operation of Oregon Jails. This document was formerly known as Oregon Jail Standards, but Oregon Sheriffs determined that the term was confusing in that it implied these were official state standards, and not best practices that jails voluntarily adhere to. The OSSA Jail Standards are copyrighted, and may not be copied, duplicated, reproduced or otherwise shared without express written permission of the Oregon State Sheriffs' Association. These standards are designed to improve the operation and management of Oregon jails while decreasing potential civil liability, enhancing staff professionalism, and increasing standardization of procedures in Oregon jails.

The standards are based on legal requirements and sound corrections practice. They are not intended as a substitute for professional judgment and common sense. The standards will be most effective if used as a starting point in the development of county jail operations plans and policies.

The *OSSA Jail Standards* are based on constitutional and statutory requirements; however, the Standards are not intended as legal authority or legal advice applicable to a specific factual situation, and may not be relied upon as legal advice. Although these standards are reviewed by a licensed Oregon attorney specializing in correctional issues, jail officials should always involve their individual county counsels or legal advisor in determining the answer to specific legal questions related to policy, procedure, and practice because—

- a. the qualities and deficiencies of individual jail facilities may impact the constitutionality of policies and procedures;
- b. individual courts may interpret constitutional requirements in exactly the same manner;
- c. individual counties may differ in terms of how aggressive they wish to be in formulating policy that may have to be defended in the event of litigation;
- d. even when the law is clear, different fact situations will often cause differences in the manner in which the law is applied; and
- e. the county counsel or district attorney is the county's statutory legal representative, and will be aware of specific legal issues that may impact jail operations, such as provisions of a county charter or a federal consent decree that binds the county.

Application

Although not legally binding, it is recommended that counties choosing to implement these standards should use them as a comprehensive program, rather than trying to select from among the set —

- a. as a means of evaluating their individual operations;
- b. as a framework around which to write facility policies and procedures manuals;
- c. as a tool for self- and interagency inspections; and
- d. as guidance for planning to construct new facilities.

AUTHORITY

Voluntary Adoption of OSSA Jail Standards

The OSSA Jail standards may be voluntarily adopted to serve as a guide to best practices in jail operations. The standards are not legally binding, and there is no authority to close or otherwise sanction jails that choose not to implement the standards or fail to achieve full compliance with these standards during a voluntary jail inspection. These standards also reference the statutory jail standards set forth in ORS chapter 169.

While local jails are not required to comply with the standards adopted to implement the Prison Rape Elimination Act (PREA) unless they hold federal prisoners, these standards provide excellent recommendations for reducing the risks of sexual assaults in local jails. Many of the OSSA jail standards have recommendations that parallel PREA standards, and contain a notation of the corresponding PREA standard.

ORGANIZATION OF THE STANDARDS

Component Parts

The standards are divided and subdivided into sections, subsections, and individual standards. An alphanumeric number is used to identify each part of the jail standards. Using a sample number of A-301, the component parts are:

In Section	A
Subsection	300's
Standard	301

Citing the Standards

In citing the standards in a report or other form of written communication or documentation, the components should be written as follows:

"Section A-300's"
"Standard A-301"

PART OF A STANDARD

Component Parts

Each standard includes three component parts:

Standard. The text for each standard appears in bold print and states what is required for compliance in a voluntary OSSA Jail Inspection.

Rationale. "Rationale" provides the justification for the standard, or why the standard is warranted (such as case law, statute, or practical necessity). Specific guidance in the Rationale paragraph is informational only and not a requirement for standard compliance.

Compliance. "Compliance" provides information or suggested methods to assist the user in achieving compliance for purposes of an OSSA Jail Inspection. It is not meant to be an exhaustive list of all possible ways of demonstrating compliance.

The fact that a jail is not in compliance with a standard as set forth in the OSSA Jail Standards does not indicate that the jail is violating case law, statutory requirements, or constitutional rights of inmates; it simply indicates that the jail has not fully implemented a voluntary OSSA standard. **As a practical matter, some jails cannot comply with every standard due to physical plant limitations, staffing, resources, prior court rulings or other issues specific to that jail.**

LANGUAGE

Effect of Language

Creation of Liberty Interests

The *OSSA Jail Standards* are intended to guide and assist counties in the operation and construction of jail facilities and in strengthening professionalism among staff, supervisors, and administrators. Nothing in the *OSSA Jail Standards* creates, or is intended to create, liberty interests or other rights for inmates or the general public.

Where mandatory language appears, it is mandatory only for purposes of compliance with the OSSA Jail Standards for purposes of a voluntary OSSA inspection, and in no way intended that standards create constitutional minimums, inmate rights, or other legal requirements.

Validity of Contents

If any statement in these standards is declared illegal or otherwise found to be inaccurate, inapplicable, or inoperative, it must not be interpreted to invalidate the standards as a whole, or any subdivision thereof.

Provisions

No provision or statement is to be construed to mean something other than the plain meaning of the language used. No provision or statement is to be interpreted in a manner contrary to its obvious intent.

Effect of Titles

Titles for the various sections, subsections, topics, and standards must not limit, modify, govern, or affect the meaning or intent of the content that follows.

Meaning of Language

Mandatory and Permissive Words

For purposes of complying with these standards:

"Must," "shall," "shall not," "shall be," "shall not be," "shall be," and "will" are considered mandatory for a finding of "full compliance" with the standard. No discretion is allowed in deviating from the requirements of the standard. Use of these words in a standard is associated with topics and practices that carry higher potential liability exposure for jails, or involve topics that may present significant safety and security risks if the standard is not met;

"Should" allows for limited discretion in how the jail staff attain the end of result of full compliance with the requirements of the standard if, through judgment and experience, they find a better way or have local limitations. Use of *should* is an obligation for jail staff to take the initiative, in almost

all instances, to comply with the requirements of the standard as they are written to the best of their ability; and

- c. "May" is entirely permissive; it allows jail staff to use maximum discretion to meet the intent of the standard.

Compliance Words

"Adopting" policies or other directives means developing, implementing, practicing, and enforcing those policies or other directives. **For inspections, proof of practice will be required.** See appendix 1, Jail Inspections, and appendix 2, OJS File Setup, for more on showing proof of compliance.

Tenses

The present tense includes the past and future tenses, and the future tense includes the present.

Singular and Plural

The singular form includes the plural.

COMPLIANCE WITH THE STANDARDS

Jail Inspections

Counties choosing to implement these standards will voluntarily participate in a jail inspection process:

- a. to permit inspections of their jails by members of the authorized inspection teams; and
- b. to contribute staff to participate in the inspection of the jails of other Oregon counties.

The procedures for preparing for and conducting such inspections are covered in appendix 1, Jail Inspections.

Requests for Variances OR EXCEPTIONS

Jail officials may request a variance, sometimes referred to as an "exception" to a standard using guidance in appendix 1, Jail Inspections.

BASIS FOR THE STANDARDS

The key to justifying policy, regulations, and procedures that restrict or otherwise affect prisoners is demonstrating that such restrictions further a legitimate penological interest. Rationale is the key to surviving (prospering) in the litigious corrections environment. If jail standards in Oregon are going to be the basis for policy and procedure development, then they too should be rationally related to legitimate corrections interests. No standard should be drafted absent a clear understanding of what purpose is being served by the standard (*why* the standard is necessary); *why* discretion is limited in a particular manner; and, if the standard is considered mandatory, *why* it is mandatory; Turner v. Safley, 439 U.S. 76 (1978), "[T]here must be a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it."

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SECTION A: ADMINISTRATION

100 **MANAGEMENT**

A-101 **Authority to Operate Jail.** The sheriff of the county is the statutory keeper of the jail, unless the sheriff appoints a jail official in writing to act as keeper and files a certified copy in the office of the county clerk.

Rationale. The authority and responsibility of the sheriff of each county to be the keeper of the jail is established by statute.²

Compliance. Compliance with this standard can be met by providing a certified copy of the appointment document that was filed with the county clerk.

A-102 **Sheriff's Jail Inspections.** The sheriff should conduct personal inspections of the jail facilities on a periodic basis.

Rationale. The sheriff has ultimate responsibility for the jail facility and safe, secure, and legally sufficient operation. Inspections will be of greater importance for a sheriff whose office is not located in or immediately adjacent to the jail facility.

Compliance. Compliance with this standard can be met by providing documentation of periodic inspections by the sheriff.

A-103 **Jail Commander.** Each jail must have a designated commander who will be responsible for the management and operation of the facility. If the sheriff is not the jail commander, a jail commander must be appointed. The sheriff must supervise the actions and performance of the jail commander. The jail commander will be given operational authority commensurate with the responsibilities assigned. The duties of the jail commander must be set forth in the policies and procedures manual.

Rationale. It is necessary to assign a jail commander who has the authority and responsibility under the general direction of the sheriff to command the operation of the jail to ensure continuity of command and to provide an efficient and effective chain of command.

Compliance. Compliance with this standard may be achieved by designating a jail commander and providing authority through policies and procedures.

A-104 **Mission and Goals.** The jail must have a written statement defining the organization's mission, operational philosophy, and goals.

Rationale. It is essential jail staff understand the mission statement, because all policy and procedure flow from and must conform with that mission. A mission statement is of little practical value if it is not within the capabilities of staff to achieve. Operational goals for each year should be developed to meet the intent of the mission statement. Goals should be clear, achievable, and measurable.

Compliance. To comply with this standard, a mission statement must be developed that defines the mission, operational philosophy, and goals of the organization. This compliance can be achieved by either a jail-specific or agency-inclusive statement.

A-105 **Organization Chart.** The jail commander must maintain a current organizational chart that establishes the jail's organization, chain of command, and how it fits within the sheriff's office.

Rationale. An organizational chart provides a visual representation of the organization and chain of command that is quicker to reference and is generally easier to understand than a narrative or outline explanation of the chain of command.

Compliance. Compliance with this section can be achieved by providing a chart that provides the chain of command and organizational structure of the jail and how it fits within the sheriff's office.

A-106 **Code of Conduct.** There must be policies and procedures to implement and enforce a code of conduct for staff members. The code of conduct must be proscribed, conduct and behavior, on and off the job, and provide basic performance requirements.

Rationale. Clearly established rules and codes of conduct are necessary to ensure that staff clearly understand what is expected of them at all times. These rules and codes also serve to assure that fair notice is given to staff who engage in prohibited conduct, and they outline the process for documentation of infractions.

Compliance. Compliance can be achieved by adopting policies and procedures for a code of conduct for staff members.

A-107 **Compliance with ADA.** There must be policies and procedures that address complying with the requirements of the Americans with Disabilities Act (ADA). They must specifically address at least the following:

- a. prohibition against discrimination on the basis of a disability;
- b. removal of physical and other barriers for communication and access to facilities and providing disabled inmates with the same types of educational, vocational, and rehabilitative or recreational programs, services and activities that are available to non-disabled inmates;
- c. providing reasonable accommodation and access to facilities, services and programs for staff, inmates, and the public;
- d. a written process setting forth how an inmate makes a request for a reasonable accommodation, and how the request will be handled
- e. an assessment of each disabled inmate must be done (preferably at intake), and documentation should be available to all staff to determine what reasonable accommodations are being provided to the inmate, and what the inmate's communication preferences are for deaf or hearing-impaired inmates (does the inmate prefer to write notes, use an interpreter, read lips?).
- f. service animals for members of the public visiting or doing business in the jail (service animals means a dog or miniature horse only)
- g. the grievance procedure for a person to file a complaint for prompt and equitable resolution of any action prohibited by Title II of the ADA; and
- h. having an ADA coordinator (if the jail employs 50 or more persons).
- i. Requiring a qualified interpreter (either in person or through the use of a video relay service) be available for deaf or hearing-impaired arrestees or inmates as needed, including booking and intake, classification, classes or

programs, medical, mental health or dental appointments, and as needed to communicate with housing officers, filing grievances or making medical requests

- j. periodic testing of equipment and software used to accommodate those with disabilities, such as TTY phones, a magnifying screen for visually impaired inmates or a tablet to use video relay services,
- k. ongoing training for staff on ADA issues, at least annually
- l. a written policy requiring the use of closed captioning at all times on televisions available to inmates

Rationale. The ADA is a federal anti-discrimination statute designed to remove barriers that prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.² Accommodation and access should be balanced with the jail's safety, security, operational, and other legitimate interests.

Auxiliary aids and services may also be required to permit disabled persons to participate in mainstream activities or areas.³ Use of auxiliary aids is not required if doing so would constitute an undue hardship.

Courts have recognized that ASL is a unique language, and that many people who speak ASL do so as their primary or only language. Many ASL speakers cannot read or write English, so communicating using written notes may not be workable. Not providing an interpreter for deaf or hearing impaired inmates who need an interpreter to communicate presents serious risks to a jail.

Adopting and publishing grievance procedures for public entities that employ 50 or more persons is required by Title II of the ADA.⁴

Designation of a responsible employee is required by Title II of the ADA.

Compliance. Compliance with this standard will be achieved by adopting policies and procedures for complying with the requirements of the ADA and they must, at a minimum, address the areas specified in this standard. For buildings built prior to 1990, compliance does not require showing that all physical or other barriers have been removed if resources are not currently available to upgrade the facility. If this occurs, the jail may show compliance by demonstrating that they have made a request to the governing body requesting additional resources to upgrade the facility. Any new construction or remodeling must comply with current ADA standards. A facility may comply with the requirement to have an interpreter available by contracting for a video relay interpreter service (**VRI**) that is available 24-7 as needed.

A-108 Policies and Procedures. The jail must have policies and procedures that cover its management and operation. For jails choosing to implement these standards, at a minimum the policies and procedures must—

- a. meet the individual requirements established by the *OSSA Jail Standards*;
- b. meet the statutory jail standards established in *ORS 169.076*; and
- c. interpret other legal and operational requirements as needed to guide staff in the management and operation of the jail.

Rationale. Policies and procedures are essential—

- a. to provide an operational plan that meets constitutional, statutory, professional standards, and other practical requirements;
- b. for reasonably ensuring consistency and uniformity in the manner in which staff members perform day-to-day tasks and responsibilities and implement policy;

- c. to establish goals for expected performance requirements;²
- d. to document and formalize practices; and
- e. in defending litigation against the facility and its officials.³

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that cover its management and operation according to standards and legal requirements.

ORS 169.076

A-109

Review and Revision. Policies and procedures must be reviewed and, when necessary, revised on an ongoing basis. Policies and procedures must be reviewed at a minimum of every 24 months.

Rationale. Jail operations are impacted by many dynamic factors such as changes in statute, case law, funding and staffing levels, facility modifications and many others. Having current policy and procedure ensures jail operations meet changing requirements and protects the facility and its staff from liability.

Jails should review each policy and procedure at least once every 24 months and should make timely updates as needed to keep them current. The jail commander shall designate staff to be responsible for the reviews.

Jail officials should also determine which policies warrant legal review. Examples of frequently litigated subjects that should include legal review include use of force, conditions of confinement, grievances, inmate discipline, inmate searches, detention authority, health care, and American with Disabilities Act compliance. Legal review is not required for policies and procedures or updates to them, that deal with minor administrative (“housekeeping”) changes.

Compliance. Compliance with this standard may be achieved by adopting policy and procedures that direct a review of each policy at least once every 24 months.

The agency should produce documentation of all policies that have been reviewed since the last OJS inspection, such as a memo from the person who performed the review. Documentation should also describe all policy revisions since the last inspection. Review may be proven in a variety of ways, such as redlined copies showing updates, email distributions of policy dated within the last 24 months, a spreadsheet showing the revision date and reason, or other documentation of the practices.

Failure to comply with this standard for policy review and revision shall not cause a compliance issue for other standards. For instance, if a jail is in compliance with a laundry standard by policy and practice, but the laundry policy was not reviewed in the past 24 months, the agency is in compliance with the laundry standard. *The policy review compliance issue only impacts this standard, A1-B02, related to policy and procedure review and revision.*

A-110 **Accessibility by Staff. Policies and procedures, in either paper or electronic form, must be readily accessible to staff on an immediate basis without the need for a request or other delays.**

Rationale. Policies and procedures are useful only if they are accessible to those persons whose actions and performance they affect. In addition, it is necessary to demonstrate that staff have been made aware of policies in order to take disciplinary action against them if they fail to follow policies. If policies and procedures are not easily and routinely accessible to staff members—

- a. the policies and procedures will not accomplish the intended purposes for which they were written and adopted;
- b. staff will be less likely to understand the requirements and, therefore, less likely to function or perform according to policy; and
- c. plaintiffs in litigation may attempt to show that inaccessible policies and procedures are the same as having no policies and procedures at all.

Compliance. Compliance with this standard can be achieved by having some method of making policies and procedures accessible to staff. Access could be accomplished in many ways, such as:

- 1. Issuing to each staff member all policies and procedures, including those not specific to the person's job responsibilities; and
- 2. Issuing to each staff member a copy of each policy or procedure that is relevant to carrying out the member's assigned duties; or
- 3. Providing an adequate number of locations where current, updated copies of policies and procedures are maintained for staff to access, either electronically or in other formats.
- 4. Having a system to document that each staff member has been provided a copy of every new policy and has acknowledged that they have read and understood each policy.

A-111

Enforcement of Policy. Sheriffs and jail commanders must ensure there is an active policy and practice of consistently enforcing provisions of policy and procedure, including supervision of staff to facilitate compliance with jail policies and procedures. Supervision of policy compliance should provide a means of reasonably ensuring that staff members—

- a. protect the safety, security and other needs of the jail;
- b. function consistently with the rights of inmates;
- c. comply with required policies and procedures; and
- d. be accountable for their actions and conduct.

Rationale. The size and complexity of the jail operation will determine the nature of the system or supervision system needed. Administrators may reduce vulnerability to litigation by—

- a. not acquiescing in improper actions or misconduct of staff; and
- b. enforcing policy and procedure requirements and documenting such actions.² Documented use of the disciplinary process to enforce policy requirements may be a defense to allegations of failure to supervise staff.³

Compliance. Compliance can be achieved by—

- a. requiring supervisors and other managers to ensure the requirements of policies and procedures are implemented;
- b. adopting a system for supervising staff conduct and performance;⁴ and
- c. showing use of counseling, corrective actions, and/or disciplinary actions to enforce the provisions of the policies and procedures.

200 RECORDS MANAGEMENT

A-201 Public Records Requirements. The jail must have policies and procedures governing access to and security of public records and they must be consistent with the Oregon Public Records Act (ORS 192.311 to 192.607) and other public records statutes. (All references to public records statutes in these standards include both state and federal statutes and administrative rules and county ordinances.) NOTE: Oregon public records laws have been almost completely renumbered in the 2018 statutes.

Rationale. The legislature's passage of Public Records Laws in 1973, with later revisions, provided that every person has a right to inspect any public record in this state except as otherwise expressly exempted under Oregon law.

Compliance. The jail must adopt policies and procedures for providing or denying access to records that comply with public records statutes. These policies and procedures must address, at a minimum:

- a. That the jail must acknowledge every public records request within 5 days of receipt, as required by ORS 192.324;
- b. That the jail must respond to public records requests as soon as practical and without unreasonable delay;
- c. That the jail response to a public records request includes required language from ORS 192.329.

A-202 Duty to Classify Public Records. Jail officials must evaluate and classify records to determine which records must be released to the public and which are exempt from disclosure.

Rationale. Jail officials may classify a particular record as exempt from disclosure under statute, but are not required to classify a particular record until access to the record is requested. However, waiting until a request occurs to classify a record or other information may put officials at a disadvantage in processing requests for records within the statutory time requirements. Jail officials—

- a. may evaluate records it uses or creates and preclassify those records that are exempt from disclosure under public records exemption statutes (ORS 192.311 to 192.607); and
- b. should develop guidelines to allow consistent responses to records access requests, and a means of making a timely review by legal counsel on such requests if jail officials choose not to preclassify exempt records.

Jail officials may restrict access to records and other information for reasons of security, safety or operational necessity only if such denial is consistent with the public records statute, other federal or state law, or laws governing confidentiality of protected health information. The public records laws require that if a portion of a record is exempt from disclosure, that portion may be redacted and the non-exempt portion must be disclosed.

Jail officials may re-designate a record or reclassify a category of records or information within a record at any time.

Compliance. Compliance with this standard can be met by formalizing a system to classify the releasability of public records while ensuring statutory public record disclosure requirements are met. For any records that are not disclosed in response to a public records request, the jail must be able to identify the specific statutory exemption they are relying upon to deny release.

A-203

Access to Public Records. Public and other government agency access to jail records must be provided consistent with the provisions of the public records statutes. The jail must develop policies and procedures for—

- a. **receiving, acknowledging receipt, and responding to public records requests, including those from inmates;**
- b. **estimating costs of processing and providing the records; appealing denied requests; and**
- c. **notifying the sheriff and legal counsel, if available.**

Rationale. Public records law requires that every person has the right to inspect a public record at the office of the records custodian free of charge during normal business hours. Access by the public may not be restricted, except as specified in public records statutes. Inmates may not be able to access and inspect public records simply because they are incarcerated and cannot physically go to the office of the custodian of records. But, like other people, they can request a copy of a public record upon payment of the appropriate fee. Denials of public records requests must be made based upon the statutory exemptions. Oregon law permits the release of records to other governmental entities, including records that are classified as being exempt from disclosure. If a sheriff personally denies a public records request, ORS 192.427 provides that the decision cannot be appealed to the district attorney, and must be appealed by filing an action in the circuit court.

Compliance. Policies and procedures must follow the access requirements set forth in public records statutes and establish a process to determine whether requests will be honored or denied.

A-204

Records Inspections, Duplication, and Fees. Members of the public must be permitted, during normal business hours, to inspect and obtain a copy of any record to which they have a right of access under the public records statutes. The jail officials may charge a reasonable fee to cover the jail's actual cost of duplicating a record or compiling a record in a form other than that maintained by the jail to the extent permitted by public records statutes and county regulations, ordinances or policies implementing these statutes. Fees for duplicating or compiling records must

- a. **be established by individual counties by ordinance or policy adopted by the governing body;**
- b. **be reasonable to cover the actual costs accrued by the jail;**
- c. **may not be more than \$25 unless the jail has first provided a written estimate of the costs of producing the records and the requestor has confirmed that they want the jail to proceed with the request; and**
- d. **conform to the provisions of public records law.**

Rationale. Public records statutes generally require that persons have the right to take a copy of a public record during normal business hours. Statutes also permit jail officials to charge for duplicating records.

Compliance. Practices must follow the access requirements set forth in public records statutes.

205

Records Retention. Jail records must be maintained and archived according to the Oregon public records statutes, Oregon administrative rules and schedules on minimum records retention for a county or special district (OAR 166, division 150),

and any local directives. OAR 166, division 150, categories of records for which a jail (or parent agency) most likely will have records needing retention include but are not limited to—

- a. administrative, which includes audits, correspondence, policies, security records, and work schedules;
- b. emergency management, which includes disaster preparedness and resource lists;
- c. equipment and property, which includes equipment maintenance, standards, and vehicle usage and expense records;
- d. financial, which includes budget preparation and adopted budget records, grants, and purchasing and inventory records;
- e. information and records management, which includes computer systems security, forms, and records management;
- f. law enforcement, which includes incident files, inmate case files (under which discipline records would also fall), electronic housing detention, inmate grievances, inmate visitor records, booking records, fingerprints, and jail monitoring;
- g. payroll, which includes employee time records and leave applications;
- h. personnel, which includes employee personnel records, training program, and volunteer records;
- i. risk management, which includes injury reports, personnel accident incident reports, and safety inspection and compliance records.

Rationale. Preservation of public records, no matter the media and physical format, is essential to meet the needs of government agencies and citizens and to enable compliance with Oregon Public Records Laws. Prompt destruction of records with no continuing value is needed for operational and storage-space efficiencies. Retention schedules provide guidance on the orderly retention and disposition of public records.

Compliance. Jail systems must have access to a retention schedule that conforms to state and local requirements. Practices must follow the minimum retention requirements of that retention schedule.

A-206

Maintaining Inspection Reports from Outside Entities. Jail officials must maintain inspection reports from outside entities. Jails should be inspected periodically, as required by law or other directive, by—

- a. an OSSA Jail Standards inspection compliance team;
- b. a public health department;
- c. fire safety officials;
- d. a grand jury;
- e. the Department of Corrections;
- f. county commissioners; and
- g. other entities as may be required.

Rationale. It is a common practice in litigation on jail conditions for inmates to make general allegations of unsanitary conditions, filth, poor maintenance, and general neglect of the facility. Plaintiffs must allege more than unsupported claims to state a cause of action; however, counties defending such action should have the capability and preparation to

offer, among other defenses to inmate claims, documentation of sanitation plan requirements, and efforts to implement the jail's sanitation and maintenance plan in defending such litigation.

Compliance. Compliance with this standard can be achieved by maintaining inspection reports from outside agencies consistent with Oregon Administrative Rules and local retention schedules.

ORS 169.070

300 STAFF EMPLOYMENT

A-301 Qualifications and Certification. There must be policies and procedures that address personnel qualifications and necessary certification requirements for all jail staff.

Rationale. Policies and procedures provide the most efficient and uniform means of providing qualification and certification requirements.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide the qualifications for all jail staff and certification requirements for corrections deputies.

See PREA standard 115.17

A-302 Background Investigations. There must be policies and procedures that require background investigations to be completed on all applicants for jail staff positions before they are hired.

Rationale. Background investigations of applicants are required for state certification. Investigations may consider convictions occurred in this state or other jurisdiction, including a conviction that has been dismissed. Background investigators may not normally consider a conviction that has been expunged under ORS 137.225. If an applicant has had a conviction expunged in another state, the investigator may only consider it if the conviction could not have been legally expunged under Oregon law.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring applicants before they are hired.

See PREA standard 115.17

A-303 DPSST Standard. To be employed as a corrections deputy, an applicant must, at a minimum, meet the standards established by the Department of Public Safety Standards and Training (DPSST).

Rationale. The qualifications included under this standard are required by state law and OAR 9-008-0010, Minimum Standards for Employment as a Law Enforcement Officer.

Compliance. Compliance with this standard can be achieved by verifying that applicants meet minimum DPSST standards.

A-304 Unlawful Gender Discrimination. Policies and procedures must require that officials, on the basis of gender, not unlawfully—

- a. fail or refuse to hire an applicant for employment, except pursuant to a Bona Fide Occupational Qualification (BFOQ);

- b. discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment; or
- c. limit, segregate, or classify employees or applicants for employment in any manner that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status as an employee.

Rationale. Title VII of the 1964 Civil Rights Act prohibits unlawful gender discrimination in hiring. In addition, Oregon law prohibits discrimination on the basis of gender. ORS chapter 659A. Law enforcement or corrections officials who discriminate in hiring and other employment practices solely on the basis of gender have experienced a difficult burden justifying their practices. The county has a legitimate interest in avoiding job discrimination against applicants/employees because of their gender.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require compliance with lawful gender-related hiring practices.

A-305

Employment Rights and Privacy Interests. There shall be policies and procedures governing the balancing of employment rights of deputies and the privacy interests of inmates. Policies and procedures should include, but not be limited to—

- a. a statement of non-discrimination in hiring;
- b. screening and hiring requirements that are gender-neutral; and
- c. allowance for gender-specific positions where a bona fide occupational qualification (BFOQ) exists.

Rationale. Title VII of the 1964 Civil Rights Act provides statutory protection for employees and applicants for employment against unlawful gender-based employment. The law also provides a narrow exception to the prohibition against discrimination. Policies and procedures governing hiring and other employment practices are necessary to guide those who are responsible for or involved in hiring, promoting, assigning, supervising, or otherwise directing staff to ensure that the county does not violate Title VII requirements.

Title VII of the 1964 Civil Rights Act permits gender-based discrimination in employment practices when a BFOQ exists. BFOQs are those qualifications that are reasonably necessary to the normal operations of the jail; however, the BFOQ is intended to be a narrow exception to the general prohibition against discrimination and should not be used without consulting legal counsel.

Compliance. Compliance with this standard can be achieved by adopting hiring and employment policies and procedures that are consistent with the requirements of Title VII.

See PREA Standard 115.17

400

TRAINING

A-41

Staff Training Requirements. The jail must have a written annual training plan outlining requirements for all staff.

- a. For certified staff, the plan must include the type, requirements, and minimum number of training hours required to meet certification requirements (if any), considering at a minimum the following:
 - (a) first aid and CPR training
 - (b) use of force, defensive tactics, and firearms
 - (c) legal updates

- (d) inmate suicide prevention
 - (e) harassment and sexual harassment
 - (f) Prison Rape Elimination Act (PREA)
 - (g) ethical decision-making
 - (h) Americans with Disabilities Act (ADA)
- b. For non-certified staff, the plan must include the type, number of hours, and any other training requirements as determined by the jail command. Consider at a minimum the following:
- (a) inmate suicide prevention
 - (b) harassment and sexual harassment
 - (c) Prison Rape Elimination Act (PREA)
 - (d) first aid and CPR training
 - (e) ethical decision-making
 - (f) legal consequences of introducing contraband or having sexual relations with an inmate
- c. Consequences for staff who fail to complete training requirements.
- d. Procedures for documenting staff training activity and transmitting that information to DPSST as required.
- e. An annual documented review of the training plan.

Rationale. A written training plan may be in the form of a policy, procedure, or a separate annual plan document. Written requirements provide the most efficient and uniform means of establishing training requirements, communicating training requirements to staff, and assigning the responsibility to communicate training documentation to DPSST.

The U.S. Supreme Court has determined that there may be liability for administrators if they fail to provide training in the specific topic areas that staff need to know to carry out their assignments. The court has held that administrators may be liable when they "know to a moral certainty that their subordinates will be required" to carry out the function for which training was not adequately provided. Training is definitely required where "the need for . . . training is . . . obvious, and the inadequacy . . . likely to result in the violation of constitutional rights." In order to be liable for a failure to train, the municipality's conduct must amount to deliberate indifference to the rights of those persons who come into contact with the untrained staff member. To reduce vulnerability to liability, training should be related to the duties and responsibilities of staff. Larger systems that have more specialized assignments, should consider more individualized training packages. The plan, though subject to change during the year, should then serve as a guide to scheduling training for the year.

Compliance. Compliance requires that the jail have a written training plan, including a documented annual assessment of the jail's performance in meeting the requirements of the training plan. The annual assessment could also include an evaluation of the effectiveness or deficiencies of the training programs in light of operational, budgetary, instructor or student feedback, or other constraints or recent events.

See PREA 115.31

DPSST Certification. Corrections deputies must obtain and maintain corrections certification as mandated by DPSST. They must obtain certification by completing

required training and certification requirements. Deputies must maintain certification by adhering to legal and ethical requirements.

Rationale. Corrections deputy certification is required by OAR 259-008-0060, Public Safety Officer Certification. Nothing in this standard prohibits the use of reserves, patrol, part-time, or temporary staff to augment full-time deputies when these individuals receive appropriate in-house training.

Compliance. Compliance with this standard requires proof that deputies currently employed are DPSST certified or are in the process of getting that certification.

A-403 **Deputy Training Hours. Corrections deputies must satisfactorily complete a minimum of 40 hours of training each year.**

Rationale. A minimum of 40 hours of in-service training is necessary to maintain professional and technical competence. As required by DPSST rules, at least one hour annually must be devoted to ethics training.

Compliance. Compliance with this standard may be achieved by ensuring that each jail deputy successfully completes 40 hours of in-service training each year. An agency may be in full compliance with the standard even if individual employees are on long-term leave or limited duty for any reason that contributes to their inability to comply with this standard.

A-404 **Orientation for New Deputies. Prior to permitting corrections deputies to assume a position in the regular staffing schedule, the jail commander must provide orientation training to ensure that the corrections deputies—**

- a. are familiar with the jail facility;
- b. understand the chain of command;
- c. are aware of the jail's policies, procedures, and operational practices;
- d. are informed concerning personnel issues;
- e. participate in and successfully complete a field training program;
- f. have been trained on PREA;
- g. are certified in CPR and first aid; and
- h. have been trained on inmate suicide prevention.
- i. have been trained on obligations under the American's with Disabilities Act (ADA)

Rationale. By successfully completing the basic corrections academy, deputies will have acquired a wide range of important skills and information necessary to function as a corrections deputy in the State of Oregon. The academy training does not provide operational information concerning jail facilities. Specific orientation and/or training are needed to prepare the deputy for the deputy's specific work assignment. The larger and more complex jail facilities would require substantial training and/or orientation, while smaller jails would require a more limited effort. The amount of training and/or orientation required is within the discretion of the sheriff and/or jail commander.

Compliance. To comply with this standard, the jail commander must develop an orientation and/or training program that fits the needs of the jail and its new deputies. The jail must have documentation showing attendance at training and that required training content is provided prior to deputies being assigned to work independently in the jail.

See PREA 115.31

A-405

Management Training. Supervisors or administrators should receive ongoing management training.

Rationale. The knowledge and skills required to manage are different from those required to execute policies, procedures, and regulations in technical or other positions. Breaches of management duties and responsibilities may result in vulnerability to litigation.¹ Such topics may include the following:

- a. development of operations manuals and training
- b. civil liability of managers
- c. corrections law for managers
- d. personnel law
- e. staff discipline and corrective actions
- f. staff performance plans and performance evaluations
- g. harassment and sexual harassment
- h. Prison Rape Elimination Act (PREA)
- i. discrimination
- j. retaliation
- k. ethical decision-making
- l. use of force issues
- m. inmate suicide prevention
- n. ADA compliance

Compliance. Compliance with this standard is achieved by ensuring that supervisors or administrators involved in the jail operation receive ongoing training in management topics.

See PREA 115.41

500

HARASSMENT

A-501

Sexual Harassment. There must be policies and procedures that prohibit sexual harassment of inmates by jail staff, of jail staff by inmates, and of inmates by inmates, and provide the means for enforcing the prohibition. Policies and procedures should include, but not be limited to—

- a. prohibiting sexual harassment in any form;
- b. supervisors' responsibilities in preventing sexual harassment of inmates by jail staff, of jail staff by inmates, and of inmates by inmates and responding to complaints, reports or acquired information;
- c. the process for receiving, promptly and thoroughly investigating, and resolving complaints, reports or acquired information;
- d. a procedure where county administration or human resources is promptly notified of any sexual harassment complaints;
- e. a procedure for documenting the complaint, investigation, and outcome;
- f. a procedure to promptly notify alleged harassers that retaliation of any kind is prohibited and will result in discipline;

- g. a procedure to notify complainants and witnesses that they must promptly report any acts of retaliation;
- h. a statement that a sustained finding of sexual harassment will result in discipline, up to and including termination,

Rationale. Title VII prohibits gender-based employment discrimination, including causing, condoning, or failing to eliminate unfair treatment based upon gender in the work place. This includes failing to eliminate sexual harassment. The Ninth Circuit has held that employers can be held liable under Title VII for sexual harassment committed by third parties, which includes harassment committed by inmates against staff. Sexual harassment can, if unchecked, result in a hostile work environment, which may result in substantial liability for the organization as well as the supervisors who knew or should have known that the sexual harassment was occurring. Conducting a prompt and thorough investigation of all complaints, and taking appropriate action to stop it, provides a strong defense to claims for sexual harassment. To determine whether an employer has taken appropriate remedial action, courts will look to whether the action was reasonably calculated to end the harassment, whether the action taken was proportionate to the seriousness of the offense, and whether the action was severe enough to send a message to other employees that such conduct will not be tolerated.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit sexual harassment and provide policies and procedures for reporting, detection, and response to claims of sexual harassment.

See PREA 115.61

A-502

Harassment Prohibited. Harassment in any form, by staff or inmates is prohibited. Policy must address at a minimum—

- a. harassment prevention and response training; and
- b. steps to prevent the development of a hostile work place; and
- c. steps to prevent retaliation against those who report harassment.

Rationale. Harassment can be based upon racial, ethnic, religious or other slurs and any other offensive remarks, jokes or graphic material. It can also include other offensive verbal or physical conduct or hazing. Harassment that is not corrected promptly could potentially rise to the level of creating a hostile work place, which could result in substantial liability for the organization and supervisors who were or should have been aware of the harassment.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures on harassment prevention and response and providing training on the subject.

See PREA 115.67

A-503

Sexual Misconduct. There must be policies and procedures that prohibit sexual misconduct between staff and inmates, volunteers and inmates, contract personnel and inmates, visitors and inmates, and inmates and inmates. Policies must—

- a. provide ways to report sexual misconduct to jail officials and an alternative reporting mechanism outside the Sheriff's Office;
- b. have a process to respond to claims of sexual misconduct;
- c. have a process for investigating reported misconduct; and

- d. **subject those involved to administrative and disciplinary sanctions and/or criminal prosecution.**
- e. **train all staff at least every two years on how to identify and report sexual misconduct, and the penalties for engaging in sexual misconduct**

Rationale. In 2003, Congress enacted the Prison Rape Elimination Act. Standards implementing that Act were enacted by the US DOJ in 2012. These standards provide a laundry list of requirements that jail must comply with to reduce, respond, investigate and prevent sexual abuse or sexual harassment. Failure to comply with the standards may be, according to the federal statute, evidence that the jail is deliberately indifferent to the risk of sexual assault. In addition, Oregon law makes it a felony for a staff member of a jail to engage in sexual intercourse, deviate sexual intercourse, or sexual penetration with a person in custody or under supervision. It is a Class A misdemeanor for a staff member to engage in any sexual contact with a person in custody or under supervision. Any perpetration of sexual misconduct involving inmates may lead to an environment for sexual predators to prey on others within the facility and otherwise in custody. This is disruptive to the good order, discipline, and security of the facility and is detrimental to the treatment and rehabilitation of inmates. It leaves the agency and its officials vulnerable to legal claims.

Compliance. Compliance with this standard can be achieved by—

- a. adopting policies and procedures;
- b. having documentation demonstrating that the requirements of this standard are being met; and
- c. having documentation showing enforcement of the sexual misconduct policy if complaints have been made.

See PREA 115.11, 115.22, 115.51, 115.54, 115.61, 115.64, 116.65, 115.71, 115.72, 115.76

A-504

Sexual Assault. There must be policies, and procedures, and practices on the detection, prevention, response, and punishment of inmate sexual assault that include the following:

- a. classification and assignment of inmates that limit the occurrence of inmate sexual assault;
- b. having a system for reporting sexual assaults;
- c. ensuring the confidentiality of sexual assault complaints;
- d. protection of inmates who make complaints from retaliation;
- e. investigation and impartial resolution of sexual assault complaints by jail officials, law enforcement, and prosecution authorities;
- f. preservation of physical and testimonial evidence for use in investigation of a sexual assault incident;
- g. acute-term trauma care for sexual assault victims that include physical and mental health examination and treatment;
- h. referrals for long-term continuity of care for the victim;
- i. educational and medical testing measures for reducing the incidence of HIV transmission due to sexual assault;
- j. post-sexual assault prophylactic medical measures for reducing the incidence of transmission of sexual diseases, and for women, pregnancy;

- k. **training of correctional staff sufficient to ensure they understand and appreciate the significance of sexual assault and the need for its eradication;**
- l. **timely and comprehensive investigation of staff sexual misconduct involving the sexual assault of an inmate; and**
- m. **data collection for the reporting to federal, state, and local authorities on the following:**
 - 1. **sexual assaults;**
 - 2. **jail staff sexual misconduct; and**
 - 3. **resolution of sexual complaints by jail, law enforcement, and prosecution authorities.**

Rationale. The Prison Rape Elimination Act of 2003 (PREA) established a national standard for the incidence of prison rape in the United States, in part, as a way to protect inmates' rights under the Eighth Amendment, reduce the costs to prison systems, reduce the spread of sexually transmitted diseases, and reduce mental illness and recidivism by victims of sexual assault. PREA also established the need to report and analyze the occurrence of prison rape on a national basis and tied the eligibility for the receipt of federal grant monies to compliance with PREA. Compliance with PREA can reduce liability exposure stemming from legal claims involving sexual assaults, reduce costs to jail operations and the judicial system, and enhance the rehabilitation and treatment of inmates.

Compliance. Compliance with this standard can be achieved by:

- a. adopting policies, procedures, and practices involving sexual assault;
- b. having documentation showing that staff and other non-inmates having contact with inmates have been trained on or informed of the sexual assault policy of the jail; and
- c. having documentation showing enforcement of the sexual assault policy if complaints have been made.

See PREA – ALL STANDARDS

A-505

Information. Jails must provide verbal, video or written information to inmates about sexual misconduct and sexual assault that includes the following:

- a. **prohibited conduct;**
- b. **self-protection;**
- c. **reporting,**
- d. **treatment and counseling;**
- e. **disciplinary and legal repercussions; and**
- f. **transmission of sexually transmitted diseases due to a sexual conduct or assault.**

Rationale. Inmates need to be actively involved in their self-protection and the protections of others and in knowing treatment and counseling are available to help them if they have a need.

Compliance Jail staff can show compliance with this standard through copies of policies, inmate class rosters, forms, flyers, inmate manuals, or other documents that show inmates have been informed of the applicable elements of sexual misconduct and sexual assault policy and procedures.

See PREA 115.33

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SECTION B: ADMISSION AND RELEASE

100 *PRE-ADMISSION PROCESS*

B-101 **Notice to Allied Agencies.** Law enforcement agencies that routinely use the jail for housing their arrestees should be provided copies of directives or other information that—

- a. explain pre-admission procedures;
- b. provide requirements that must be met for the jail to admit arrestees received at the jail for booking;
- c. explain the circumstances that may prohibit admissions deputies from accepting arrestees in jail; and
- d. explain the importance of the arresting officer providing any information to jail staff that the officer has learned about the inmate, including but not limited to information that the arrestee may be suicidal, using controlled substances, or that the arrestee may be detoxing from controlled substances.

Rationale. Law enforcement deputies and others who transport arrestees to jails for booking sometimes find that for statutory, constitutional, or safety reasons an arrestee cannot be accepted. Regardless of the need or reason to turn the arrestee away, such refusals often result in frustration for transporting deputies and may result in animosity between corrections deputies and deputies who are turned away. Conflicts can be minimized by providing law enforcement agencies that use the jail with prior notice of the restrictions on accepting arrestees and the reasons for determining which arrestees cannot be accepted.

Compliance. Compliance with this standard can be achieved by providing written notice of pre-admission booking requirements to the following:

- a. field units of the Sheriff's Office;
- b. the county police department in the county;
- c. the Oregon State Police;
- d. the Oregon Department of Corrections (local Probation and Parole Offices); and
- e. any other criminal justice agency that routinely houses arrestees in the jail.

B-102 **Restraints.** The jail must have policies and procedures that require arrestees brought into the jail should not be admitted unless handcuffed or restrained by other devices that achieve the same function. Arrestees should be handcuffed with their hands behind them unless there is a legitimate reason not to do so, such as an injury or other physical condition that justifies not handcuffing behind the back.

Rationale. Requiring arrestees to be handcuffed behind the back is intended to enhance the security of the jail and the safety of jail and transporting deputies.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for denying admission of arrestees to the jail until secured by handcuffs or other suitable restraints.

B-103

Initial Search of Arrestees. Jail policies, procedures, and practices must require that all arrestees entering the jail facility receive an immediate initial search either in a pre-admission vestibule and/or after entering the booking area. Deputies conducting a search must look for contraband and signs of medical or suicide or self-harm issues that require intervention or follow-up. The type of search conducted and the name of the person who conducted the initial search must be documented. The initial search must be a frisk or clothed search, unless a more intrusive search is justified by individualized reasonable suspicion, such as contraband, medical, suicidal thoughts or attempts, or self-harm issues.

Rationale. The purpose of the initial search is to subject all arrestees who enter the jail to a quick check for weapons, drugs, and other contraband. This provides a reasonable margin of safety during the booking process by disarming arrestees and detecting more easily discoverable items of contraband that could present an immediate threat to the safety and security of the jail. Jails have strong security and safety interests in searching arrestees entering the facility. A lawful arrest establishes the authority to search. The safety of corrections deputies and the security of the facility depend upon ensuring that weapons and other contraband are intercepted at or before the arrestee's entry into the jail. Not all officers conduct thorough searches at the time of an arrest. Some arrestees may not have been searched at all. In facilities that have a pre-admission vestibule, the search should be conducted prior to the arrestee being permitted to enter the booking area. If the facility has no pre-admission vestibule, then the search should be conducted immediately after the arrestee enters the jail facility.

A blanket policy for an unclothed search of all arrestees prior to admission is unconstitutional, because the arrestee has not yet had an opportunity to exhaust all reasonable release options. Frisk or clothed searches should ordinarily be sufficient to meet the requirements of the initial search. More intrusive admission searches are justified if there is reasonable suspicion that the arrestee possesses contraband, has a medical condition (MRSA, lice) that might jeopardize the safety or security of the jail, or if the inmate is suicidal. An unclothed search may be conducted once the arrestee has exhausted reasonable release options and the decision has been made to lodge the arrestee.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require a frisk or clothed search by a corrections deputy before accepting the transfer of custody of the arrestee and documenting the search. Practice must abide by policy and procedure.

B-104

Authority to Receive. The jail must adopt policies and procedures that require before accepting custody of an arrestee brought to the jail for booking, the jail must make a reasonable attempt to determine that—

- a. the person bringing the arrestee to the jail is a peace officer or other person authorized to book the arrestee; and
- b. the arrestee is being lawfully committed to the jail.

Rationale. Compliance with this standard is required by ORS 169.076(2)(a) and is necessary to protect against liability for accepting custody of an arrestee who cannot lawfully be committed or admitted to the jail.

It is not possible, nor is it the responsibility of the jail, to judge the validity of arrests made by peace officers. Corrections deputies should, however, make reasonable efforts to determine that the person bringing an arrestee to the jail has peace officer or other statutory authority to arrest, detain, or transport an offender. Corrections deputies should also require appropriate legal papers (such as warrants, sentencing and commitment

orders, probable cause statements, or other such documents) before agreeing to accept custody.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for determining legal confinement authority for all arrestees being booked into the jail.

ORS 169.076(2)(a)

B-105

Receiving Females. The jail should have policies and procedures that require when a female arrestee is brought to the jail, a female staff member should be present to assist with the admission process.

Rationale. The presence of a female staff member should help avoid allegations of sexual harassment or other improper actions by male deputies. Female staff are typically required to conduct clothed and unclothed searches (except in emergency situations) and to handle shower and clothing exchange functions for female inmates. The courts have determined that a lack of available female staff to conduct a search does not constitute an emergency. If no female deputy is available, another female staff member (contract if necessary) trained in searches should be available to conduct searches and handle other functions that would violate the sexual privacy of female arrestees if conducted by male deputies.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that ensure that a female staff member is available and participates in the admission of female arrestees, and that male staff members do not conduct clothed or unclothed searches of female inmates except in emergency situations.

See PREA 115.15

B-106

Receiving Juveniles. The jail must have policies that prohibit the housing of juveniles unless the juvenile is housed in a location where they are separated (sight and sound) from adult inmates.

Rationale. Oregon has specific statutes on the treatment of youth offenders as adults and their detention in the same place as adult offenders: ORS 137.124, 137.705, 137.707, 169.800, 419C.130, 419C.349, 419C.364, 419C.370, and 420.011. Although Oregon law allows juveniles to be housed in an adult facility, PREA standards (28 CFR 115) require that they be housed in an area with sight and sound separation from adult offenders.

Compliance. To comply with this standard, the jail must adopt policies that prohibit housing a juvenile in an adult facility unless there is clear sight and sound separation.

ORS 169.800

See PREA Standard 115.14

B-107

Arrestees Requiring Immediate Medical, Dental or Mental Health Attention. The jail must have policies and procedures that require arrestees in need of immediate attention for a serious medical, dental, or mental health problem must not be admitted to the jail until examined by a physician, nurse practitioner, or physician's assistant. (A medical need is serious if it has been diagnosed as such by a physician or if it were so obvious that a layman would recognize the need for medical care as a serious need.) Jails must not admit arrestees who are—

- a. unconscious;
- b. seriously injured; or

- c. **seriously ill and in need of urgent medical care.**
- d. **seriously mentally ill and gravely disabled (demonstrating a lack of judgment or understanding to the point that his or her health and safety are significantly endangered and lacks the capacity to understand that it is the case)**

Rationale. Arrestees with serious medical, dental, or mental health problems must not be admitted to the jail prior to being examined and treated by a physician. In some cases, it will not be clear whether an inmate is seriously injured or seriously ill. If a jail has on-site medical providers, the providers may be consulted to determine if the inmate should be examined by a physician prior to being admitted. If it is unclear and no medical provider is available to assist, jails should err on the side of caution and require the inmate to be seen prior to admission.

- a. If the medical need is serious, the time required to complete admission procedures may be critical to the welfare of the arrestee.
- b. Unreasonable delays in providing medical, dental, or mental health care for persons in need of immediate care or serious medical attention may result in findings of deliberate indifference in the event of litigation.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require arrestees to be examined and, if necessary, treated by a physician before being cleared for jail admission.

200

ADMISSION PROCESS

B-201

Assistance from Peace Officer. The jail should have policies and procedures for asking for assistance from the arresting or transporting officer if needed. In smaller jail facilities where only one corrections deputy is on duty, the transporting officer should be asked to stay until the arrestee has been searched and is secured. Additional assistance should be requested if the arrestee is combative, extremely dangerous, or uncooperative.

Rationale. In jails staffed with only one deputy, the personal safety of the deputy and the security of the facility will be better protected if the deputy who delivered the arrestee to the facility assists the receiving deputy until the search has been completed and the arrestee has been secured in a holding cell.

Compliance. Compliance with this standard may be achieved by adopting policies and procedures for requesting assistance from the officer who transported the arrestee to jail until the arrestee has been searched and secured; however, only having documentation of the assistance of the arresting or transporting officer or a shift schedule may serve as proof of compliance.

202

Information from Transporting Officer. The jail must have policies and procedures that require before accepting custody of an arrestee or an inmate from another facility, the receiving deputy will ensure that the transporting officer has provided all information known to him or her that would be relevant and necessary to safely and securely process and house the arrestee or inmate. Jails must—

- a. require the transporting officer to complete a form that requests specific information needed by the jail;
- b. require receiving deputies to inquire of the transporting officer concerning any information that appears to be missing about the arrestee or inmate in the required forms;

- c. **the receiving deputy will specifically ask the transporting officer whether the arrestee or inmate has done or said anything that might indicate thoughts of suicide or self-harm, use of controlled substances, or detoxification from alcohol or a controlled substance and the response should be documented.**

Rationale. Often arresting and transporting officers are aware of, but fail to provide, information concerning an arrestee's medical history, mental health problems, risk of attempting suicide, violent propensities, or other problems. Generally, that information will be willingly provided if the officer is asked. Failing to obtain information about whether an arrestee has done or said anything that might put the jail on notice of a potential self-harm or self-harm risk may be seen as deliberate indifference by a court.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring the jail to systematically obtain and document information from arresting and transporting authorities.

B-203

Warrantless Arrests. The jail must have policies and procedures that require all arresting authorities that bring arrestees to the jail on warrantless arrests must provide a written probable cause statement in a timely manner.

Rationale. The U.S. Constitution permits warrantless arrests, but requires that persons arrested without a warrant must be promptly brought before a magistrate for a judicial determination of probable cause. This determination must be made within 48 hours of arrest.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require arresting and transporting officers to provide written probable cause statements when they book arrestees on warrantless arrests.

Jail officials may negotiate procedures with law enforcement agencies to have the probable cause statement delivered to the jail by the end of the arresting officer's shift, if such procedures would better serve the needs of the jail. If a delayed procedure is adopted, the law enforcement agencies using the system should be advised that if the probable cause statement has not been received within a specific time frame, the arrestee will be released.

B-204

Probable Cause. The jail must have policies and procedures that ensure arrestees who remain in custody are scheduled for a probable cause determination as soon as reasonably possible. Absent a bona fide exigency, the determination must occur within 48 hours of the arrest.

Rationale. The U.S. Constitution permits warrantless arrests, but requires that a magistrate must make a prompt judicial determination of probable cause. Probable cause determinations should be held as soon as possible, but at least within 48 hours of the arrest. In *McLaughlin v. County of Riverside*, the U. S. Supreme court used the case to define "prompt":

Where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.³

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for ensuring that arrestees receive probable cause reviews as soon as possible after arrest, and certainly within 48 hours. Weekends are included in totaling the time between arrest and the required probable cause determination.

B-205

Intake Information. During the booking process, the corrections deputy should obtain, at a minimum—

- a. identifying arrestee information, including the following:
 1. name and aliases;
 2. age and date of birth;
 3. place of birth;
 4. race;
 5. gender;
 6. physical description;
 7. address and telephone number;
 8. occupation and employer;
 9. social security number;
 10. driver's license number and state; and
 11. emergency name and telephone number; and
- b. official information, including the following:
 1. date and time of admission;
 2. date and time of arrest;
 3. offenses charged;
 4. authority for commitment (warrant, court commitment, etc.);
 5. name of arresting agency;
 6. name and signature of arresting authority; and
 7. name of booking staff.

Rationale. The information listed above is the minimum information necessary to properly identify the arrestee and to document the authority for booking the arrestee into jail. Foreign nationals have the right to consular notification based on the Vienna Convention on Consular Relations of which the United States of America is a party. Requiring the place of birth information at the time of booking is necessary to comply with the Vienna Convention.

Compliance. Compliance with this standard can be achieved by adopting booking sheets, intake forms, and/or other forms or computer systems that provide for the collection of the required information.

See PREA 115.41 and 115.42

B-205

Foreign-Born Arrestees. The jail must have policies and procedures for complying with international treaties and federal laws for notifying foreign consulates and immigration authorities whenever a foreign-born arrestee is admitted into the jail for booking.

- a. **Jail officials must advise any non-U.S. Citizen arrestee of the right to have his or her consular officials notified.**
 1. **Depending on the arrestee's nationality, consular notification may be mandatory rather than optional, as outlined in the U. S. Department of State publication *Consular Notification and Access*,**
 2. **During the booking process, jail officials must complete a consular notification form for each foreign-born arrestee if notification is mandatory for the arrestee's country of nationality.**
 3. **A written record of the provision of notification and actions taken must be kept on each foreign-born arrestee.**
- b. **Jail officials may, as allowed by ORS 181A.820 (2) and ORS 180.805, notify the designated U.S. Immigration and Customs Enforcement (ICE) office by contacting an immigration enforcement agent.**
 1. **Notification of ICE can occur by direct telephone call, fax, or other electronic means.**
 2. **A written record of ICE notification and actions taken must be kept on each foreign-born arrestee.**

Rationale. Foreign nationals have the right to consular notification based on the Vienna Convention on Consular Relations (VCCR) of which the United States of America is a party. The obligation of consular notification and actions are binding on states and local governments as well as the federal government, primarily due to the Supremacy Clause in Article VI of the United States Constitution.

Article 36 of the VCCR requires that foreign nationals who are arrested or detained be given notice "without delay" of their right to have their embassy or consulate notified of that arrest. The notice can be as simple as a fax giving the person's name, the place of arrest, and, if possible, something about the reason for the arrest or detention.

There are express provisions in federal law that provide state and local law enforcement the authority to assist federal officers with the enforcement of immigration law under certain circumstances. According to the Immigration and Nationality Act, the federal government is required to detain certain illegal aliens who pose a national security risk or commit crimes in the United States. Criminal aliens include those that have been convicted of crimes involving drug smuggling, murder, or aggravated felonies. Jails are not required to hold detainees for ICE without an order signed by a federal judge (not an ICE enforcement officer). Jail policies should spell out what information about arrestees will be shared with ICE, while ensuring that information prohibited by ORS 180.805 is provided.

Note that ORS 180.805 appears to create a conflict with ORS 192.345(3), which requires that the record of an arrest must be disclosed, and it includes the arrested person's name, age, residence, employment, marital status and similar biological information. It would appear that a jail has to provide this information to any person who requests it, unless they know for certain that the request is being made for purposes of enforcement of federal immigration laws, in which case disclosure of some of this information would be prohibited by ORS 180.805.

ORS 180.805

- (1) Except as required by state or federal law, a public body may not disclose, for the purpose of enforcement of federal immigration laws, the following information concerning any person, whether current or otherwise:
 - (a) The person's address;

- (b) The person's workplace or hours of work;
 - (c) The person's school or school hours;
 - (d) The person's contact information, including telephone number, electronic mail address or social media account information;
 - (e) The identity of known associates or relatives of the person;
 - (f) The date, time or location of the person's hearings, proceedings or appointments with the public body that are not matters of public record; or
 - (g) Information described in paragraphs (a) through (f) of this subsection with respect to known relatives or associates of the person.
- (2) Except as required by state or federal law, or as necessary to determine eligibility for a benefit a person is seeking, a public body may not inquire about or request information concerning a person's citizenship or immigration status.
- (3)(a) If a public body collects information concerning a person's citizenship or immigration status, the public body may decline to disclose the information unless disclosure is required by:
- (A) State or federal law;
 - (B) A court order; or
 - (C) A warrant authorized by a court.
- (b) Nothing in this subsection:
- (A) Prevents a person from obtaining records about the person or the person's dependents from a public body;
 - (B) Authorizes a public body to withhold aggregated information that is not personally identifiable.
- (4) A public body shall, within six months of August 15, 2017, and every year thereafter, review the public body's confidentiality policies to ensure that the public body treats information concerning a person's citizenship or immigration status, and information described in subsection (1) of this section, in a manner consistent with this section and ORS 180.8.
- (5) This section prohibits any public body from complying with a federal immigration law if the law requires information that is prohibited by federal law.
- (6) As used in this section:
- (a) "Federal immigration authority" means the United States Department of Homeland Security, the United States Immigration and Customs Enforcement, the United States Citizenship and Immigration Services or a successor agency, any other federal immigration agency or official, or any other entity to which a federal immigration agency delegates or assigns the authority to detect, investigate or enforce violations of immigration law.
 - (b) "Information concerning a person's citizenship or immigration status" means information about whether a person is a citizen of the United States or has lawful authority to be present in the United States, either through a visa, a green card or another official documentation. The term does not include information consisting of a person's address, location, contact information, relatives, associates or other information that could lead to the detection or apprehension of the person.
 - (c) "Public body" has the meaning given that term in ORS 174.109.
 - (d) "Social media" has the meaning given that term in ORS 659A.330.

ORS 192.345(3) the record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

- (a) The arrested person's name, age, residence, employment, marital status and similar biographical information;
- (b) The offense with which the arrested person is charged;
- (c) The conditions of release pursuant to ORS 135.230 to 135.235;
- (d) The identity of and biographical information concerning both complaining party and victim;
- (e) The identity of the investigating and arresting agency and the nature of the investigation;
- (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- (g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures on consular and ICE notification and using forms or computer systems that provide for the collection of the required information on foreign-born arrestees and subsequent consular and ICE notification actions, in compliance with Oregon statutes.

B-207

Custody File. A jail file should be maintained for each arrestee booked into the jail for the purpose of storing the booking intake form, all documents authorizing the arrest, incarceration, and other official documents.

Rationale. Individual custody files are necessary to provide a single location for storing official documents related to each arrestee's incarceration. Misplacing, losing, or separating of official documents may result in an arrestee being unlawfully detained or otherwise suffering an infringement of the arrestee's statutory or constitutional rights.

Compliance. To comply with this standard, the jail should establish a system of individual custody files (electronic or hard copy). The files must contain all admission forms, official commitment papers, and other documents deemed appropriate, and must be retained as required by public records retention rules.

ORS 199.076(d)
15 C.F.R. 115.81

B-208

Medical Screening. The jail must have policies and procedures that require arrestees booked into jail facility, other than book-and-release arrestees, must receive medical screening as a part of the booking process. Screening forms should—

- a. obtain information about—
 - 1. current illnesses or injuries;

2. significant medical history problems;
 3. mental health history, diagnosis, and treatment
 4. whether currently being treated by a physician (and the physician's name)
 5. currently prescribed medication;
 6. pregnancy or other female medical condition;
 7. determine whether the inmate normally uses any prosthesis or device to assist in everyday functions (wheelchair, hearing aids, leg braces, glasses or contacts, walker) and consult with ADA coordinator, as necessary;
 8. current drug and/or alcohol use and potential detoxification issues;
 9. suicidal thoughts, attempts, or feelings.
- b. implement procedures for observing arrestees for—
1. to detect amputations or significant deformities;
 2. to detect obvious injury or illness;
 3. to detect tracks or other indications of intravenous drug use or signs of drug withdrawal; or
 4. for other manifestations of medical symptoms or problems.
- c. have a procedure for evaluating the need for—
1. immediate medical intervention; or
 2. referral for routine care.

Rationale. Incoming arrestees should be medically screened to—

- a. discover and facilitate the emergency handling of arrestees' serious medical problems;
 - b. identify less serious medical problems and facilitate the proper delivery of medical care;
 - c. ascertain what medications have been prescribed and begin the process of medical review of the appropriateness of the medication in the jail setting;
 - d. gain other medical information relevant to the housing of arrestees; and
 - e. assist jail officials to avoid liability by obtaining sufficient information to make informed choices regarding arrestee medical care.
- reduce the risk of introduction of communicable disease into the jail population

Compliance. To comply with this standard, the jail must adopt policies and procedures governing the medical screening of new arrestees.

IS 169.076(d)

B-209

Suicide Risk Screening. The jail must have policies and procedures that require arrestees being booked into the jail facility to be screened to determine their risk of attempting suicide unless they are being constantly supervised or will be released immediately.

- a. **A risk assessment form or other instrument should be used to screen incoming arrestees that includes questions and/or observations concerning—**
 1. **previous suicide attempts;**
 2. **current state of mind and suicidal ideations;**
 3. **information from arrest or transport authorities related to observed or noted risk factors;**
 4. **a family history of suicide or suicide attempts; and**
 5. **scars or other physical manifestations of previous suicide attempts.**
- b. **Policies should identify a mental health provider to assist the jail in dealing with suicidal arrestees. The mental health providers should be available to provide assistance in evaluation and caring for arrestees who are at risk to commit suicide or engage in other self-destructive behavior or attempts.**
- c. **If an arrestee has previously been lodged in jail, staff should determine whether the inmate previously was at risk to commit suicide or engage in other self-destructive behavior or attempts, if that information is readily available.**
- d. **If information is discovered or if an arrestee discloses information that indicates that they are a suicide risk, the jail must take appropriate steps to manage the risk.**

Rationale. Suicide risk screening is done as a proactive means of attempting to prevent arrestee suicides by—

- a. identifying risk factors that indicate a potential for suicidal behavior;
- b. evaluating observations and available information to assess risk levels; and
- c. initiating appropriate preventative procedures based on the evaluation of risks.

This standard is intended to assist jail officials in preventing arrestees from engaging in self-destructive behavior. However, in embarking on this course, it is recognized that preventing such behavior is not always possible, because—

- a. **arrestees may attempt suicide or engage in other self-destructive behaviors, exhibit or demonstrate symptoms or behaviors that can be easily interpreted as a precursor to self-destructive behavior, even by professionals in the behavioral sciences;**
- b. **one or more of the characteristics or factors that are generally identified as suicide-risk indicators (such as depression, agitation, speaking unrealistically about getting out of jail, difficulty relating to others, delusions, withdrawal, sadness, crying, helplessness, insomnia, pessimism, and loss of self-esteem) will be present to some degree in virtually all arrestees being booked into jail;**
- c. **arrestees are often manipulative and may fake symptoms to further their own agendas;**
- d. **the mental state of arrestees does not remain constant and the forces that influence suicidal behavior will increase and/or decrease from the time the potential suicide risk is evaluated; and**
- e. **corrections deputies are not mental health clinicians and cannot be expected to function as if they possessed that type of education, training, and expertise.**

The US Supreme Court has held that there is no constitutional obligation to provide suicide screening protocols for inmates. *Taylor v. Barkes*, 135 S Ct 2022 (2015). Notwithstanding

that holding, inmate suicide screening is a highly recommended practice to reduce inmate suicide and may reduce liability risk to the jail.

While screening may be helpful, it is an imperfect tool that produces false positives and false negatives. It is the intent of this standard to recommend screening to increase the capability and awareness of deputies in identifying arrestees who represent a high risk of committing suicide.

In many jails, being placed on suicide watch results in the most restrictive living conditions in the entire jail, and may prevent inmates from reporting that they are feeling suicidal. Jail Commanders are encouraged to work with mental health staff to house potentially suicidal inmates in the least restrictive environment necessary to ensure their safety.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures designed to take reasonable precautions to prevent arrestees and inmates from committing suicide or engaging in other self-destructive behaviors, and by reviewing information from arresting officers, medical screening, and prior booking information in order to determine whether an inmate is at risk of suicide or self-harm.

B-210

Mental Health Screening. The jail should have policy and procedures related to mental health screening at booking. Arrestees booked into jail should receive at least minimal mental health screening as a part of the booking process. At a minimum, the jail should—

- a. ask questions during the medical screening process concerning past or current mental health treatment, mental health hospitalizations, and medications;
- b. observe arrestees for signs of behavior that would indicate an obvious risk to self or others; and
- c. refer arrestees suspected of being mentally ill to the attention of mental health professionals, priority given to the more acute arrestees.

Rationale. Mental health screening by corrections deputies is intended to identify arrestees with mental health problems to permit appropriate intervention, follow up, or other handling.

The quality of screening that can be done by corrections deputies is limited. Corrections deputies lack the education, training or experience necessary to diagnose mental illness. Even mental health professionals disagree among themselves over who is or is not mentally ill and over the definition of mental illness.

Compliance. To comply with this standard, jails should adopt policy and procedures related to mental health screening at booking.

WIS 169.076(2)(d)

See WPEA 115.81

B-211

Segregation During Admission. The jail should have policies and procedures for the period between intake and classification to—

- a. temporarily segregate those arrestees who present an obvious and serious risk—
 - 1. to assault others;
 - 2. of being assaulted; or
 - 3. of infecting others with an infectious disease; and
- b. closely observe arrestees who—

1. are obvious suicide risks;
2. are obviously highly dangerous if housed with other arrestees; or
3. are obviously extremely vulnerable.

Rationale. When it is obvious that an arrestee has an infectious disease or is extremely dangerous or vulnerable, segregation may help prevent arrestees from harming each other. This is notably true regarding sexual predators and arrestees who may be vulnerable to sexual assault. Segregation is by no means the only way of dealing with assaultive or vulnerable arrestees. When sufficient levels of supervision are present, segregation may be unnecessary.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures to determine which arrestees should be segregated.

See PREA Standard 115.62

300 **ANCILLARY ADMISSION FUNCTIONS**

B-301 Removal of Personal Property. The jail must have policies and procedures that upon arriving at the jail, arrestees must be required to relinquish their money and personal property to jail personnel unless retention is authorized by jail policy.

Rationale. Arrestee money and property should be taken at the time of admission to—

- a. prevent the introduction of weapons, drugs, and other contraband into the jail;
- b. protect arrestee money and property from theft;
- c. make unavailable to arrestees those items that jail officials deem to be potentially harmful to the arrestee or others; and
- d. assist in verifying the arrestee's identity.

Due to the differences in facility design and operational approach among jails, the location, timing, and procedure for taking and securing arrestee property will vary among jails. If the jail has a secure vestibule or similar area that is designed and furnished in a manner that provides arresting or transporting deputies a work area separate from the booking area, arrestee money and property should be taken and receipted in the pre-admissions area, prior to admitting the arrestee into the booking area. Most jails are not designed with a pre-admissions vestibule or processing area; thus, the arrestee will ordinarily retain money and personal property until inside the booking area.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring money and property to be taken and secured as early into the admission process as is feasible, and by providing a receipt to the arrested person as required by ORS 133.455.

B-302 Property and Clothing Inventory. The jail must have policies and procedures for inventorying inmate clothing and other property before it is placed into storage. The policy should be based upon an ordinance which allows an inventory of property. It may be inventoried even if the property is not going to be stored in the jail. Policies should also provide instruction regarding the proper handling of any items that will not be stored in the jail or criminal evidence found during a clothing and property inventory.

Rationale. Inmate clothing should be inventoried before it is placed in storage—

- a. to complete the inventory process and protect against possible false claims of misappropriation by staff members; and
- b. as a means of preventing the introduction of illegal and contraband items into the jail.

Complete inventories of arrestees' clothing and property have been affirmed by the U.S. Supreme Court. An administrative inventory ordinance eliminates the officer's discretion by directing the officer as to what items may be inventoried. Administrative searches under Oregon law are complex, may be much more limited than the complete inventory of all property allowed under the 4th Amendment, and the law changes often. Jails are encouraged to periodically have their inventory policy and authority reviewed by legal counsel.

Examples of property the jail may choose not to store include: bicycles, large bags, packs, oversized items, ammunition, luggage, firearms or weapons, medication, alcohol or controlled substances, flammables, explosives, toxic materials or perishable food items. Jails and other public buildings are prohibited by Oregon and federal law from storing toxic materials, some flammable materials, explosives, and other hazardous materials. It is appropriate to search containers that may contain these materials if authorized by policy or ordinance.

Compliance. To comply with this standard the jail should ideally have a County ordinance which specifies what must be inventoried and how the inventory must be conducted. In the absence of an ordinance, the jail must adopt policies and procedures for inventorying the clothing and other personal property of inmates being admitted to the jail. The policy must eliminate staff discretion by specifying exactly what specific types of property must be inventoried, and the manner in which the inventory must be conducted. Policies should also provide instruction regarding the proper handling of any property that will not be stored in the jail or criminal evidence found during an inventory.

B-303

Inventory and Receipt. The jail must have policies and procedures for inventorying the money and property taken from arrestees at admission. Arrestees must receive a receipt for the items taken. For money, the total amount is all that needs to be listed.

Rationale. A written inventory of, and receipt for, the money and property taken at intake is required to—

- a. protect the jail staff from false claims of theft by arrestees;
- b. protect arrestees from loss of property as a result of theft or mishandling;² and
- c. document the process of receiving and releasing custody of arrestee money and property.

Property should be described in sufficient detail that disputes between arrestees and jail staff concerning lost or allegedly lost property can be resolved with a minimum of difficulty.

Normally, inventory policies are based upon county ordinances. Jail policies may be sufficient if no ordinance is enacted, but in all cases the ordinance or policy must eliminate the discretion of the staff member by setting out the exact scope of the inventory in terms of what items will be inventoried and how it will be conducted. In order to be valid, the inventory must be performed exactly as prescribed by ordinance or policy.

Compliance. To comply with this standard, the jail must adopt policies and procedures that comply with ORS 133.455 for inventorying the money and property taken. The only requirement for documenting money taken is to list the total amount.

B-304

Storage. The jail must have policies and procedures for storing arrestee money and property if an arrestee cannot post security or otherwise secure prompt release.

- a. Property taken from the arrestee should be secured in a property storage area.
- b. Money taken from the arrestee should be placed in an inmate funds account.
- c. The arrestee must be given a receipt for the money and property placed in storage.

Rationale. If an arrestee cannot be released in a timely manner and the jail assumes control of the arrestee's property and money, the jail also assumes responsibility for any money or property lost, stolen, destroyed, or significantly damaged while in the custody and care of the jail. Tight, controlled operational procedures are necessary to protect arrestees' property and to protect the jail staff from false allegations.

Money has a lawfully determined face value. Placing the money in an account as opposed to placing the actual cash in a property envelope—

- a. provides greater protection against mishandling or misappropriation of arrestees' money;
- b. decreases the potential for false claims of theft;
- c. affords greater efficiency in handling inmate funds.

Absent an adequate property storage area and efficient property handling procedures, property can be easily misplaced, mixed with another arrestee's property, or misappropriated.

Compliance. To comply with this standard, the jail must have—

- a. policies and procedures for handling arrestee money and property; and
- b. a secure arrestee property storage area with restricted access by staff, and no access by other arrestees or inmates unless escorted under direct staff supervision at all times.

B-305

Arrest Search Prior to Lodging. The jail must have policies and procedures for a more thorough search of an arrestee who has exhausted reasonable efforts to post security to attain other prompt arraignment release and must be moved into the jail population. The jail policy should—

- a. provide criteria for helping jail staff determine when it is appropriate to lodge an arrestee in the jail;
- b. prohibit premature moves of arrestees to jail housing as a pretext to justify an otherwise unwarranted intrusive search; and
- c. provide that once an arrestee has exhausted all reasonable release options, lodging an inmate anywhere in the jail where they may have contact with other inmates (housing units, disciplinary segregation, medical segregation, administrative segregation or other area where they could have contact with other inmates inside the jail) is sufficient justification for an unclothed or visual body cavity search, also known as a strip search.
- d. in addition to an unclothed search, the jail may use a body scanner to detect contraband that is secreted internally. A body scanner should not be used as a substitute for a visual strip search, because a body scanner will not reveal important information such as whether an arrestee has body lice or other vermin, other medical conditions, scars indicating suicide attempts or

self-mutilation, or the presence of tattoos indicating an affiliation with security threat groups.

Rationale. Offenders have "arrestee" status from the time they arrive at the pre-admission area until they exhaust reasonable release options and are moved to a housing assignment. They have "inmate" status after exhausting their release alternatives and being assigned to move to a housing assignment inside the jail, regardless of whether that assignment is in a disciplinary segregation unit, a medical unit, a general housing assignment or an administrative segregation unit. Arrestees should not be moved from the admissions area until reasonable efforts to secure a security release have been exhausted. When the inmate is lodged in the jail, more thorough and intrusive searches are required. Moving an inmate who has not been thoroughly searched into the jail population increases the potential for introduction of weapons, drugs, or other dangerous items into the jail, jeopardizing the safety of staff and other inmates and the security of the facility.

The line between arrestee and inmate status is not always easy to determine. The status depends on factors related to the probability of release. It appears that an arrestee will post security or otherwise secure release within a reasonable period of time if or she should remain on arrestee status until released. Determining what is "reasonably timely" will require the exercise of discretion by staff.

If it becomes necessary to transfer the arrestee to a jail housing area where the arrestee may have contact or intermingle with other lodged inmates, the arrestee may legally be subjected to an unclothed search, without any further justification.

The risk to facility security resulting from restrictions on arrestee searches require special care by jail officials to balance inmate rights with jail safety and security needs.

Compliance. Compliance with this standard can be attained by adopting policies and procedures for searching inmates after reasonable release options have been exhausted and a decision has been made to lodge the inmate in the jail.

B-306

Shower and Clothing Exchange. The jail should have policies and procedures requiring that if an arrestee has exhausted post security or otherwise secure release and must be lodged in the jail where contact with other inmates is possible, the arrestee should be required to shower and exchange his or her personal clothing for jail-issued clothing.

- a. Soap must be provided for the shower.
- b. Arrestees must be given a hot- or warm-water shower.
- c. If there is an indication of vermin, arrestees must undergo delousing procedures. Delousing procedures should include—
 1. detection and recognition;
 2. temporary quarantine;
 3. delousing procedures for the inmate and the quarantine area;
 4. documentation of the infestation and action taken;
 5. use of delousing agents approved by a local board of health or licensed sanitarian; and
 6. training on the proper and safe use of the delousing agents.

Rationale. Shower and clothing exchange are important procedures to aid in the process of maintaining sanitation and cleanliness in the jail. Inmates have no rights to their own

clothing while incarcerated, however, jails have discretion. Requiring inmates to wear jail-issued clothing provides security benefits by—

- a. preventing inmates from smuggling contraband into the general housing area hidden in their clothing; and
- b. making it more difficult—
 - 1. for inmates to escape custody by blending in with other non-inmates; and
 - 2. if the inmate does flee custody, making it more difficult to avoid recapture due to the nature of their dress during the time immediately after escape (Bright colored jump suits, clothing stamped in large letters with the name of the jail, and other distinctive clothing are easier to locate and identify).

Shampoo is recommended, but optional. Arrestees are more likely to wash their hair thoroughly if shampoo is provided. Some arrestees may be reluctant to clean their hair with body soap.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring all arrestees who are not able to post security to otherwise arrange release within a reasonable time after booking to—

- a. surrender personal clothing for storage;
- b. shower;
- c. submit to delousing, if there is reason to believe that the inmate and/or his or her clothing are vermin infested; and
- d. dress in jail-issued clothing.

B-307

Securing Clothing. The jail should have policies and procedures for securing an inmate's personal clothing when processed for lodging. When inmate clothing is taken, it should be—

- a. inventoried;
- b. secured in a manner that reduces the likelihood of clothing being separated, misplaced, or damaged; and
- c. stored in a ventilated room.

Rationale. When the jail takes control of clothing, it becomes responsible for returning the same clothing that it took and in at least as good a condition as it was received. Storing inmate clothing in a poorly ventilated area, especially unlaundered clothing, will result in the clothing area becoming unsanitary and smelly.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide for the inventory, storage, and care of inmate clothing that meet the jail's need to maintain a sanitary environment.

B-308

Jail-Issued Items. After completing the admission process, inmates should be issued—

- a. jail clothing;
- b. bedding; and
- c. hygiene items.

Rationale. Jail clothing should be provided to replace clothing taken during the admission process. Jail clothing can also be color coded or imprinted with other identifiers as a means

of aiding with the classification and segregation of inmates, and to make escape more difficult.

The issue of providing bedding has both practical and legal implications. Bedding provides a sanitary cover over the jail-issue mattresses and provides warmth for inmates while sleeping. Inmates have a right to a sanitary living environment and to sufficient bedding to protect against cold temperatures. Hygiene items are legally required, but should also be provided for inmates to aid in maintaining sanitation and to enable inmates to comply with the jail's grooming requirements.

Compliance. Compliance with this standard can be achieved by requiring issuance of clothing, bedding, and basic hygiene items.

ORS 169.140

B-309

Photographs and Fingerprints. The jail must have policies and procedures that require the photographing and fingerprinting of adult and Measure 11 or waived juvenile offenders upon admission and address any exceptions.

Within the policy, jails may allow for the use of reasonable force to obtain the photographs or fingerprints – except in the case of a civil detainer.

Rationale. Photographs and fingerprints are taken—

- a. to satisfy statutory requirements;
- b. to meet the requirements of law enforcement and corrections agencies to identify criminals and criminal suspects;
- c. to assist corrections deputies in identification of inmates while they are confined; and
- d. to facilitate the updating of federal, state, and local agency criminal history files.

Measure 11 and waived juveniles are considered adults for purposes of their involvement with the criminal justice system. Thus, the juvenile must be processed as if he or she were an adult if the court waived the juvenile to stand trial as an adult or a grand jury indictment is returned or a criminal information is filed by the district attorney on waived or Measure 11 charges.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that include—

- a. the requirements for fingerprinting and photographing offenders; and
- b. the exceptions to the requirement to fingerprint and photograph offenders.

B-310

Sharing Photographs and Fingerprints. The jail must have policies and procedures that require copies of fingerprints and photographs to be forwarded to the Oregon State Police (OSP), the FBI, and other agencies with which the jail agrees to share such materials, as allowed by ORS 419A.250.

Rationale. Criminal identification is an important tool to facilitate the law enforcement process.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that include—

- a. information concerning the fingerprints and photographs required for OSP and the FBI; and

- b. requirements for providing fingerprints and/or photographs to other agencies based on interagency agreements.
- c. A prohibition on sending fingerprints and/or photographs of a child to OSP or FBI as required by ORS 419A.250(2). Note that a child is a person under the jurisdiction of the juvenile court for a dependency issue. A person under the jurisdiction of the juvenile court for a delinquency issue (having committed an act that would be a crime if committed by an adult) must still be sent to OSP and FBI ORS 419A.250(5).
- d. A prohibition on storing juvenile fingerprints in violation of ORS 419A.250(3) and procedures allowing inspection of juvenile fingerprints that complies with ORS 419A.250(4) and (5).

B-311 **Access to Telephones. The jail should have policies and procedures that ensure that inmates have access to a telephone within a reasonable time frame following the admission process, unless the admission process cannot be completed due to the inmate's lack of cooperation or other delay.**

Rationale. Inmates are lawfully entitled to access to counsel if charged with a criminal offense, to arrange for the posting of security (if eligible for security) and to notify a family member or other person within a reasonable time. Release on security is, under ordinary circumstances, guaranteed by the Eighth Amendment to the U.S. Constitution and Oregon statutes.

Compliance. To comply with this standard, the jail should adopt policies and procedures that ensure that inmates have access to a telephone following admission.

ORS 169.076(2)(c)

B-312 **Attorney Visits. The jail should have policies and procedures that permit inmates to receive visits from an attorney following the admission process.**

Rationale. Inmates are lawfully entitled to visit with an attorney if charged with a criminal offense.

Compliance. To comply with this standard, the jail should have policies and procedures that ensure that during the booking process inmates are permitted to visit with an attorney.

ORS 169.076(4)

400 ***INMATE RELEASE***

B-401 **Opportunity for Security Release. The jail must have policies and procedures to ensure that after the booking process has been completed, arrestees eligible to post security (bail) for their release must be provided the opportunity to post security.**

Rationale. Release on security is, under ordinary circumstances, guaranteed by the Eighth Amendment to the U.S. Constitution and Oregon statutes. An arrestee may have enough money in their property at admission or a valid credit card that may be used to post security if an outside person does not do it for the arrestee.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide eligible inmates with timely access to the security-release process.

B-402 **Unreasonable Delays Prohibited. Inmates must not be subjected to unreasonable delays in the security-release process. Policies and procedures must not permit unreasonable delays—**

- a. at the request of arresting authorities to accommodate investigative priorities; or
- b. to punish an inmate for a bad attitude
- c. for other personal reasons or because of animosity towards the inmate

Rationale. After all admission processes have been completed, unreasonable delays may subject jail officials to potential liability. The inmate may only be denied security release by a lawful authority.

It must not be considered unreasonable for corrections deputies to delay the release of an inmate—

- a. upon request of the arresting authority if—
 - 1. additional warrants or commitments have been issued for the inmate that would justify continued detention or arrest; or
 - 2. the arresting authority is in the process of filing a new criminal complaint against the inmate; or
- b. if the admission process has not been completed due to the inmate's lack of cooperation or other behavior that presents a danger to the inmate, staff or others, or jeopardizes the safety and security or good order of the facility.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that ensure security-release inmates timely access to family or friends to arrange security.

B-403 **Release Authorization. Policies and procedures must require that prior to releasing the inmate, a corrections deputy must verify—**

- a. the authority to release the inmate;
- b. that required release papers have been received; and
- c. that there are no holds, detainers, warrants, or commitments outstanding that would preclude release.

Rationale. Inmates may have multiple cases pending with charges that are filed on different dates and in different jurisdictions. Keeping track of the various warrants, commitments, detainers, and holds can be a confusing task. Corrections deputies are vulnerable to mistakes unless each entry is specifically examined to determine that it has been cleared and the paperwork is in place.

Compliance. Compliance with this standard may be achieved by adopting policies and procedures that call for the verification of documentation that show pending charges or that any holds have been cleared.

NOTE: Immigrations and Customs Enforcement holds or detainers are not sufficient authority to detain an inmate, unless issued by a federal judge. This is true even if the document presented is titled as a Warrant for Arrest of Alien (I-200) or a Warrant of Removal/Deportation (I-205) because these documents are not real warrants – they are signed by an ICE agent, not a judge.

ORS 169.076(2)(h)

B-404

Identification. Policies and procedures must require that a corrections deputy releasing an inmate must verify—

- a. the identity of the inmate being released; and
- b. if the inmate is being released to another jurisdiction, the identity and authority of the person taking custody of the inmate.

Rationale. Jails handle large numbers of inmates, many of whom are known to corrections deputies. If deputies are not diligent in verifying the identity of each inmate being released, inadvertent releases may occur resulting in escape of inmates from the facility.

Procedures for verifying the identity of inmates for release may include, but are not limited to—

- a. personal knowledge of the identity of the inmate;
- b. photograph comparison;
- c. fingerprint comparison; and/or
- d. asking the inmate information from his or her booking sheet that only the inmate should know

Verifying the identity and authority of official to whom an inmate is to be released is necessary to prevent the unauthorized release of an inmate—

- a. to someone posing as a an officer to aid a inmate to escape from custody; or
- b. to a peace officer who lacks the legal authority to terminate the jail's custody of the inmate.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for verifying the identity of inmates and officials to whom inmates are to be released.

ORS 169.076(2)(h)

B-405

Inmate Property and Money Return. The jail must have policies and procedures that require, as a part the release process, the return of all property and money taken from inmates. Policies and procedures should note exceptions for that which was seized as evidence, otherwise lawfully confiscated, retained, or destroyed.

Rationale. Unless lawfully seized, retained, or destroyed, there can be no legal justification for refusing to release to an inmate the inmate's own money and property upon release. For example, illegal items such as drugs (even if no charges are filed) cannot lawfully be returned, (this does not apply to drugs legally prescribed to the inmate and in original medical packaging) nor can items for which the inmate has previously disavowed ownership. The jail cannot be required to store perishable items. Perishables, such as food, brought to the jail by inmates who are not released soon after booking, have to be destroyed for sanitation reasons.

Compliance. Compliance with this standard can be achieved by adopting a policy that requires the return of property and money taken from inmates. The policy should clearly set forth the exceptions to the general policy.

ORS 169.076(2)(h)

B-406

Release Documentation. The jail must have policies and procedures that require the documentation of the release process. The jail must document for each inmate released—

- a. the date and time of release;
- b. authorization for the release;
- c. the agency and person to whom the inmate was released, if any;
- d. the money and property returned, including a receipt signed by the inmate;
- e. ensure that release documents and property receipts are retained; and
- f. provide a means of verifying and documenting the release of money and property if the inmate refuses to sign the receipt.

Rationale. Documentation is needed to memorialize the release process and to protect the jail and its deputies.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that document the release process.

500 TRANSFER BETWEEN FACILITIES

B-501 Transport Requirements. The jail should have policies and procedures governing inmate property and documents on transport to other jails and to the Oregon Department of Corrections. These policies and procedures should include—

- a. a limit on the quantity of inmate property on the transport to that that will fit in a sealed bag no larger than 14 by 22 inches;
- b. a prohibition of dangerous items in property, such as knives and other sharps;
- c. a prohibition on commissary food items in property; and
- d. the requirement to attach current and complete forms to the outside of the sealed property bag that identify the inmate and the inmate’s medical, classification, disciplinary information, and any other behavioral information deemed appropriate. The originating facility will provide any readily available information regarding whether the inmate is or has been a suicide risk.

Rationale. The New Hope system has property and information-sharing requirements for the transfer of inmates among agencies. Policy and procedures are necessary to ensure a common practice and cooperation in the transfer of inmates between facilities with efficiency, safety, and security.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing the transport of inmate property between facilities and the sharing of information that is pertinent for the safe handling and care of the inmate.

502 Transfers Out of State. The jail must have policies and procedures that prohibit pre-trial detainees from being transferred to an out-of-state facility, unless the transfer is court-ordered.

Rationale. Transferring a pre-trial inmate to an out-of-state jail would likely make it difficult for the inmate and his or her attorney to prepare to defend the criminal charges for which the inmate was arrested. Policies should also require that the county counsel must be asked for direction if an order is received to transfer a pretrial detainee out of state.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that do not permit transfer of inmates out of state without a proper court order.

ORS 135.215

B-503

Transfers to Other Jails. The jail must have policies and procedures that prohibit pretrial inmates from being transferred to another county without a court order if the location of the receiving jail would make it unreasonably difficult for an inmate to access his or her attorney unless there are exigent or unusual circumstances.

Rationale. Inmates have no right to be confined in any particular jail; however, inmates should not be moved any distance or facility that would make it unreasonably difficult for an inmate to access his or her attorney. Transfers to an adjoining county will normally be considered reasonable.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit inter-facility transfers that would result in denying a pretrial detainee reasonable access to his or her attorney.² Reasonable access may include the use of video or other technological methods.

ORS 169.053

B-504

Transfer to Other Facilities. The jail should have policies and procedures that allow convicted inmates to be transferred to facilities in or out of state.

Rationale. Given a valid conviction, a criminal defendant has been constitutionally deprived of liberty to the extent that government may confine the person and subject the person to the rules of its prison (or jail) system so long as conditions of confinement do not otherwise violate the Constitution. Absent state-created interests, the courts have consistently ruled that interstate transfers are within the discretion of corrections officials.

Just as an inmate has no justifiable expectation that he or she will be incarcerated in any particular prison (or jail) within a state, the inmate has no justifiable expectation that he or she will be incarcerated in any particular state.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing inmate transfers.

B-505

Transfer of Inmates to Oregon Department of Corrections. The jail should have policies and procedures that require inmates sentenced to confinement in the Oregon Department of Corrections (DOC) to be transported from the jail in a timely manner. The jail receives commitment papers from the court. Procedures should be compatible with the following requirements of the DOC. To the extent possible, the jail must give the DOC an advance notice of one business day before transfer.

Rationale. The jail cannot transport the inmate until it receives the commitment order. In some jurisdictions, the commitment may not be received for several days after the sentencing. If the inmate is under death sentence, the warrant ordering the execution of the inmate must be delivered to the Director of the Department of Corrections or designee at the Oregon State Penitentiary.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for transporting newly committed inmates to state institutions.

ORS 138.305

SECTION C: INMATE MANAGEMENT

100 CLASSIFICATION

C-101 **Housing Plan.** There must be policies and procedures that provide guidance to staff concerning the inmate housing plan for the jail population. Policies and procedures should include—

- a. the assigned capacity of each cell, cell block, or dormitory;
- b. identifying inmate classifications that can be housed in each cluster of cells, cell block or dormitory; and
- c. what steps should be taken if assigned capacity is reached or it becomes necessary to exceed assigned capacity.

Rationale. Policies and procedures are necessary to ensure that staff understand the jail's housing plan, the number of inmates who may be housed in a given location, and what steps are to be taken in case the assigned capacity is reached or must be exceeded.

Compliance. Compliance with this guideline can be achieved by adopting policies and procedures that provide direction for staff concerning the housing plan for inmates.

C-102 **Classification Staff.** The jail must have staff to carry out the classification function. The classification staff should be responsible for reviewing classification, reclassification, and special housing assignments.

Rationale. Having staff members administer the classification system is necessary to ensure that the classification process operates in a consistent and uniform manner and makes it more difficult for inmates to manipulate the system.

Compliance. To comply with this standard, the jail must have staff to administer the classification process. In large jails, the classification function may be the sole function of designated staff, while in smaller jails, the staff could be assigned to handle the supervision of classification in addition to other assigned duties.

See PRS 115.41 and

C-103 **Classification Training.** Classification training must be provided for those staff who are involved in the classification process. Advanced classification training should be provided to the staff designated to supervise the classification process.

Rationale. Classification is the backbone of inmate management and a necessary component in maintaining safety and security in the facility. To understand the function and important elements of the classification system, training is needed concerning procedural requirements. The responsibility of supervising the classification process requires more advanced training including procedural, legal, documentation, and operational topics.

Advanced training options include, but are not limited to, training provided by the National Institute of Corrections and the Oregon Department of Corrections. The Oregon State Sheriffs' Association, Oregon Sheriffs' Jail Command Council, or other qualified entities could also provide or arrange for such training. The classification staff should also receive periodic classification training. Possible topics include—

- a. updates on case law regarding—
 1. classification;

2. duty to protect; and
3. due process; and
- b. classification topics related to—
 1. classification assessment;
 2. re-classification;
 3. evaluating violence risk;
 4. validating classification criteria;
 5. transgender, non-binary or intersex inmates;
 6. communicable disease control; and
 7. gangs and gang identification.

There are many classification issues that are very basic to the process; however, there are many differences in the operation of classification in large and small jails. Training must reflect those differences.

Compliance. Compliance with this standard can be achieved by classification staff completing classification training.

See PREA 115.31

C-104

Function of Classification. The jail must have policies and procedures for an objective classification process that at a minimum, provides a means of—

- a. evaluating inmates'—
 1. potential for violence or sexual assault;
 2. vulnerability to violence or sexual assault;
 3. escape risk;
 4. potential for being disruptive or a management problem;
 5. need for specific programs and services;
 6. possible security threat group affiliation;
 7. potential for infecting other inmates or staff with a communicable disease; and
 8. other needs to be segregated from others; and
 9. disabilities and needs for reasonable accommodations – such as a lower tier bunk or an ADA cell
- b. determining—
 1. appropriate levels of custody and housing assignments; and
 2. eligibility for programs and services.

Rationale. Classification is an important tool for managing inmates, providing a safe facility, and preventing inmates from escaping. Without some form of classification process, jail administrators face a very difficult challenge in meeting these important functions.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for an objective classification process to manage the elements listed in this standard.

ORS 169.076(20(g))

See PREA 115.41, 115.42 and 115.43

C-105 Classification is Non-disciplinary. Inmate classification must be operated as a non-disciplinary inmate management system separate and distinct from inmate discipline.

Rationale. If the classification process is operated as a non-disciplinary system, separate and distinct from the inmate discipline system, classification decisions do not trigger due process requirements for inmates. The reason that classification does not trigger due process concerns is that it involves a substantial amount of discretion on the part of the classifying official. If a jail were to enact policy that provides that specific criteria will result in specific classification – taking away the discretion of the classification staff – that would likely trigger due process concerns.

Compliance. Compliance with this standard can be achieved by adopting a classification system that has as its stated intent a non-disciplinary management function.

C-106 Pre-classification. Arrestees arriving at the jail for admission should be—

- a. confined in separate cells; or
- b. supervised in a manner that reduces the risk to arrestees of violence, intimidation, or other harm.

Rationale. The period of time prior to completion of the admission process is when the least is known about inmates; thus, it creates the opportunity for violence, suicide, medical emergencies, and other problems.

Compliance. In jails that have a sufficient number of holding cells, arrestees should be segregated until the admissions process is completed and the inmate is classified and assigned housing. If there are not enough cells to segregate inmates, the jail can comply with the standard by providing close supervision of arrestees.

See PREA 115.62

C-107 Re-assessment. Jail policies and procedures must provide for reviewing inmate classifications on a scheduled basis to determine whether adjustment of the classification is required.

Rationale. Even so-called "objective" classification systems involve subjective elements in the classification determinations. In prisons, officials can take days or weeks to classify an inmate, and have pre-sentence investigations and other information to rely on. However, the nature of inmate classification in jails requires decisions to be made swiftly, frequently with limited available information. Thus, while prisons can function comfortably with yearly classification re-assessments, jails should be reviewed more frequently. This standard sets no minimum time for completing classification re-assessments. Oregon's jails vary widely in size, design, inmate profile, and other factors that affect the need for reassessments. The re-assessment procedure should reflect the needs and management constraints presented by the facility and the inmate population.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for reviewing inmate classifications on a scheduled basis.

See PREA 115.41

C-108

Inmate Requests for Reconsideration. Jail policies and procedures should provide a means for inmates to request reconsideration of classification assignments. To avoid creating a right to due process, the policy should not be in mandatory language and should offer only a limited, informal review by the jail commander or other designated person.

Rationale. Due process is not constitutionally mandated for classification or reclassification determinations, unless a right is created by state action. In Oregon, neither statutes nor these standards create a liberty interest that would require due process or a right of appeal for inmates.² However, providing an opportunity for inmates to request reconsideration of their classification can be of benefit to both the inmate and jail officials. Inmates are benefited by receiving an opportunity to request an informal review of a classification determination. Jail officials benefit because if there is a flaw in the classification, it can be discovered and corrected before it creates problems for the jail. As inmates may seek to manipulate their classification, jails may wish to put a time limit on those requests — for example an inmate can request an informal classification review every thirty days.

Compliance. To comply with this standard there should be a policy that permits inmates to request an informal review of their classification.

See PREA 115.41

C-109

Specific Classification Criteria. The jail must adopt policies and procedures for the specific criteria to be used in classifying inmates. Those criteria should include, but not be limited to the following:

- a. physical gender (based on anatomy);
- b. gender identification (male, female, non-binary, transgender, intersex);
- c. age;
- d. offense;
- e. criminal history;
- f. history of sexual crimes;
- g. time until release;
- h. observed or self-reported irregular behavior; and
- i. if known or obvious to jail officials—
 1. communicable disease;
 2. substantially mentally or emotionally disordered;
 3. escape history;
 4. violence history;
 5. drug abuse history;
 6. disciplinary history;
 7. disruptive behavior history; and
 8. special susceptibility to violent or sexual assault.

Rationale. The classification criteria are to be used to provide for the separation of inmates by sex and by such other factors as may reasonably provide for the safety and well-being of inmates and the community. The factors listed above may, individually or in combination, have some value as predictors of an inmate's behavior while incarcerated. Some factors have greater value than others. The presence of one or more factors may also result in

false positives and false negatives. The imperfect nature of relying upon various classification criterion should be kept in mind in the classification process. Predicting inmate behavior is a difficult and imprecise science.² Jail officials should decide, based on their own experience and training, which factors will be used and how they should be weighted.

Compliance. Compliance must be achieved by adopting policies and procedures that provide direction concerning the types and application of classification criteria.

See PREA 115.41 and 115.42

C-110 **Race. Race must not be used as a criterion to segregate inmates.**

Rationale. Using race to segregate inmates has been found to violate the United States Constitution.

Compliance. To comply with this standard, the jail should adopt a classification plan that does not permit segregation by race, except in exigent circumstances for a limited period of time.

C-111 **Gender. Male and female inmates should ordinarily be housed in a manner that does not permit inmates to view the living areas (cells and day rooms) of inmates of the opposite gender and reduces opportunity for routine verbal conversation between male and female inmates.**

Rationale. This standard is intended to protect inmates' sexual privacy by eliminating clear sight lines between the housing areas of inmates of the opposite gender. Sound separation is recommended to prevent the general harassment and intimidation of inmates of the opposite gender.

It is not intended that male and female inmates be absolutely separated by sight and sound. Separation is required only to the extent necessary to protect inmates, and to further the safety, security, order, and discipline interests of the jail.

Compliance. Compliance with this standard can be achieved—

- a. by ordinarily housing males and females in different housing units or by providing sound separation between inmates of the opposite gender; and
- b. housing inmates in a manner that prevents routine conversation between male and female housing areas, and substantially restricts any verbal communication between male and female housing.

See PREA 115.15

C-112 **Violent Inmates. The jail must have policies and procedures that require inmates known by jail officials to be a substantial risk to commit violent acts against others be segregated, or have other reasonable measures taken to mitigate the risk they present to staff and other inmates. Depending upon the seriousness of the risk, policies may permit actions other than segregation. Policies should also allow officials to terminate segregation orders, if they reasonably believe that the risk is no longer serious or safety requirements can be met in a less restrictive manner.**

Rationale. Inmates are entitled to reasonable protection from other inmates who present a known, serious and immediate risk to their lives or safety. Jail officials cannot absolutely guarantee the safety of jailed inmates, but must take reasonable steps to protect inmates' safety. Jail officials must not be deliberately indifferent to the safety of inmates. Jail officials have a difficult, sometimes impossible task, because they cannot act upon information that

they do not have, nor can they assume that every inmate who has ever committed a violent act is a serious or immediate risk to others. The majority of inmates have some violence in their criminal history or other past.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require segregation of inmates who are known to be a serious and immediate threat to the safety of others.

See PREA 115.41, 115.43, and 115.62

C-113

Communicable Disease. Policies and procedures should require that inmates who present a substantial risk of infecting other inmates with a communicable disease should be segregated, if deemed necessary by medical authority.

Rationale. Jails are closed environments where inmates and staff exist in close proximity. Preventing the spread of communicable disease may require segregation of inmates when the type of disease is sufficiently serious and contagious and is required by ORS 169.076(2)(g).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for screening for contagious diseases and for segregating those inmates for whom isolation is deemed appropriate by a medical authority.

ORS 169.076(2)(g)

See PREA 115.81

C-114

Documenting Classification. There should be a system for documenting the classification process and decisions.

Rationale. Inmate classification reviews and decisions should be documented to preserve a record—

- a. as an aid to defending possible future litigation;
- b. to provide information that the jail commander can use to stay informed concerning what is occurring in the facility;
- c. to document future classification actions involving the inmate; and
- d. to provide data that can be quantified for use by the jail commander or sheriff.

Compliance. Compliance with this standard can be achieved by adopting a system of documentation of the classification process.

See PREA 115.41 and 115.42

C-115

Classification of Records. Classification files should be classified by the jail administration as confidential information if consistent with the Oregon Public Records Act.

Rationale. Disclosure of information contained in the classification reports may be detrimental to the safety of the person who disclosed the information or other individual[s]. Disclosure of information contained in classification documents reports could reasonably be expected to:

- a. inhibit the rehabilitation of inmates;
- b. jeopardize the privacy of an individual; or
- c. substantially prejudice or prevent carrying out of corrections functions.

Compliance. Jails should classify classification records to protect information that should be kept confidential.

See PREA 115.81

200 NON-DISCIPLINARY RESTRICTIONS

C-201

Use of Non-disciplinary Restrictions. The use of administrative segregation and other such restrictions to manage inmates must not be administered with the intent to punish. The jail should use non-disciplinary restrictions to further the legitimate inmate management interests of the jail, including but not limited to, safety, security, order, and treatment by adopting a plan that responds to atypical security and safety risks among inmates or for an individual inmate by—

- a. restricting movement;
- b. controlling access to services, programs, and privileges; and
- c. administratively segregating high-risk inmates.

Rationale. Individual inmates present widely differing management problems. Meeting the requirements of housing a diverse inmate population in a manner that provides reasonable protection for inmates while meeting the jail's safety, security, and program requirements requires varying types and degrees of restrictions imposed for individual inmates. All inmates cannot be handled, supervised, treated, and controlled in the same manner, because individual inmates represent different levels of violence, vulnerability, risk of escape, and needs.

Accurate evaluation of risk and the need for restrictions is, at best, very difficult due to the rapid turnover of inmates in jails and the limited information ordinarily available to jail officials upon which to base their determinations.

Compliance. Compliance with this standard can be achieved by adopting a plan that responds to atypical security and safety risks among or for individual inmates.

See PREA 115.43 and 115.44

C-202

Justification for Use of Administrative Segregation. There must be written criteria for the use of administrative segregation. Administrative segregation should be considered when—

- a. the inmate requests to be segregated for his or her own safety or staff deem the inmate to be in need of protection;
- b. necessary to protect the safety of others;
- c. necessary to meet the needs of the safety, security, or order of the jail facility or operation;
- d. an inmate awaiting a disciplinary process needs to be segregated prior to the hearing;
- e. isolation of an inmate is necessary pending investigation for a criminal violation committed while in the facility;
- f. necessary to isolate an in transit inmate or an inmate who is awaiting transfer;
- g. ordered by a medical staff for medical reasons;
- h. an inmate is suspected of having a contagious disease; or

- i. **an inmate is exerting undue influence over, or attempting to exert influence or authority over other inmates or groups of inmates;**
- j. **other circumstances indicate that administrative segregation may enhance jail safety, order, or security.**

Rationale. Individual inmates present widely differing management problems. Meeting the requirements of housing a diverse inmate population in a manner that provides reasonable protection for inmates, while meeting the jail's safety, security, and program requirements, requires varying types and degrees of restrictions to be used for individual inmates. All inmates cannot be handled, supervised, treated, and controlled in the same manner, because individual inmates represent different levels of threat of violence, vulnerability, risk of escape, and needs.

Pending disciplinary action, temporary isolation or other restriction of inmates may be necessary to protect the security and safety of the institution, staff, other inmates, and the general public. Such actions are lawful if not done with the intent to punish. Inmates may be transferred from one location to another for non-disciplinary reasons without due process, even if it results in harsher conditions of confinement. This includes transfers to administrative segregation of inmates awaiting the disciplinary process.

Accurate evaluation of risk and the need for restrictions is, at best, very difficult due to the rapid turnover of inmates in jails and the limited information ordinarily available to jail officials upon which to base their determinations.

Compliance. Compliance with this standard can be achieved by adopting written criteria for considering when it may be appropriate to assign an inmate to administrative segregation.

See PREA 115.43 and 115.68

C-203

Administrative Segregation Conditions. The jail must have policies and procedures addressing the conditions of confinement for persons held in administrative segregation. Conditions should not be intentionally dissimilar to the conditions in the general population, except to the extent required to further the jail's safety, security, or other legitimate interests.

Rationale. While conditions in segregation will likely be different from those in the general population and, perhaps, uncomfortable, the differences in living conditions do not necessarily trigger a constitutional cause of action. However, jail officials should not add to the restrictions unless such restrictions serve a legitimate penological purpose.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures limiting the restrictions on inmates in administrative segregation to those made necessary or advisable by the circumstances requiring the segregation itself.

C-204

Justification and Authorization for Restriction. The jail must have policies and procedures which allow authorized staff discretion to impose temporary restriction of privileges. Staff must document any imposed restrictions. Restrictions may be imposed when necessary to—

- a. **gain immediate control over an inmate's dangerous, threatening, or manipulative behavior; or**
- b. **control any situation that threatens the safety, security, or order of the jail; or**
- c. **facilitate an investigation or other administrative process**

Rationale. Allowing immediate staff action followed within a reasonable time by supervisor review provides a balancing of the needs of the facility with the interests of inmates. The standard allows the swift and sure action that is often required in jails, but provides for an

objective determination of the appropriateness of the action and the ability to modify the orders, if necessary.

Compliance. To comply with this standard, the jail must adopt policies and procedures for authorizing, initiating, documenting, and reviewing temporary restrictions, including the criteria for imposing temporary restrictions.

See PREA 115.43

- C-205** **Prohibited Restrictions.** The jail must have policies and procedures addressing the disciplinary restrictions. The restrictions must not include—
- a. loss of good time;
 - b. denial of food, medical care, personal hygiene, or other essential necessities of life; or
 - c. denying access to courts and counsel or other restrictions that would violate the clearly established rights of inmates;
 - d. Restricting an inmate’s mail privilege unless the restriction is in response to a violation of jail mail rules

Rationale. Taking good time without due process or denying inmates the essential necessities of life is prohibited by the Constitution and laws of the United States and the State of Oregon. A temporary deprivation, such as confining an inmate to their cell for a few days, does not rise to the level of needing formal due process as it is not significantly different than the everyday living conditions in a jail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit restrictions that violate this standard.

ORS 169.110

- C-206** **Authorization of Restriction.** The jail must have policies and procedures that allow any authorized staff to order temporary restriction of an inmate or the temporary suspension of services or privileges if the staff member has reason to believe that failure to act would endanger the security of the jail or the safety of the staff, inmates, or the public. The staff member must document the temporary restrictions, and promptly inform a supervisor as directed by agency policy.

Rationale. Allowing immediate staff action followed within a reasonable time by supervisor review provides a balancing of the needs of the facility with the interests of inmates. The standard allows the swift and sure action that is often required in jails, but provides for an objective determination of the appropriateness of the action and the ability to modify the orders, if necessary.

Compliance. To comply with this standard, the jail must adopt policies and procedures for initiating temporary segregation and/or other temporary restrictions and include the criteria for staff in making their determination to impose temporary restrictions, and the time limits when a staff member must document and notify supervisors of imposing restrictions.

- C-207** **Review of Restrictions.** Temporary restrictions must be reviewed by administrative or supervisory staff on a scheduled basis. If a temporary restriction is imposed pending discipline, the matter should be resolved by the disciplinary process. When an inmate has been placed on temporary restriction pending discipline, the disciplinary process, whenever possible, should be held within seven days. If the

process must be extended beyond seven days, the extension should be approved by a supervisor.

Rationale. Review of the restrictions for as long as the restrictions remain in force is necessary because—

- a. the restrictions are intended to serve an explicit non-disciplinary purpose or purposes;
- b. once the need for the restrictions is resolved, the restrictions will no longer be serving the intended purpose; and
- c. a scheduled review will make it less likely that follow up will be unnecessarily delayed.

Compliance. Compliance with this standard can be achieved by adopting a process of supervisory or administrative review of temporary restrictions.

See PREA 115.43

300 INMATE RULES

C-301 Inmate Rules. The jail must have policies and procedures for providing inmates the rules that govern their conduct. The policies should include, but not be limited to—

- a. providing the means by which inmates must have access to inmate rules;
- b. identifying the topics that the rules will cover;
- c. determining how the rules will be kept current;
- d. defining—
 - 1. conduct that is required of inmates; and
 - 2. prohibiting specific types of conduct; and
 - 3. providing information concerning the consequences for rule violations.

Rationale. Policies provide the most efficient and uniform means of ensuring that inmate rules are provided in an effective manner.

Inmates cannot be expected to act appropriately and avoid misconduct if they are not provided adequate means of understanding which actions are required and which are prohibited. While the mere providing of written expectations does not ensure compliance with rules of conduct, it will—

- a. assist those inmates who wish to comply with facility rules to understand the requirements; and
- b. provide fair notice of requirements and the potential penalties for noncompliance for those inmates who are less inclined to adhere to the rules of conduct.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures related to the content and distribution of inmate rules.

ORS 169.076(12).

See PREA 115.33

302 Access to Rules. Access to the rules of conduct must be provided to inmates in a readily available format.

Rationale. Rules must be provided—

- a. to ensure fair notice to inmates and provide a consistent and immediate reference; and
- b. to reasonably ensure that staff and inmates understand the requirements and that they are consistently and uniformly implemented.

Such notice is particularly important in the disciplinary process, where rules are a critical element in ensuring due process. Inmates should not be punished for conduct of an innocuous or trivial nature under vague and uncertain rules.

Compliance. To meet the requirements of "a readily available format," the rules provided in one or more of the following:

- a. a rules handbook handed out to inmates at admission;
- b. posting the rules in each cell block;
- c. making rules available upon request (if rules are provided on request, the process should ensure access without delay);
- d. other media format or means available to inmates to include a kiosk or tablet; or
- e. providing verbal information to inmates who cannot read or who do not understand written rules.

ORS 169.076(12)

See PREA 115.33, 115.16

C-303

Maintaining Inmate Rules. Jail operators should have policies and procedures for the reviewing of inmate rules at least every two years and updating rules as changes occur.

Rationale. Worse than having no written rules to guide conduct is having rules that are contrary to current requirements. Policies and procedures evolve over time. It is necessary to ensure that the rules provided to inmates reflect those changes.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for reviewing and updating rules of conduct at least every two years.

C-304

Orientation. Policies and procedures should describe the means by which inmates must be made aware of applicable facility operations as they relate to inmates. Jails should provide an orientation to inmates as a part of initial housing. This orientation should include subjects such as, but not limited to sexual misconduct, sexual harassment, grievances, reporting suicidal thoughts and feelings, and disciplinary process.

Rationale. Policies and procedures provide the most efficient and uniform means of providing the requirements for inmate orientation. Most persons admitted to the jail will not be aware of the operational requirements and rules of the facility. Providing basic information—

- a. reduces the need to respond to numerous questions concerning release, access to services, and facility operation;
- b. may help relieve inmates' anxiety resulting from a lack of understanding of what is going to happen to them, how they can contact family members, and how to achieve release.

It is necessary that inmates have fair notice concerning both required and prohibited conduct. Such notice is particularly important in the disciplinary process where rules are a

critical element in ensuring due process. Inmates should not be punished for conduct of an innocuous or trivial nature under vague and uncertain rules.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures describing the means by which inmates must be made aware of applicable facility operations as they relate to inmates, and requiring documentation that each inmate has been through orientation.

See PREA 115.33

C-305

Non-English Speaking Inmates. The jail should have policies and procedures to assist in communicating with inmates who do not read or speak English. Rules should be explained to those inmates who do not understand English.

Rationale. Many foreign inmates, and some that are citizens of the United States, do not read or understand the English language. Inmates who do not read English cannot benefit from receiving rules and regulations written in English. The jail should maintain a list of jail staff members, law enforcement deputies, and other employees who speak foreign languages and who can assist when needed. In some cases, foreign countries maintain consulates in the state and can be of assistance.

Policies and procedures should be adopted for dealing with inmates who do not speak English when there is no means of translation assistance available. It is also recommended that the inmate manual, or at least the sections dealing with the rules of prohibited conduct and disciplinary procedures, be translated into languages such as Spanish. There are countless languages and dialects spoken worldwide, and it is not possible for any jail to have the means of communicating more than a few.

Compliance. Compliance with this standard may be achieved if jail officials adopt policies and procedures to assist in communicating with inmates who do not read or speak English. At a minimum, inmate orientation, inmate rules, and grievance procedures must be made available to inmates who do not read or speak English.

See PREA 115.33

C-306

Special-Needs Inmates. Rules should be explained to inmates who are illiterate or who have limited intellectual capacity to understand the rules without explanation.

Rationale. Written rules are of no benefit to inmates who cannot read, and may be of limited benefit to those inmates with limited mental capacity.

Compliance. Compliance with this standard can be achieved by adopting a process to explain rules to inmates who cannot read or who otherwise require assistance in understanding rules.

See PREA 115.16

INMATE BEHAVIOR AND DISCIPLINE

C-401

Use of Sanctions. Policies and procedures must establish inmate discipline as a process that uses sanctions based on the seriousness of the violation as a means of enforcing rules governing inmate behavior.

Rationale. Inmates are persons who are confined in jail as a result of violations or alleged violations of law. The ultimate goal of the jail is to ensure that inmates follow facility rules during their incarceration to ensure safety and security. There are two primary ways that inmate behavior can be modified – punishment (sanctions for bad behavior) and positive

reinforcement (rewards for good behavior). An example of positive reinforcement is the use of good time credits to provide an incentive for inmates to follow rules. A facility that only uses punishment cannot expect to make lasting changes to inmate behavior – research has proven that punishment alone is ineffective to modify behavior.

Constitutional rights to due process for accused inmates vary depending upon the seriousness of the violation and the potential sanctions that can be imposed. The U.S. Supreme Court held that not every deprivation imposed by jail officials triggers procedural protection of the Due Process Clause. Violations of state law by inmates require involvement of the criminal process. Jail discipline procedures should, therefore, differentiate among violations based on seriousness.

Compliance. To comply with this standard, jails must have policies and procedures that allow the use of sanctions as a means to enforce inmate rules.

See PREA 115.71, 115.72 and 115.78

C-402

Documenting Violations. There must be a system for documenting incidents involving minor and major violations of rules in inmates.

Rationale. Incidents of inmate violations of rules must be documented to preserve a record—

- a. of the conduct of individual inmates;
- b. to better deal with inmates who accumulate numerous minor disciplinary actions reported by different deputies (multiple minor disciplinary actions may result in future minor actions being classified as major);
- c. as an aid to defending possible future litigation;
- d. to provide information that the jail commander can use to stay informed concerning what is occurring in the facility;
- e. to provide data that can be quantified for use by the jail commander or sheriff.

Compliance. Documentation of rule violations is required and may be electronic (computerized) or hard copy (paper and file cabinets) or a combination of electronic and hard copy.

C-403

Discipline and Incident Reports. The jail must maintain and store incident reports and disciplinary reports according to retention schedules.

Rationale. Complying with state and county retention schedules should reasonably ensure that relevant disciplinary records are available for use in any litigation that might result from the discipline of an inmate.

Compliance. To comply with this standard, documents must be kept according to retention schedules.

C-404

Minor Violations: Criteria and Sanctions. The jail must have policies and procedures that—

- a. require disciplinary actions to be classified as minor if the maximum sanction for the violation is any of the following:
 1. restriction of privileges (including but not limited to commissary, telephones, personal mail, social visits, and recreation) for 14 days or less;

- 2. restriction to individual cell for up to five days;
- 3. written or verbal reprimand;
- 4. counseling;
- 5. a warning; or
- 6. any other sanction that is no more severe than those listed above.

b. provide the allowable types of sanctions for minor violations of jail rules.

Rationale. Minor disciplinary actions can be resolved through an informal discipline process that has minimal sanctions, that—

- a. allow the discipline to be legally imposed with minimal due process;² and
- b. provide staff a simple, straightforward, and less adversarial means of correcting inmate misconduct.

Compliance. To comply with this standard, the jail must have policies and procedures for determining when a disciplinary violation will be handled as a minor violation and what sanctions are allowable.

C-405 Minor Violations: Minimum Due Process Required. Policies and procedures for handling minor disciplinary violations must include at a minimum—

- a. a verbal statement of the alleged violation and administrative rules;
- b. an opportunity for the inmate to respond to the allegations;
- c. written documentation of the staff determination relative to the alleged rule violation and any sanctions ordered; and
- d. an opportunity to appeal the action to the jail commander or designee.

Rationale. Informal actions must be documented to make a record of the minor violations of each inmate. Repeated minor offenses may rise to the level of major misconduct.

The sanctions listed in this standard are examples of minor penalties. The benefit of such minor sanctions over stronger sanctions for minor violations is that they can be imposed in a more swift and sure manner, and may result in greater cooperation from the involved inmate.

Compliance. To comply with this standard, the jail must adopt policies and procedures for handling minor disciplinary violations.

C-406 Minor Violations: Criteria. Policies and procedures must require that disciplinary actions must be classified as major if—

- a. the potential penalty for the violation exceeds the maximum allowed for minor violations; or
- b. the rule violation is prosecuted as a violation of law; or
- c. the potential penalty is any loss of sentence reduction credits.

Rationale. Major disciplinary actions were defined in *Wolff v. McDonnell*, as "flagrant or serious," and in *Baxter v. Palmigiano*, as a "grievous" loss. If the outcome of the disciplinary action could result in a serious or grievous restriction of or loss of benefit to the inmate, the violation must be classified as major.

Compliance. To comply with this standard, the jail must have policies and procedures for determining when a disciplinary violation will be handled as a major violation.

C-407

Major Violations: Process. Policies and procedures must require that inmates accused of major violations be provided due process, as outlined under subsection C 410 to C 420, An inmate may be required to request a disciplinary hearing, and there is no requirement that a hearing be held if the inmate does not request one. An inmate may also choose to plead guilty without going to a hearing. Jail Commanders should consider implementing a rule that reduces maximum sanctions if the inmate pleads guilty, to provide an incentive for inmates not to request a hearing in cases where the evidence is clear.

Rationale. The U.S. Supreme Court has determined that before an inmate can be punished for a major violation of jail rules, due process must be afforded.

Compliance. To comply with this standard, the jail must have policies and procedures requiring inmates accused of major violations be provided due process.

C-408

Major Violations: Sanctions. Policies and procedures must provide the allowable types of sanctions for major violations of jail rules. Sanctions for major violations may include one or a combination of the following:

- a. loss of sentence reduction credits;
- b. loss of jobs that earn good time;
- c. extended periods of disciplinary isolation;
- d. restriction of personal mail for mail-related rule violations;
- e. extended restriction of personal visits;
- f. extended restriction of recreation;
- g. additional work assignments;
- h. extended loss of dayroom privileges (inmate confined to own cell);
- i. extended loss of commissary or store privileges;
- j. restitution;
- k. fines;
- l. food loss or disciplinary diet; and
- m. other sanctions that are not cruel and unusual in violation of the Eighth Amendment.

Rationale. When major rule violations are involved, a strong response is required. Sanctions that are not cruel and unusual and are not obviously or overly harsh compared with the seriousness of the offense are generally constitutional.

Procedures should guide staff in determining which sanctions should be ordered and how they should be used. Severity of sanctions must be reasonable and related to the severity of the offense.

- a. **Good-time.** Taking away good-time has been upheld by the U.S. Supreme Court. State law provides jail officials with the discretion to award good time. Since good time is dependent upon an inmate's good behavior, it may be taken as a sanction for misconduct.
- b. **Loss of jobs that earn good time.** Inmates have no right to work (such as inmate worker jobs) or work programs in a jail and such jobs can be terminated.
- c. **Disciplinary segregation.** It is well established that disciplinary segregation may be used as a disciplinary sanction. Policy should clearly delineate the difference

between non-disciplinary isolation (administrative segregation) and disciplinary segregation. Inmate discipline by intent utilizes negative reinforcement to control inmate misconduct by modifying their behavior, and extended periods of disciplinary segregation can be effective as a disciplinary sanction.

- d. **Loss of dayroom privileges.** Loss of day room privileges is another form of disciplinary segregation; however, instead of being moved to an isolation cell, the inmate is confined to his or her own cell without being able to use the dayroom.
- e. **Restriction of personal mail.** Inmates have a 1st Amendment right to send and receive mail. Like other rights of inmates, this right may be restricted for legitimate penological reasons. While courts have upheld the use of mail restrictions as a disciplinary sanction, jail administrators should use this sparingly and only when there is a clear relationship between the misconduct at issue and mail, such as using the mail to try to intimidate witnesses. If mail restrictions are used—
 - 1. they should be narrowly tailored to address mail-related misconduct; and
 - 2. in no case may restrictions be used to deny sending or receiving attorney mail or other official mail.
- f. **Restriction of personal visits.** Personal visits may be suspended as a disciplinary sanction. The restrictions must not be extended to attorney visits or other official visits.
- g. **Restriction of recreation.** Recreation restrictions have been upheld; however, care should be taken to ensure that the recreation restrictions should not be imposed for such a lengthy period of time that the loss of recreation would result in a serious health problem.
- h. **Loss of commissary privileges.** The value of restricting commissary privileges may be lost if the inmate is not isolated, because the inmate may simply borrow commissary items from other inmates to be repaid after the inmate regains commissary privileges.
- i. **Restitution and fines.** Ordering restitution has been upheld by some courts. The policy of each jail on this issue should be defined with the assistance of the county counsel.
- j. **Nutritional loaf.** Inmates may not be deprived of basic human needs, such as food; however, courts have permitted the use of special disciplinary meals such as food loaf or so-called nutritional loaf. Disciplinary meal recipes should be evaluated by a certified dietician to ensure that they are nutritionally adequate and provide an adequate number of calories to maintain health. There is no requirement that the food be delicious, only that it be nutritious.
- k. **Other sanctions.** This list of penalties is by no means exhaustive. Other sanctions may be used if they—
 - 1. do not result in "wanton and unnecessary infliction of pain";
 - 2. are not "grossly disproportionate to the severity" of the misconduct; and
 - 3. do not cause a "serious deprivation of basic human needs."

Compliance. To comply with this standard, the jail should adopt policies and procedures that provide the allowable types of sanctions for major rule violations.

ORS 169.110

See PREA 115.78

C-409

Criminal Violations. The jail must have policies and procedures that outline when an administrative rule violation is also a criminal violation, the inmate can be charged in both venues.

- a. **Criminal violations process:** When an inmate violates an administrative rule that is also a violation of federal, state or local law, the case should be prosecuted administratively as a disciplinary violation, submitted to the district attorney for consideration of criminal charges, and—
 - 1. document each occasion when a case was submitted to the DA (including whether a complaint was issued); and
 - 2. document decisions by jail officials not to submit cases to DA for consideration.
- b. **Double Jeopardy:** Administrative and criminal prosecution of inmate violations must be processed independently, with neither proceeding being dependent on or limiting the other. Because one proceeding is criminal and the other is administrative, there is no double jeopardy.

Rationale. Inmates are not insulated against violations of the law simply because they are already in jail or because the offense is committed against another inmate. Criminal acts committed by inmates in a jail should be prosecuted whenever feasible, because—

- a. criminal acts threaten the safety of staff, other inmates, or the public;
- b. criminal acts may diminish jail security, order, and discipline;
- c. each conviction has an impact on the sentencing matrix used in pre-sentence investigation reports prepared by Parole and Probation for judges in sentencing inmates; and aggressive prosecution of crimes committed by incarcerated persons sends a message to inmates that such conduct will not be tolerated and that there will be a price to pay for such violations.

Under the law, jail officials can prosecute criminal acts in jail criminally, administratively, or both, without concerns of double jeopardy. While the U.S. Constitution prohibits a second attempt to punish in a criminal proceeding, acquittal on a criminal charge does not prevent a subsequent civil or administrative action arising out of the same facts. Administrative and criminal due process requirements have different purposes, due process requirements, standards of proof, and rules of evidence.

The elements necessary for criminal prosecution may not always be present and inmates may refuse to testify in court. Even when jail officials have a strong case for prosecution, they have no control over the decisions made by district attorneys when cases are presented for prosecution.

Compliance. To comply with this standard, the jail must adopt policies and procedures for determining when an administrative rule violation becomes a violation of the law and for documenting referral and charging decisions. Jail staff may document referral information in a jail incident report. Documentation of charging decisions may be maintained by the District Attorney's Office.

PREA 115.22

C-410

Notice to Inmate. The jail must have policies and procedures requiring that inmates be provided written notice of the pending disciplinary hearing for major misconduct at least 24 hours prior to the disciplinary hearing.

- a. **The notice must include at a minimum—**
 - 1. the date and time of the violation;

- 2. the location of the violation, if known;
- 3. the title and number of the rule violated;
- 4. a brief description of the alleged violation; and
- 5. a summary of the evidence that supports the violation.

(a) If evidence is redacted for institutional or security reasons, such as the name of an informant, the summary must indicate that information has been redacted.

b. Procedures should include that the notice not inadvertently disclose such information as:

- 1. the names of informants or other persons who provided testimony or other information with a promise of anonymity;
- 2. information concerning investigative techniques or other confidential information; or
- 3. information concerning ongoing or pending investigations.

Rationale. The U.S. Supreme Court ruled in *Wolff v. McDonnell* that inmates were entitled to written notice 24 hours prior to a disciplinary hearing to provide a reasonable amount of time to prepare to defend the charges against them. The notice should provide enough information that the inmate will be able to understand what he or she is being charged with and know the circumstances that are at the heart of the charges of misconduct as well as the evidence that will be relied upon.

The description of the allegations must not be detailed, but must provide enough information for the inmate to prepare a defense. The notice to the inmate should not include information of a confidential nature that would expose the names of confidential informants or inmate witnesses (if any might be at risk), details of an investigation, or other such information. This information should be redacted from the summary of evidence.

Compliance. To comply with this standard, the jail officials must have policies and procedures that require—

- a. a standard notice form that ensures that all required information is provided; and
- b. disciplinary hearings are not held until 24-hour notice requirements are met.

See PREA 5.73

C-411

Timeliness. Jail policies and procedures must provide guidance on the scheduling of disciplinary hearings. Disciplinary hearings should be held as soon after the mandatory 24-hour preparation time as is reasonable.

Rationale. Holding hearings without unnecessary delay is advisable—

- a. to allow witnesses to testify while memories are still fresh;
- b. to provide swift, sure resolution to matters of discipline; and
- c. to allow sanctions for inmates found guilty of disciplinary violations to be implemented as soon as possible after the misconduct.

There is no constitutional time period within which disciplinary actions must be brought if the delay does not prejudice the inmate's defense.

Compliance. The jail must have policies and procedures that provide guidelines for scheduling disciplinary hearings.

C-412 Impartial Hearing Entity. Jail policies and procedures must require that inmate discipline cases be heard by an impartial hearing officer or panel.

Rationale. The U.S. Supreme Court ruled that an impartial hearing entity is constitutionally required. Persons hearing disciplinary cases can be corrections deputies, if they have not participated in the case in an investigative or review function, or as a witness, or have personal knowledge of material facts. There is no constitutional requirement that makes a disciplinary committee more legally correct than a single hearing officer. If the hearing officer is impartial, nothing is to be added to the due process equation by multiple-member panels.

Compliance. Policies and procedures must require that the hearing officer or disciplinary panel members are impartial. A deputy or other staff member may serve as a hearing officer, so long as the deputy had no personal involvement in the incident giving rise to the disciplinary event.

C-413 Record of Hearing. The discipline hearing entity should make and maintain a record of the disciplinary hearing. Policies and procedures should require, at a minimum, that a record be maintained to document the following:

- a. rulings on requests to call witnesses and accept evidence;
- b. testimony or other information received from confidential sources;
- c. information relative to the reliability of confidential information sources; and
- d. the evidence relied upon in developing findings of fact.

Rationale. Courts must ordinarily leave disciplinary decisions to the sound discretion of jail officials and not substitute their judgment for those of corrections officials. The courts may review the case, however, to determine whether jail officials met due process requirements; met their burden of proof; or if their actions were unreasonable, arbitrary, and capricious. If there is no record to review, the court may find it difficult to uphold an otherwise properly handled disciplinary action. The hearing record must be maintained to document "what was done" and "why" it was done, at least until the possibility of litigation has passed. Documentation may be in the form of tape recordings, written notes, or a combination of the two.

Compliance. To comply with this standard, the jail should have policies and procedures that require documenting hearing information and actions that are noted in this standard.

C-414 Presenting Evidence and Calling Witnesses. The jail should have policies and procedures that allow inmates to present documentary evidence and request witnesses to testify in defense of the alleged violation of rules. The hearing entity should document in the hearing record each refusal and the reason for denying the request. The hearing entity may refuse to hear a requested witness if—

- a. permitting the witness to be called would jeopardize institutional security or the safety of staff, other inmates, or the community;
- b. the testimony would not be relevant;
- c. the testimony would be cumulative;
- d. there is a lack of necessity; or
- e. the request for a witness was not made in a timely fashion.

Rationale. A limited opportunity of inmates to present documentary evidence and call witnesses to defend allegations of misconduct is constitutionally required.

Compliance. To comply with this standard, the jail should have policies and procedures that set forth the reasons for which an inmate request may be denied.

C-415

Confidential Sources, Accusers, and Witnesses. Policies and procedures must address the use of confidential sources and the confronting of accusers and witnesses by inmates. Inmates are not entitled to confront accusers or cross-examine adverse witnesses, and should only be permitted to confront accusers or cross-examine adverse witnesses when there is a very low probability that retaliation, disruptions, or hearing delays will result. Policies and procedures must—

- a. permit the use of confidential information and testimony in inmate discipline cases;
- b. provide the guidelines for evaluating the reliability of the information and information source;
- c. protect the identity of a confidential source;
- d. provide the procedures by which confidential information or testimony will be received by the hearing entity; and
- e. classify all disciplinary reports that include confidential information or the names of confidential sources;
- f. provide for a summary of the information received to be provided to the accused inmate, if providing the summary unlikely to reveal the identity of the confidential source; and
- g. limit confrontation of accusers and cross-examination of adverse witnesses to those circumstances where it is reasonable to conclude that there is no danger of retaliation, disruption, or other problems associated with that confrontational process.

Rationale. The U.S. Supreme Court in *Wolff v. McDonnell* and *Baxter v. Palmigiano* strictly limited the rights of inmates to confront their accusers and to cross-examine adverse witnesses.³ The Court pointed out that "confrontation and cross-examination present greater hazards to institutional order."⁴

"If confrontation and cross-examination of those furnishing evidence against the inmate were to be allowed, of course there would be considerable potential for havoc inside prison walls. Proceedings would inevitably be longer and tend to unmanageability."

"Retaliation is much more than a theoretical possibility; and the basic and unavoidable task of providing reasonable personal safety for [staff] and inmates may be at stake, to say nothing of the impact of disciplinary confrontations and their resulting escalation of personal antagonism on the important aims of the correctional process."

Compliance. To comply with this standard jail must have a policies and procedures defining rules for inmate witnesses.

See WAC 115.66 and 115.67

C-416

Staff Assistance. The jail must have policies and procedures that allow the accused inmate to request the assistance of a staff member in preparing for the disciplinary hearing—

- a. if the inmate is not competent to defend himself or herself; or
- b. the issues are unusually complex.

Rationale. The U.S. Supreme Court has ruled that inmates are not entitled to an attorney at a disciplinary hearing, but should be provided assistance in preparing for the discipline hearing if the inmate is not competent to prepare a defense or the issues are unusually complex. An inmate request for assistance should be granted if the inmate is impaired or has a disability that would limit their ability to present a defense, or cannot read or communicate in English well enough to mount a competent defense.

Compliance. To comply with this standard, policies and procedures should provide guidelines for determining when assistance is required.

C-417

Self-incrimination. The jail must have policies and procedures that protect an inmate against self-incrimination at the inmate's disciplinary hearing. The policies must address that the hearing officer or other hearing entity—

- a. warn the inmate that the testimony can or may be used in a criminal prosecution;
- b. advise the inmate that if he or she refuses to answer questions asked during the hearing, the hearing officer can make an adverse inference from the inmate's silence for the purpose of determining guilt; and
- c. may consider an inmate's silence as evidence of guilt, but there must be some other evidence to support the guilty finding as an inmate's silence alone cannot sustain a violation.

The warning should be a prepared warning statement that can be read and provided to an inmate who is unwilling to testify.

Rationale. The U.S. Supreme Court has ruled that inmates are protected against self-incrimination at a disciplinary hearing if their testimony will be used against them in a criminal prosecution. In *Baxter v. Palmigiano*, the U.S. Supreme Court stated:

As the Court has often held, the Fifth Amendment 'not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privilege him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in later criminal proceedings.' . . . Prison disciplinary hearings are not criminal proceedings; but if inmates are compelled in those proceedings to furnish testimonial evidence that might incriminate them in later criminal proceedings, they must be offered 'whatever immunity is required to substantiate the privilege' and may not be required to 'waive such immunity.'"

The effect of it is that permitting an adverse inference to be drawn from an inmate's silence at his disciplinary proceeding is not, on its face, an invalid practice; . . .

The need for a *Miranda* warning does not apply to interrogations for an internal disciplinary proceeding that is not a violation of criminal law, but if there is any possibility of a criminal charge arising, a *Miranda* warning should be given. Because the hearing officer may not always be aware of whether a criminal proceeding will result or if the district attorney will use the inmate's statements in a criminal case – it is safer to provide *Miranda* warnings in all disciplinary proceedings.

Compliance. To comply with this standard, the jail must adopt policies and procedures that protect an inmate's right against self-incrimination at the inmate's disciplinary hearing. It should include procedures for warning and taking an adverse inference for silence, and make it clear that silence alone is not enough to find an inmate guilty of a violation.

C-418 **Standard of Proof. The jail must have policies and procedures requiring that the hearing entity must have some evidence on the record to support a finding of guilt.**

Rationale. The U.S. Supreme court established the standard of proof in inmate discipline cases as "some evidence." The Court made it clear that a hearing entity's factual findings or decisions with respect to appropriate sanction are not subject to second-guessing by courts.² This standard does not prevent the jail from establishing a higher standard of proof for disciplinary hearings (i.e., substantial evidence, preponderance of the evidence, clear and convincing, or, even, beyond a reasonable doubt).

Compliance. To comply with this standard, the jail must adopt policies and procedures that provide that no inmate can be found guilty of a disciplinary violation unless the hearing entity has found some evidence on the record that supports the finding.

See PREA 115.72

C-419 **Written Findings. The jail must have policies and procedures requiring the hearing entity provide a written statement as to—**

- a. the specific evidence relied upon;
- b. the reasons for the disciplinary action; and
- c. the disciplinary sanctions ordered, if any.

Rationale. The U.S. Supreme Court ruled that "there must be a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action."

The written findings also provide the inmate a record of the evidence relied upon by the hearing entity in making the determination. Merely entering conclusions of guilt is not sufficient. Findings must do more than merely incorporate the charging document into findings of fact.

Compliance. To comply with this standard, policies and procedures must be adopted requiring that written findings must be specific and listing all evidence that influenced the fact finder's findings and actions.

See PREA 115.71 and 115.73

C-420 **Appeals. The jail must have policies and procedures that address an appeal process. Inmates must be provided an opportunity to appeal adverse rulings to an authority above the hearing entity. Appeals should not become a *de novo* hearing (a new hearing that allows new evidence), but rather an opportunity for the jail commander, sheriff, or other designated person to review the action. Appeals should be limited to claims that—**

- a. due process requirements were not adequately followed;
- b. the hearing entity failed to meet the "some evidence" standard of proof; and
- c. disciplinary sanctions were unconstitutionally harsh.

Rationale. Appeals are not constitutionally mandated ; however, they benefit both the inmate and jail officials. Inmates are benefited by receiving a review of a disciplinary action by someone of higher authority than the hearing entity. Jail officials benefit because if there is a flaw in the disciplinary action, they will be able to correct the problem before it becomes a cause of action in a lawsuit.

Compliance. To comply with this standard, the jail must adopt policies and procedures that permit inmates to appeal disciplinary actions.

See PREA 115.72

500 **GRIEVANCES**

C-501 **Function of Grievance Process.** The jail must have policies and procedures for a grievance process that—

- a. affords inmates a formal process to address complaints and other concerns;
- b. can be used by the jail commander to identify operational dysfunction, inmate frustration, and other management problems;
- c. requires numbering, tracking and retention of inmate grievances and of management's responses;
- d. requires inmates to submit their grievances in written or electronic form;
- e. requires deputies must issue a grievance form upon request;
- f. provides understandable procedures for inmates to initiate and staff to process and resolve grievances;
- g. requires written responses within set time lines; and
- h. requires administrative review.
- i. defines what it means to fully exhaust the grievance process
- j. requires that a grievance be limited to a single issue
- k. requires that a grievance provide details of the location, involved staff and witnesses, and approximate date and time of the event being grieved
- l. require that the inmate include an explanation of what relief or remedy they are seeking
- m. require that staff not respond (except to close the grievance as improper) to improperly filed grievances, including late grievances, grievances that don't provide required information, grievances that raise more than one issue, and grievances that do not include the inmate's suggested remedy
- n. provide that an inmate may continue to pursue the grievance process even if transferred to another institution or released, and provide information about how to do so
- o. all requirements for grievances must be included in an inmate manual or inmate rules which are readily available to inmates

Rationale. It is not realistic to believe that inmates will be happy or satisfied while being incarcerated in jail; the very purpose of which is to control their behavior and deprive them of liberty. However, inmates' frustration and anxiety, a natural by-product of incarceration, can be moderated if there is a system to channel the anxiety and anger to an acceptable forum. Inmate grievance systems are intended to fulfill that purpose. The Prison Litigation Reform Act requires that an inmate exhaust all administrative remedies before filing a lawsuit regarding his or her incarceration in that facility. Grievance mechanisms may address inmate concerns that might otherwise be aired through an inmate damage suit or class action challenge to jail conditions.

While state and federal constitutions do not create an independent constitutional right to a grievance system, the existence of a grievance system may make other jail practices, policies, and procedures more defensible. Jail officials may be the primary beneficiaries of a grievance system for inmates to address their concerns because the grievance process provides—

- a. a means through which inmates can complain and challenge the conditions of their confinement in a constructive manner;
- b. a safety valve for inmates' frustrations and apprehension;
- c. a perception of greater fairness; and
- d. a means of documenting the process.

Properly operated, the grievance system can also provide information from which the Jail Commander can evaluate the operational climate of the jail, and documentation generated by the grievance system provides—

- a. a record of the good-faith efforts of jail officials in attempting to address the legitimate concerns of inmates;
- b. information to document unreasonable inmate complaints and demands;
- c. information that can be used to defend the jail in the event of litigation; and
- d. an additional measure of the interpersonal skills with which staff members interact with inmates.

Unless an inmate is specifically restricted or limited by policy due to chronic abuse of the grievance system, deputies should issue grievance forms to inmates upon request.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for a formal inmate grievance system that addresses all required elements above.

See PREA 115.52

C-502

Resolution at Lowest Level. The jail should have a written grievance process that encourages grievances to be resolved at the lowest staff level. Policies and procedures should require staff to document how the matter was resolved, or what was done to attempt to resolve the matter.

Rationale. Many, if not a majority, of the issues that inmates grieve involve their interaction with staff members. Attempting to resolve grievances at the lowest operational level between frontline correctional deputies and inmates requires staff members to be a part of the solution. Matters that with the jail commander referee staff-inmate conflicts. Matters that cannot be resolved at the lowest level can be handled at the higher level.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures and a grievance process that encourages the first level of response to inmate grievances to be at the lowest level.

See PREA 115.52

C-503

Scope of Grievance Process. The grievance process should be used as a means of receiving, processing, and resolving inmate complaints including, but not limited to, those involving policies, procedures, practices, regulations, conditions, and staff conduct. In general, all inmate complaints should be grievable except complaints against—

- a. disciplinary actions if the jail has a separate disciplinary appeal process;
- b. classification assignments if the jail has a challenge or appeal process built into the classification system;
- c. incidents or problems to which the inmate was not a party;

- d. a collection of unrelated complaints;
- e. group grievances;
- f. grievances over which the jail has no control, such as decisions by a court or probation officer.

Rationale. The grievable issues listed in the standard are all areas that can lead to litigation. Providing Inmates the opportunity to grieve in each of those areas can provide the jail administrators with an opportunity to resolve the matter without litigation. Those areas also cause the greatest inmate concern. A quick resolution may reduce the frustration, and anxiety that may prompt an inmate to litigate. Classification challenges and disciplinary appeals may be dealt with separate from the grievance system. Jail administrators should deal with each grievance on its own merits on an individual basis with the inmate. If the inmate grieves a non-grievable issue, a short response that the issue is not grievable should be made. This ensures that an inmate cannot avoid the requirements of the Prison Litigation Reform Act by arguing that they were not allowed to use the grievance system.

Compliance. Compliance with this standard can be achieved by specifying what is and is not grievable.

C-504

Emergency Grievances. The jail must have policies and procedures that require a grievance process that should provide an expedited process for those grievances of an exigent nature requiring faster processing than would occur with routine processing of a grievance. For example, it may be necessary to give emergency status and fast-track processing to a grievance involving—

- a. medical treatment;
- b. fire and life-safety complaints,
- c. PREA related complaints;
- d. claims concerning missed release dates.

Rationale. The grievance system is a deliberate, sometimes time-consuming process. Certain inmate problems or complaints may need to receive emergency or at least expedited handling.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for emergency or expedited handling of inmate grievances.

See PREA 115.61, 115.62 and 115.64

C-505

Retaliation and Interference Prohibited. The jail should have policies and procedures that prohibit retaliation against inmates for using the grievance system and which prohibit staff from interfering with the filing of grievances.

Rationale. Retaliation against inmates for filing grievances is prohibited, because retaliation—

- a. may create a cause of action for violation of the inmate's civil rights, even if what is done in retaliation would not, by itself, be an unconstitutional act² and
- b. would reduce the willingness of inmates to use the grievance system to resolve problems that would be contrary to the interests of the jail.
- c. may excuse the inmate from having to fully exhaust the grievance process, which can result in the loss of an important defense against inmate litigation

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit retaliation against inmates for filing grievances, and which prohibit staff from interfering with the filing of grievances.

See PREA 116.67

Do Not Copy

SECTION D: INMATE COMMUNICATION

100 MAIL

D-101 **Inmate Personal Mail.** The jail must have policies and procedures that implement a personal mail system for inmates that —

- a. permits inmates to send and receive personal mail;
- b. allows inmates to receive approved publications;
- c. prevents the introduction of contraband through the mail;
- d. requires affirmative measures to prevent inmates from using the mail to plan actions that would violate law or jail regulations;
- e. prevents introduction of written material that would be contrary to the safety, security or treatment objectives of the jail;
- f. does not violate the clearly established rights of inmates or those with whom they correspond;
- g. functions consistent with the legitimate interests of the jail; and
- h. governs the criteria, limitations, authorization and procedures for mail restrictions if the jail permits restrictions of any form of personal mail as a disciplinary punishment.

Rationale. Mail is an important means of assisting inmates to maintain family and community ties while incarcerated. Unfortunately, inmates may abuse the mail system to attempt to introduce contraband, or conspire to violate the law or jail security, or otherwise frustrate the legitimate interests of the jail. Mail must, therefore, be regulated and handled in a manner that does not compromise the interests of safety, security, order, and treatment.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for inmate personal mail.

ORS 12076(2)(c)

D-102 **Delivery Schedule.** The jail should have policies and procedures for processing inmate mail as follows:

1. Incoming mail should be delivered to inmates within 24 hours of the mail being received in the jail.
2. Outgoing mail should be processed within one business day of being received from the inmate.

Exemptions may be allowed for mail held due to violation of law or jail regulation.

Rationale. Restrictions or limitations on inmate access to mail may be justified only if they are reasonable and further a legitimate governmental interest. Delaying mail unnecessarily or failing to staff the mail function sufficiently to avoid unreasonable delay may result in a civil rights claim². It should be noted that the courts have not established clearly that any delay in mail is automatically a constitutional violation³. Weekend mail has not been required by the courts.⁴

Delays or temporarily withdrawing mail as a sanction for a disciplinary violation serves a legitimate penological interest by making discipline less comfortable.⁵

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate prompt handling of inmate mail.

ORS 169.076(2)(i)

D-103

Volume of Mail. The jail should have policies and procedures that do not limit the number of letters or postcards inmates may send or receive, unless the volume is great that it results in an unreasonable hardship on mail handling staff. Limits may be imposed on the volume of letters, postcards and other materials that may be stored in housing units. Limits may be imposed on the number of items mailed on behalf of indigent inmates.

Rationale. Mail is one method for inmates to communicate with the outside world and should not be unnecessarily restricted. Restrictions on inmate mail should be reasonable and related to jail safety, security, order, or resources. Inmates who initiate any situation that results in an extremely high volume of mail or are otherwise the recipients of mail in such volume that it cannot be handled with existing mail room resources may be limited in the number of pieces of mail that will be processed each day. The U.S. Supreme Court has recognized that corrections facilities have finite resources for handling

The amount of mail that an inmate would be allowed to receive should be limited only when mail is received in such a high volume that the mail handling resources of the jail are unduly burdened. Inmates whose mail volume has exceeded the jail's capability should be notified in writing of—

- a. the limits that must be imposed;
- b. the storage capacity limits in cells and the inmate property room; and
- c. procedures that will be implemented for reducing the volume of mail stored in the inmate's cell or the inmate storage area.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that allow inmates to send and receive a reasonable volume of mail.

D-104

Length or Size of Letters. The jail should have policies and procedures that specify any limits on the number of pages in an outgoing letter or postcard or the size of the envelope. There should be no limits except that—

- a. a letter should fit in a standard 4 x 9 inch business envelope;
- b. the weight of a letter should not exceed one ounce; and
- c. there should be provisions for approving exceptions to limits imposed as to the number of pages, weight, thickness, or size of envelopes. Exceptions—
 1. should accommodate the special requirements involved with legal mail; and
 2. should be for those inmates who can demonstrate an adequate need to be exempted from the policy. (By providing a means of providing for special needs, the jail will improve its ability to defend any litigation arising from inmate challenges to the policy.)

Rationale. For mail handling efficiency, the process for handling outgoing inmate mail should be setup for postcards and letters to be routinely handled using first class postage. This limits the weight of a letter to one ounce, the thickness to no more than 1/4 inch, and the size to no more than 6-1/8 inches high by 11-1/2 inches long.

If letters are allowed, the number of pages should not be so excessive that it would not fit in an ordinary business envelope or call for special handling because it requires additional postage that overly burdens mail-processing staff. The number of pages or size of envelope should not result in increased jail-paid postage costs for indigent inmates.

Jails may not require that all inmate mail be sent or received on postcards instead of letters without consulting with legal counsel. While this form of mail may decrease the amount of contraband sent into the jail, reduce the amount of staff time necessary to screen mail for contraband or prohibited communications such as sexually explicit or gang-related information, and reduce the cost to provide indigent inmates with writing materials, at least one US District Court judge in Oregon found that it was an exaggerated response that did not satisfy the *Turner v. Safely* test (*Prison Legal News v. Columbia County*, 2013 F Supp 1068 (2013)).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that specify any limits on the manner, length and size of inmates' outgoing mail and providing for exceptions to the limits. If a jail adopts a postcard-only policy, inmates must still be allowed to send letters for legal and official mail.

D-105 **Providing Writing Supplies and Postage.** The jail must have policies and procedures that make paper, envelopes, and postage available for purchase by inmates for writing personal letters and corresponding with courts and counsel.

- a. Indigent inmates must be provided sufficient free postage or allowance to permit meaningful access to the courts and counsel.
- b. The jail may prohibit possession of postage stamps by inmates, providing, instead, stamp embossed envelopes or stamping envelopes with a postage meter.
- c. The jail may require that envelopes and postcards used by inmates for outgoing mail to be imprinted with the name and return address of the jail facility; and
- d. Inmate segregation must give the opportunity to obtain writing supplies and postage stamps subject to limitations to accommodate safety, security, or other legitimate interests.

Rationale. The jail should provide the means for purchasing writing supplies and postage through the jail because allowing supplies to come in from friends or family increases the likelihood of introduction of contraband.

Providing a reasonable amount of free postage ensures that indigent inmates can have access to courts and counsel. Inmates are entitled to reasonable access to the courts and counsel. Inmates cannot be denied mail access simply because they cannot afford the postage to mail letters to courts and counsel; however, inmates are not entitled to unlimited postage. Jail officials—

- a. are not required to provide free postage to inmates who are not indigent; and
- b. can require inmates to follow formal procedures for acquiring free postage.

Stamps can be used as a monetary unit for gambling, paying illicit debts, etc. Jails are, therefore, justified in refusing to allow inmates to possess stamps.

Stamping or printing the name and address of the jail on envelopes or postcards sold to inmates makes it more difficult for inmates to use the mail to operate scams or other illicit activities from the jail. The federal courts have upheld the practice as constitutional.⁷

Stamping or printing envelopes with the name and address of the jail is entirely optional and is not a factor in compliance.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide inmates the opportunity to purchase writing supplies and postage and allowances or other means for indigent inmates to receive paper, envelopes, postage, and pencils that permit them adequate access to courts and counsel.

D-106 **Outside Mail.** The jail must have policies and procedures that allow inmates to be permitted to correspond with whomever they wish outside the jail, except that the jail may prohibit—

- a. written correspondence with inmates in any correctional facility; and
- b. other written correspondence if there is a reasonable belief that such correspondence would jeopardize safety, security, order, treatment goals or judicial directives
- c. correspondence with persons the inmate is prohibited from contacting, such as victims .

Rationale. The U.S. Supreme Court has upheld policies that prohibit written inmate-to-inmate correspondence and any other written correspondence that would jeopardize the legitimate penological interests of the jail.

Policies and procedures should provide criteria for restricting classes of persons from corresponding, such as inmates currently incarcerated and parolees.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that permit inmates to correspond with others outside the jail and set the criteria for restricting or prohibiting correspondence.

D-107 **Screening Unopened Inmate Mail.** The jail must have policies and procedures that require all unopened inmate mail to be initially screened to determine the need to refuse delivery, immediately confiscate it, or to identify the need for special handling, such as for privileged mail. Policies and procedures should address the factors for refusing delivery or immediate confiscation. The objectives of these factors must—

- a. further legitimate penological interests;
- b. be directly related to those objectives;
- c. be content neutral, except as otherwise set forth in these standards; and
- d. any time the jail refuses to deliver mail to an inmate, the inmate and the sender must be provided notice of the non-delivery, the reason, and have an opportunity to challenge the decision.

Rationale. Mail may be addressed to inmates that are no longer in custody. Once mail is opened, it may not be returned to sender without additional postage. Mail handlers may be able to identify and confiscate unopened mail that is in violation of a mail rule early in mail handling process to reduce the possibility of items that are a safety and security risk from reaching the addressee. Privileged mail is entitled to confidentiality and needs special handling to maintain confidentiality. (See standard D-117 for the handling of privileged mail.) Inmate mail should not be destroyed in any event. If the jail determines that the mail cannot be delivered to the inmate, it should be returned to the sender or put in the inmate's property. Notice must be provided to both the inmate and the sender.

The U.S. Supreme Court in, *Turner v. Safley*, set reasonableness as the standard for reviewing and regulating inmate mail. In *Thornburg v. Abbott*, the U.S. Supreme Court noted:

The Court in *Turner* identified several factors that are relevant to, and that serve to channel, the reasonableness inquiry. The first *Turner* factor is multifold: we must determine whether the governmental objective underlying the regulations at issue is legitimate and neutral, and that the regulations are rationally related to that objective. . . . The regulations are expressly aimed at protecting prison security; a purpose this Court has said is "central to all other corrections goals." *Pell v. Procunier*, 417 U.S., at 823, 94 S.Ct., at 2804.

As to neutrality, "[w]e have found it important to inquire whether prison regulations restricting inmates First Amendment rights operated in a neutral fashion with respect to the content of the expression."

In *Thornburg*, the Court also noted being a "security threat" is not the only justification for refusing to deliver publications. Mail or publications may be refused even if they did not lead directly to violence, but would exacerbate tensions and lead indirectly to disorder.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide the specific factors that would provide justification for refusing to deliver inmate mail.

D-108

Sexually Explicit or Inflammatory Mail. The [redacted] must have policies and procedures that regulate the screening of sexually explicit or inflammatory publications or other materials. Such sexually explicit or inflammatory publications or other materials may be rejected if—

- a. they would violate state laws;
- b. by their nature or content they would pose a threat to the security, good order, treatment goals, or the discipline of the jail, or would facilitate criminal activity; or
- c. they would exacerbate tensions and lead indirectly to disorder, even if they did not lead directly to violence; or
- d. promote a hostile work environment.

Rationale. Sexually explicit materials in a jail may also jeopardize the jail's legitimate interests in other ways. Admission of publications may lead directly to violence or exacerbate tensions and lead indirectly to disorder. The 9th Circuit has held that a jail policy of restricting prisoners' access to sexually explicit materials was reasonably related to legitimate penological interests. Sexually explicit materials may hamper treatment efforts among the sex-offender population.

If sexually oriented magazines, pictures, etc., are to be kept out of the jail, jail officials have the burden of justifying the exclusion of that material. Staff have a greater right to freedom from a hostile work environment than inmates have to possess materials that are sexually explicit or that objectify human beings.

Examples might include but are not limited to sexually explicit publications, pictures, or other material, that—

- a. encourages or instructs in the commission of criminal activity;
- b. by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity; or
- c. graphically depicts the following:
 1. sexual penetration;
 2. sex acts or simulated sex acts;

- 3. sadomasochistic acts;
- 4. bestiality; or
- 5. sex acts involving children.

The U.S. Supreme Court in, *Turner v. Safley*, set reasonableness as the standard for reviewing and regulating inmate mail. In *Thornburg v. Abbott*, the U.S. Supreme Court noted:

The Court in *Turner* identified several factors that are relevant to, and that have to do with, the reasonableness inquiry. The first *Turner* factor is multifold: we must determine whether the governmental objective underlying the regulations at issue is legitimate and neutral, and that the regulations are rationally related to that objective. . . . The regulations are expressly aimed at protecting prison security; a purpose this Court has said is "central to all other correctional purposes." *Pell v. Procunier*, 417 U.S., at 823, 94 S.Ct., at 2804.

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Any justification listed should further a legitimate penological interest. "Inflammatory publications" legally include publications or materials that are explicitly racist and likely to cause violence.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that identify specifically what types of materials may be kept from inmates.

D-109

Rejecting Incoming Mail on the Basis of Content. The jail must have policies and procedures that address the rejection of correspondence, publications, or other mail on the basis of content. A entire piece of mail should be rejected rather than removing the offending pages, paragraphs, or words.

Rationale. The U.S. Supreme Court has determined that if a publication contains portions that should be rejected, the entire publication should be refused rather than simply tearing out the offending material. The court reasoned that—

- a. corrections officials are simply not required to do the editing of the material that would be needed; and
- b. such editing would probably cause more anger among inmates than rejecting the entire publication.

The jail has the option of employing the all-or-nothing rule upheld by the U.S. Supreme Court for removing the offending material and then forwarding the publication or other correspondence to the inmate to whom it is addressed.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for handling correspondence, publications, or other mail in which a portion of the material must be rejected.

Process for Rejecting Mail. If any publication or other mail is rejected, the sender, if known, and the addressee (inmate) must be notified in writing of the—

- a. rejection of the correspondence;

- b. reasons that the correspondence was rejected; and
- c. process for informally appealing the rejection to the jail commander or designee.

Rationale. The person with whom the inmate is corresponding may not be familiar with the jail's mail regulations; thus, would be unaware that he or she was in violation of the regulations. The sender, even if aware of the regulations, may wish to argue that the correspondence did not create a violation. The sender has a right to expect delivery of mail to the inmate to whom it is addressed, unless the mail violates the law, or is contrary to a jail rule that has a valid, rational connection to a legitimate penological interest.

The inmate should also be notified if a piece of mail was rejected, and provided the reason.

The sender should be afforded an opportunity to informally appeal the decision to a person of higher rank than the person who processed the mail in a timely manner, if possible, within 48 hours.

Inmates should have an opportunity to appeal the decision in a like manner. As an alternative, the jail may choose to handle inmate appeals through a grievance process.

Compliance. Compliance with this standard can be achieved by adopting objective standards for staff to determine what may be refused, along with a process that provides both notice and an opportunity to be heard for both the inmate and the sender of correspondence that has been denied and has a subjective standard for staff to determine what may be refused.

D-111

Opening and Inspecting Personal Mail. The jail must have policies and procedures requiring that incoming personal mail that passed the initial screening must be opened and inspected for contraband. Mail policy must—

- a. require incoming personal mail to be opened and inspected before being forwarded to the inmate addressee;
 - b. outline the process for inspecting mail;
 - c. list criteria for determining what is contraband and what is illegal;
 - d. provide guidance on determining what action should be taken when contraband and illegal contraband are found during mail inspection;
 - e. identify specific staff responsibility for screening inmate mail and by limiting the number of persons authorized to participate in the process; and
 - f. ensure that inmates' rights regarding the mail will be protected.
- g. ensure the safety of staff handling mail

Rationale. Correspondence between inmates and those outside the jail provides a means of introducing contraband into the jail and planning actions that would jeopardize jail security, safety, order, and other legitimate interests. Opening and inspecting mail assists in the interdiction of contraband. Mail may also be opened and inspected because the U.S. Supreme Court has recognized need to open and inspect mail to protect security and other interests. Failure to inspect incoming mail has the potential of reducing jail security, increasing risk of harm to staff members and other inmates, and impeding mission accomplishment.

Inspecting outgoing mail has less impact on security than incoming mail. Refer to the Rationale paragraph of standard D-112 for additional discussion concerning outgoing mail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for opening and inspecting inmate mail, and providing for measures to address

staff exposure to dangerous controlled substances – such as the use of protective equipment and the availability of Naloxone or similar overdose treatment medications. These policies may provide for the use of a mail scanner that detects controlled substances, or the use of a third-party mail service that photocopies all inmate mail to prevent the introduction of contraband.

D-112

Reading Personal Mail. The jail should have policies and procedures governing the reading of inmate personal mail, including, but not limited to—

- a. who is authorized to screen and read inmate mail;
- b. the criteria for determining when inmate mail should be read;
- c. ensuring mail is read only to the extent that such reading furthers a legitimate penological interest; and
- d. providing procedures for following up on apparent misconduct discovered as a result of reading inmate mail.

Rationale. Jails are populated by persons who have demonstrated an inability to conform with the requirements of law. It is naive to believe that inmates will not continue to engage, or attempt to engage, in illegal or otherwise inappropriate behavior given the opportunity.

Inmates may not use the mail to violate, or attempt to violate, or conspire to violate, the law or jail regulations by—

- a. arranging to obtain drugs;
- b. planning assaults or other violent acts against persons;
- c. organizing prisons or jail disorders or escapes;
- d. establishing gangs or facilitating gang activities;
- e. intimidating or coercing victims or witnesses; or
- f. planning other criminal enterprises.

Reading mail assists mail officials in preventing or discovering and responding to inmates' use of, or attempts to use, the mail to engage in conduct that violates the law or jail regulations. Few jails have the resources to read all inmates' personal mail; however, putting inmates' mail in a can and will be read may serve as a deterrent to some of the misconduct. While there is no problem reading mail for legitimate penological reasons, and sharing evidence of criminal misconduct with law enforcement, under the Oregon Constitution, jails should not search or read inmate mail at the direction of law enforcement without a warrant.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that outline the process for mail reading.

D-113

Publisher-Only Rule. The jail should have policies and procedures that govern the procurement of books from outside the jail. The jail may require books and periodicals to be obtained directly from the publisher or distributor.

Rationale. The U.S. Supreme Court provides an explanation of the rationale for requiring a publisher-only rule:

We conclude that a prohibition against receipt of hardback books unless mailed directly from publishers, book clubs, or bookstores does not violate the First Amendment rights of MCC inmates. That limited restriction is a rational response by prison officials to an obvious security problem. It hardly needs to be emphasized that hardback books are especially serviceable for smuggling

contraband into an institution; money, drugs, and weapons easily may be secreted in the bindings. They also are difficult to search effectively. There is simply no evidence in the record to indicate that MCC officials have exaggerated their response to this security problem and to the administrative difficulties posed by the necessity of carefully inspecting each book mailed from unidentified sources. Therefore, the considered judgment of these experts must control in the absence of prohibitions far more sweeping than those involved here. (footnote and citations omitted)

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that govern the manner in which books and periodicals may be obtained by inmates.

D-114

Packages. The jail should have policies and procedures governing whether inmates are permitted to receive packages while incarcerated. While not required to be accepted, if jails do permit delivery, they must provide policies and procedures governing—

- a. eligibility to receive packages;
- b. limits on what can be received;
- c. limits on when items can be received and
- d. the disposition of perishables and other contraband received.

Rationale. Allowing inmates to receive packages creates the potential for serious security violations and other problems.

- a. The inspection process necessary to search for contraband involves a substantial and inordinate amount of available staff time. Packages and the items inside the packages provide a means of opportunity for disguising and hiding contraband.
- b. The additional property that accumulates in the cells would—
 - 1. increase the risk of theft, gambling, and inmate conflicts;
 - 2. increase the clutter, storage problems, and fire hazard (fuel load) inside cells; if excess property has to be stored outside the cell, exceed or tax the storage space available in the vast majority of jails; and
 - 4. result in sanitation problems (especially if food, other perishables, or unclean items are included in packages).

The U.S. Supreme Court has found that refusing to allow inmates to receive packages is not unconstitutional.

Corrections officials concluded that permitting the introduction of packages of personal property and food would increase the risks of gambling, theft, and inmate fights over that which the institution already experienced by permitting certain items to be purchased from its commissary. "It is enough to say that they have not been conclusively shown to be smuggling in this view." It is also all too obvious that such packages are handy devices for the smuggling of contraband. There simply is no basis in this record for concluding that . . . officials have exaggerated their response to these serious problems or that this restriction is irrational. It does not therefore deprive the convicted inmates or pretrial detainees of . . . their property without due process of law in contravention of the Fifth Amendment (citations and footnote omitted).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing packages items sent to inmates.

D-115 Junk and bulk mail. The jail must have policies and procedures that allow inmates to receive solicited and unsolicited junk and bulk mail.

Rationale. The Ninth Circuit Court has ruled that prohibitions on inmates receiving bulk rate, third, and fourth class mail, are unconstitutional as applied to prepaid, for-profit, subscription publications. In two recent cases, the Ninth Circuit found that publishers and inmates have a First Amendment right to communicate, and that right existed whether the inmate asked for the communication or not. The court found that a jail policy that excluded unsolicited bulk mail (Crime, Justice and America) because the inmate didn't request the magazine did not clearly pass the Turner test and sent the case to a jury. In another case, the California DOC agreed to pay \$65,000 plus attorney's fees to settle claims that it interfered with delivery of Prison Legal News. Unless the bulk or junk mail meets other exclusionary criteria, such as being prohibited as offensive, threatening, or obscene, jails must allow inmates to receive unsolicited junk or bulk mail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures allowing inmates to receive solicited or unsolicited junk or bulk mail that is not otherwise prohibited.

D-116 Cash and Negotiable Instruments. The jail must have policies and procedures for the removal of cash, money orders, checks, and other negotiable instruments from incoming inmate mail. Cash, money orders, and cashier's checks should be credited to inmate accounts. All other negotiable instruments should be returned to the sender or receipted and placed in inmate property.

Rationale. Cash in the possession of inmates creates a greater risk of theft, gambling, and other problems related to security and order than maintaining inmates' money in accounts controlled by the jail. Policies prohibiting inmates from carrying cash have been affirmed by courts against constitutional challenges.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the manner in which cash, money orders, and cashier checks will be processed when found in inmate mail.

D-117 Privileged Mail. Policies and procedures must identify what constitutes privileged mail and how it may be regulated and should be handled. Policies and procedures should address the following:

- a. privileged mail including, but not being limited to, mail—
 1. sent by inmates to their attorneys, the Governor, jail administrator, judge, the Attorney General, and Department of Corrections officials;
 2. received by inmates from their attorneys, including Disability Rights Oregon or the ACLU; and
 3. to or from other entities designated by jail policy.
- b. requiring privileged mail to be clearly identifiable as such;
- c. opening and inspecting incoming privileged mail for contraband in the presence of the inmate to whom it is addressed;
- d. opening and inspecting outgoing privileged mail in the presence of the inmate who sent the letter if jail officials have some reason to believe the letter represents a threat to the legitimate safety, security, order, or other legitimate interests of the jail;
- e. handling and documenting inadvertently opened privileged mail;

- f. **prohibition on jail officials reading privileged mail in the absence of a court order;**
- g. **pursuing administrative, criminal and/or other remedies to the fullest extent against those involved if contraband is found in mail designated as privileged that such attempts to violate jail security;**
- h. **not obstructing the use of mail to communicate with court and counsel**
- i. **permitting inmates in disciplinary or administrative segregation to use mail to communicate with the courts and counsel in a manner consistent with that available to other inmates.**

Rationale. Access to courts and counsel is an established inmate right. Privilege (confidentiality) extends to communication between attorneys and their inmate clients. Privilege is necessary to permit the unfettered communication necessary for attorneys to represent their clients properly. Mail between inmates and their attorneys may not be read and should not be opened outside the presence of the inmate.

Jail officials cannot provide privilege to all mail. Providing the staff-intensive procedures required for privileged mail would be a waste of the jail's limited resources, and delivering mail to inmates unopened and uninspected would result in an unacceptably high risk to jail safety and security. Thus, some means is needed of identifying and separating privileged mail that requires much more staff intensive procedures from personal and other non-privileged mail that can be handled in a routine and cost-effective manner.

Jail officials can require privileged mail to be clearly identifiable, such by—

- a. requiring that letters be specially marked as originating from an attorney, with the attorney's name and return address printed on the envelope; and
- b. requiring that the sender of the privileged mail to identify the correspondence as privileged by writing "privileged," "confidential legal material," or some other designation to notify jail staff that the contents of the letter contains material that is entitled to privilege.

Jail officials must not read or scan privileged mail; however, it can, and should, be opened and inspected in the presence of the inmate to whom it is addressed to determine if it contains contraband. Privileged mail, if not inspected, potentially jeopardizes jail security and inmate privacy—

- a. when inmates and their associates learn that envelopes bearing an attorney's name and return address will always be delivered unopened, it does not require much imagination to steal attorney letterhead or have it commercially printed for use in smuggling contraband or otherwise violating jail regulations;
- b. there have been numerous incidents, nationally, in which attorneys have been involved in—
 - 1. smuggling weapons, drugs, or other contraband into inmates;
 - 2. assisting in escapes/attempts; or
 - 3. other intentional violations of jail regulations;
- c. some attorneys may inadvertently mail to inmates items that are contraband (such as paper clips and metal paper fasteners); and
- d. attorneys' staff members who have friends or relatives in jail may use legal envelopes for purely personal communication to avoid having it read by jail officials.

If mail from attorneys is found to violate jail security regulations, jail officials may take action to limit the privilege provided, and, if the attorney violates the law, legal action may be taken.

Access to courts and counsel must not be denied as a management convenience for inmates in administrative (non-disciplinary) segregation, nor as a disciplinary punishment. Some modification of how inmates in segregation status access legal assistance may be necessary to accommodate security, safety, or other legitimate penological interests.¹¹

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that identify the types of mail that must be afforded privilege and its handling requirements.

ORS 169.076(10).

See PREA 115.51

200 VISITING

D-201

Visiting Schedule. The jail should have policies and procedures that provide for a visiting schedule that sets forth the days and hours of social visitation. The visiting schedule should allow inmates to have a reasonable number of visiting opportunities. A jail may choose to restrict or even prohibit social visitation for a reasonable period of time (14 days or less from booking date, for example) for pre-trial detainees, or may allow visitation only through electronic means during this period.

Rationale. The Supreme Court has found no "unfettered" right to visitation guaranteed by the Constitution. That does not mean that the jail should put an end to inmates' social visits; however, the jail does have wide discretion in terms of how it regulates inmates' social visits and in determining what may visit. Restrictions or limitations on inmates' visits may be justified only if they are reasonable and further a legitimate governmental interest.

Reasonable visitation is intended to provide inmates adequate opportunity to maintain family and community ties without overburdening jail resources. There is no clearly established constitutional requirement covering the number of visits inmates are allowed, and the courts have failed to reach consensus on this issue. Various court rulings have required one permitted one 40-minute visit per week, two 30-minute visits per week, three 20-minute visits per week, reducing visits from three per week to two, five to ten visits per month, three visits per week, weekend visits, and holiday visits.

Facilities and staff levels permitting, policies should provide an opportunity for reasonable visitation, and offer both weekday and weekend visits as a reasonable attempt to accommodate the various work and other schedules of visitors. Facilities are strongly encouraged to provide some opportunities for in-person visitation, as courts and legislatures that have considered the issue have not found video visitation to provide the same experience for inmates and visitors.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate inmate visits in a manner that balances the legitimate penological interests of the jail (including staffing and security impacts) with the interests and needs of inmates, their families and the community. Facilities that have the capability of providing in-person visitation should provide limited opportunities for in-person visitation.

ORS 169.076(2)(i)

D-202

Number of Visitors. The jail should establish, by policy, the maximum number of people who may visit an inmate at a given time. The number of visitors should be

determined by evaluating the effective operational capacity of the visiting area and the constraint imposed by safety and security considerations.

Rationale. Jails offer very different facilities for accommodating inmates' visits. Visiting rooms vary according to design, size, equipment, visibility, acoustics, and other factors. These differences will determine whether safety and security will be degraded by permitting an inmate to visit with more than one visitor at a time.

Compliance. Compliance with this standard can be achieved by adopting a policy that clearly set forth the number of visitors who may be permitted to visit the same inmate at any one time.

D-203

Visiting Area. Jails should have an area identified for inmates' social visits. The visiting area should provide a means for the inmate and visitors

- a. clearly see each other; and
- b. hear each other speak.

Rationale. For visits to serve their intended function in an effective manner, the audio and visual properties of the visiting room should not unnecessarily inhibit the visiting opportunity. Obviously, having to visit inside a secure jail setting will diminish the quality of the social interaction under the best of circumstances. There is no specific constitutionally required size for window openings, nor is there a specific type of sound system required; however, if the vision and sound quality are adequate, the purposes of the visit will be served.

Sight requirements can be met by

- a. ensuring that the security barrier permits inmates and visitors to be heard when speaking in a normal voice and for visit participants to see each other without effort; or
- b. providing barrier-free visits.

Compliance. Compliance with this standard can be achieved by ensuring that inmates and their visitors visit in facilities that provide adequate sight and sound quality.

D-204

Privacy Monitoring of Visits. Inmates and visitors should be provided general notice prior to any monitoring of social visits.

- a. Notice may be provided in the written rules and regulations posted or otherwise provided for inmates, by posting other notices in conspicuous places for inmates to see, and/or during orientation sessions for newly arrived inmates.

Visitors must be notified that their conversations may be recorded.

- c. Attorney visits may not be audio monitored or audio recorded.

Rationale. Depending on the type of visiting provided, visits between inmates and outside visitors may provide a means of introducing contraband into the jail. Even with barrier visits, communication may result in planning actions that jeopardize the jail's legitimate security, safety, order, and/or other penological interests. Maintaining the option of monitoring social visits provides a means of controlling and reducing the risks. The jail is entitled to take reasonable steps to ensure security even when such steps may be intrusive. The Constitution does not provide inmates an expectation of privacy in their personal communication while incarcerated.

"The recognition of privacy rights for inmates in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal

institutions." Even though inmates have no expectation of privacy, jail commanders can provide an additional margin of protection against civil rights litigation by putting inmates and visitors on notice that they have no expectation of privacy and visits may be monitored.

Compliance. Compliance with this standard can be achieved by giving notice that inmates and visitors have no expectation of privacy, and that social visits may be monitored.

D-205

Contact Visits. The jail's visiting policies and procedures should identify which, if any, inmates will be permitted to have contact visits. Jails may prohibit personal contact visits. If jail policy allows contact visits, they should provide—

- a. the criteria for determining which inmates are eligible for contact visitation;
- b. procedures for handling contact visits; and
- c. security procedures for mitigating and controlling the risks.

Rationale. Jails are populated by persons who have demonstrated an inability to conform with the requirements of law. It is naive to believe that these persons will not continue to engage, or attempt to engage, in illegal or otherwise inappropriate behavior whenever the opportunity. Contact visits (visits conducted without contraband barriers or other physical separation of inmates and visitors) greatly increase the risk that inmates may use contact visits to violate the law or jail regulations by—

- a. passing drugs, weapons, or other contraband;
- b. escaping or attempting to escape;
- c. committing assaults; or
- d. engaging in sexual activity.

The U.S. Supreme Court and the 9th Circuit has ruled that a blanket prohibition against contact visitation is constitutional. The Supreme Court has ruled lower courts that had overturned regulations that disallowed contact visitation. The 9th Circuit has upheld a policy of prohibiting all contact visits with attorneys in *Casey v. Lewis*, 4 F3d 1516 (1993). Notwithstanding this, a jail commander can authorize attorney contact visits as appropriate. For death penalty cases, the American Bar Association has stated that an attorney cannot adequately represent their client unless they have contact visits to get to know the client and get their input. This is not legally binding, but may influence the 9th circuit if this issue arises again.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate contact visits.

D-206

Visitor Eligibility. Jails must have policies and procedures that—

- a. set forth the criteria for determining visitor eligibility;
- b. set forth justifications for disqualifying someone from visiting an inmate that may include, but are not limited to—
 1. previous acts by the visitor that involved;
 2. attempts to smuggle drugs, weapons, or other contraband into the jail;
 3. disruptive behavior during visits or refusal to follow visitor rules;
 4. assisting, conspiring, or otherwise participating in an escape or attempted escape; or
 5. acts that threaten the safety, security, or other legitimate penological interests of the jail; and

- 6. a reasonable belief by jail officials that the visitor represents a threat to the safety, security, order, discipline, treatment, or other legitimate interests of the jail.
- c. determine which staff have authority to deny a person's eligibility to visit; and
- d. define what, if any, opportunity the visitor will be offered to challenge the decision.

Rationale. There is no "unfettered" right to visit inmates in a jail or other correctional facility. Eligibility for particular visitors to visit falls within the jurisdiction and discretion of jail officials. As with any restrictions imposed by jail officials, they should be supported by a valid, rational connection to a legitimate penological interest.

Any restrictions on who may visit inmates in the jail should have a valid, rational connection to a legitimate governmental interest.

Since the visitor has no due process right to challenge the decision, it is within the discretion of jail officials to determine what, if any, opportunity to be heard will be provided. Jail commanders should provide an informal process of reviewing such decisions to ensure that discretion is not abused.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulates visitor eligibility.

D-207 **Identification and Registration. The jail should have policies and procedures that require visitors to present identification and register prior to visits.**

Rationale. Jail officials have the right to require prospective visitors to produce identification as a part of the jail's legitimate visitor eligibility screening process. Registration of visitors documents inmate visitation.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for identifying and registering visitors as a precondition for visiting inmates.

D-208 **Visitor Attire. Visiting policies and procedures should clearly explain any restrictions on attire that visitors may wear to visit inmates.**

Rationale. Allowing visitors to dress in an overly sexually provocative manner or in gang attire while visiting inmates in a closed environment may jeopardize the security and safety interests of the jail. Multiple layers of heavy clothing worn to contact visits may provide greater means of concealing contraband. Irrespective of the reasons for regulating visitors' attire, visitors should be provided a clear explanation of restrictions in the visiting rules and regulations—

- a. to eliminate or reduce the potential for misunderstanding;
- b. to help resolve disputes by visitors who arrive for visits dressed in inappropriate attire; and
- c. as documentation of the exact nature of the dress requirements in the event of legal challenges.

The manner in which people dress is generally protected by the First Amendment. Restrictions on attire should be no more restrictive than is necessary to meet the security and other objectives of the rule. Restrictions on attire must have a valid, rationale connection to a legitimate penological interest. Courts have recognized that corrections officials have interests related to dress; however, courts are unlikely to uphold regulations

that are arbitrary, capricious, unreasonable, or are not rationally related to a legitimate penological interest.⁴

Compliance. Compliance with this standard can be achieved by ensuring that any policies and procedures that restrict the attire of visitors have a valid, rational connection to clearly stated legitimate penological interests.

D-209

Visiting Rules. The jail should have policies and procedures that provide the process for providing and enforcing visiting rules and regulations. Rules and regulations governing jail visits should be posted or otherwise provided to visitors. Violations of visiting rules—

- a. by inmates must be processed through the inmate discipline procedures and may result in—
 - 1. warnings or other informal disciplinary actions;
 - 2. major disciplinary actions; and/or
 - 3. criminal actions; and
- b. by visitors may result in—
 - 1. warnings;
 - 2. suspension of visiting privileges;
 - 3. permanent revocation of visiting privileges; and/or
 - 4. criminal prosecution.

Rationale. Visiting is a function that has the potential of increasing the vulnerability of jail security and the safety of staff, inmates, and the public. To mitigate potential problems, visiting must be handled in a manner that reduces to the lowest possible level opportunities for escape, introduction of contraband, inmate violence, disruptions, and other actions that would be inimical to the legitimate penological interests of the jail.

The adoption, implementation, and strict enforcement of visiting rules and regulations are an effective means of

- a. demonstrating the importance of proper conduct during visits;
- b. providing notice to inmates and their visitors; and
- c. terminating—temporarily or permanently—the visiting privileges of visitors who are unwilling or incapable of complying with regulations.

Posting or otherwise making available to visitors rules and regulations governing visiting—

- a. to assist visitors to understand and comply with required and prohibited conduct or behavior; and
- b. to provide fair notice and serve as a basis for action against visitors who violate behavior requirements.

Inmates' violations should be processed through the inmate discipline system. Visitors who violate visiting rules are not entitled to a due process hearing, unless the county has created a liberty interest in visiting inmates because of rules, regulations, or ordinances. Even in the absence of a due process hearing, jail officials should require either that the jail commander participate in the decision to ban a visitor permanently or that he or she, at least, informally review such decision.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide the process for providing and enforcing visiting rules and regulations.

D-210 **Special Visits.** The jail should provide policies and procedures for handling requests for special visits. The policies should include—

- a. who has authority to grant special visits;
- b. the procedures that should be followed in handling special visit requests;
- c. the factors that may justify consideration of a special visit. These include—
 1. persons that drive long distances to visit and will not be available on the scheduled visiting days of the inmate with whom they wish to visit;
 2. facilitating the delivery of death messages or other news of a serious and personal nature; or
 3. accommodating other exigent circumstances.

Rationale. There is no clearly established constitutional right to special visits. However, by providing a means of considering for special needs, the jail will improve its ability in defending any litigation arising from inmate challenges to the policy.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for handling requests for special visits.

D-211 **Visits with Minor Children.** Visiting policies and procedures should provide for visits of an inmate's minor children when accompanied by a parent or legal guardian.

Rationale. Unless visits between inmates and their minor children are denied for cause in specific cases (such as the inmate in jail on an incest charge or conviction), visits with minor children are justified on the same basis as other family visits.

There is a lack of consensus in the courts concerning the visiting rights of minor children; however, it is in the best interest of jail officials to be proactive and permit minor children to visit, but regulate the visits in a manner that protects the jail's legitimate interests. The US Supreme Court has upheld restrictions that require any child visitor to be accompanied by a family member or legal guardian and that allow the prohibition of visits by nieces, nephews, and children as to whom parental rights have been terminated.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing the process for visits of minor children.

D-212 **Providing and Regulating Attorney Visits.** The jail must have policies and procedures to ensure inmates are entitled to attorney visits, including inmates in administrative or disciplinary segregation. Visits may be regulated to—

- a. require visits to be conducted at reasonable hours;
- b. restrict visits when inmates are being served meals or at other times when visits would substantially interfere with jail operations at times of peak activity; and
- c. facilitate and ensure jail security.

Rationale. Inmates are constitutionally entitled to visit with their attorneys. Attorney visits may be regulated, but regulations must have a valid, rational connection to legitimate penological interests. Attorneys do not have a right to visit inmates who have not asked for their assistance.

Visits should be limited to reasonable hours to avoid pulling inmates out for visits during sleeping hours. Waking inmates for late-night visits would disturb other inmates trying to sleep. Some flexibility should be permitted to cover exigent circumstances. (Standard B-312 covers attorney visits during admission.)

Visits during meal times, especially in larger jails where feeding is a more involved process, may result in an inmate missing a meal. Since jails are not restaurants that serve at all hours, and jail kitchens frequently work on very tight schedules, inmates cannot expect to have special meal accommodations if regular meals are interrupted by unscheduled attorney visits.

Security procedures apply to attorneys the same as they do for inmates, staff, visitors, and others. Attorneys can be required to submit to reasonable search processes such as metal detectors, inspection of brief cases, and, if there is sufficient justification, frisk or clothed searches.

Attorney visits may not be denied as a management convenience for inmates in administrative (non-disciplinary) segregation, nor as a disciplinary punishment. Some modification of how inmates in segregation status visit with attorneys may be required, to accommodate security, safety, or other legitimate interests.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide for and regulate attorney visits.

D-213

Privacy. Policies and procedures must require privacy for visits between inmates and their attorneys. There must be no audio monitoring or recording of visits between inmates and their attorneys.

Rationale. Attorney-client visits are privileged and, thus, cannot be audio monitored. Monitoring inmates' visits with their attorneys would chill the communication necessary for the inmate to be represented properly. The prohibition against audio monitoring visits does not prohibit corrections deputies from visually observing visits. Visual observation of visits, if done from a distance that does not allow eavesdropping, furthers the jail's legitimate safety and security interests without infringing on the communication and privacy of the visit.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring privacy and prohibiting monitoring of inmates' visits with attorneys.

300

TELEPHONE USE

D-301

Telephone Access: Personal Calls. The jail should have policies and procedures that govern the means by which inmates in the general population with regular opportunities to access telephones for personal calls. Policies and procedures should—

- a. govern the means by which inmates will be provided access to telephones, including the operation of a collect and/or prepaid telephone system;
 - b. set the number of calls inmates will be allowed to make each week if telephones are not located in living areas;
 - c. have set time limits for telephone calls; and
- address the hours during which inmates should be permitted access to telephones to call family members and others identified and approved by jail policy.

Rationale. There is no clearly established constitutional requirement defining the extent to which inmates are entitled to access telephones for personal calls. Court's ruling on inmate telephone access issues have reached widely differing conclusions of law. Some courts have ruled that inmates have at least some right of access to telephones for personal use; a few even specifying the hours of the day, the amount of time per inmate, and/or number of calls per week required to satisfy inmates' constitutional rights. Other courts have ruled

that inmates have little, if any, constitutional right to make personal telephone calls (other than the requirements for inmates at admission).

By providing reasonable access to telephones to supplement visiting and mail communication, jails should have a substantial cushion against a claim for a constitutional cause of action.

Collect telephone systems—systems requiring the party being called by the inmate to agree to accept a fixed local call charge—provide inmates telephone access, while providing benefits to the jail facility. Benefits include—

- a. safeguarding against harassing or threatening calls by inmates to victims, witnesses, or others (because the person being called can refuse to accept the call prior to the inmate coming on the line);
- b. diminishing the potential for inmates to use jail telephones to engage in fraudulent schemes from jail cells⁴ (because persons receiving inmates' calls are informed that the call is coming from an inmate⁵ in a jail);
- c. creation of an automated record of calls made by inmates;
- d. reducing the volume of telephone calls from inmates; and
- e. generation of revenue for the county (collect telephone system vendors share the income from the system with the county).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate inmate telephone use in a manner that balances the legitimate penological interests of the jail with the interests and wants of inmates.

D-302

Telephone Access: Court and Attorney Calls. Inmates must be permitted to make a reasonable number of telephone calls to their attorneys. The jail should have a procedure for the inmates to make emergency calls to the court. The jail's telephone policies and procedures:

- a. must allow inmates telephone contact with counsel;
- b. should provide a mechanism where an inmate can contact court staff by telephone if written correspondence with the court would not be sufficient to resolve a situation and there is an emergency;
- c. should provide any rules or restrictions concerning the following:
 1. how calls are placed;
 2. the hours when calls can be made;
 3. duration of calls;
 4. which telephones will be used for attorney calls;
 5. the number of calls per week permitted;
 6. authorization for additional calls to courts or counsel to meet exigent circumstances;
- d. should require the opportunities for inmates to call their attorneys to be documented; and
- e. should permit inmates in disciplinary or administrative segregation communicate with the courts in a manner consistent with that available to other inmates.
- f. Should prohibit the audio monitoring or recording of telephone calls between attorneys and inmates, except when done pursuant to a warrant.

Rationale. Inmates have a constitutional right to contact their attorneys. Access to courts is an established inmate right. Telephones provide a means of meeting this right. Telephone access can be regulated; however, restrictions should not significantly impair access to counsel. (Standard B-311 covers attorney calls during admission.)

Collect telephones for attorney calls have generally been upheld; however, alternative means of providing telephone contact with attorneys and courts should be available to meet exigencies.

Judges are generally prohibited by the Code of Judicial Conduct from having ex parte contact with litigants, except when circumstances require for scheduling, administrative concerns, or emergencies that do not involve substantive matters or the merits of the case. Normally, all communications to the court should be done by written correspondence, but in an emergency an inmate should be allowed to contact court staff directly.

Access to courts and counsel must not be denied as a management convenience to inmates in administrative (non-disciplinary) segregation, nor as a disciplinary punishment. Some modification of how inmates in segregation status access legal assistance may be necessary to accommodate security, safety, or other legitimate penological interests.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing telephone calls to attorneys and courts.

D-303

Long Distance Telephone Calls. The jail should have policies and procedures governing long-distance telephone calls by inmates that should include—

- a. the factors that may justify long-distance telephone calls;
- b. whether special approval is required to authorize long-distance telephone calls; and
- c. the procedures that should be followed in providing long-distance calls and ensuring that the calling costs are collected or charged.

Rationale. Inmates may need long-distance telephone access, because—

- a. the inmate's family and other associates live out of state or out of the calling area;
- b. the inmate's attorney is located outside of the calling area; or
- c. exigent circumstances require a long distance call.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for handling long-distance telephone calls for inmates.

D-304

Monitoring and Recording Telephones. Inmates have no expectation of privacy in their personal telephone calls. Inmate telephone calls may be monitored and recorded by law enforcement officials for any reason that is consistent with the purpose and legitimate interests of the jail.

If the jail policy is to monitor calls, policies and procedures must—

- a. require notice that telephones may be monitored; notice can be provided by one or more of the following methods—
 - 1. in the written rules posted or otherwise provided for inmates;
 - 2. by posting other notices in conspicuous places for inmates to see;
 - 3. during orientation sessions for newly arrived inmates;

- 4. **by affixing warning labels to telephones to which inmates have access; or**
 - 5. **by other means established by the jail commander.**
- b. **identify the level of authority for approving monitoring, if monitoring is not done as a matter of routine.**
 - c. **Inmate phone calls may be monitored and recorded for legitimate penological reasons, and any evidence of criminal activity may be shared with law enforcement. Inmate phone calls should not be monitored at the request of law enforcement to gather information about a particular inmate absent a warrant.**

Rationale. Telephone calls between inmates and persons outside the facility may provide a means of introducing contraband into the jail, or planning other actions such as escapes, assaults, or other actions that would violate law or jail rules or jeopardize the jail's legitimate security, safety, order, and/or other penological interests. Maintaining the operation of monitoring personal telephones provides a means of controlling and reducing the risks. The jail is entitled to take reasonable steps to ensure security even when such steps may be intrusive and regulate use in a manner that does not compromise jail inmates' safety, security, order, and treatment. ORS 165.540 exempts public officials at jails from the prohibition of obtaining the contents of telecommunication, except for attorney-client privileged communication.

Oregon courts have found that jails may monitor and record inmate phone calls and share information found with law enforcement, but a recent court decision held that the jail should not be acting at the direction of law enforcement in gathering information from inmates for use in a criminal proceeding without a warrant.² Inmates thus have no constitutional expectation of privacy in their personal telephone communication as to jail officials while incarcerated, and inmate telephone calls may be monitored on a routine, random, or selective basis.

In addition to constitutional issues, Title III of the Omnibus Crime Control and Safe Streets Act requires a court order to monitor telephone conversations absent prior consent from one of the parties. By using jail telephones, inmates are agreeing to monitoring and recording. In addition, all recipients are specifically notified that the call is coming from a jail and will be monitored and recorded, and they have to acknowledge consent by pressing 1 on the keypad to accept the call.

Even though inmates have limited expectations of privacy, jail commanders can provide an additional margin of protection against civil rights litigation by putting inmates on notice that they have no expectation of privacy and that telephones may be monitored, recorded and that the communications may be shared with law enforcement.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing the privacy and monitoring of inmate telephone calls, notice to inmates, and prohibiting the monitoring of inmate phone calls for the purposes of law enforcement investigations only pursuant to a warrant.

D-30

Telephone Rules. Policies and procedures governing inmate use of jail telephones should include telephone rules and the need for disciplinary action for violating the rules. Inmate rules on telephone use should be posted or otherwise provided. Violations of telephone rules should be processed through the inmate discipline system and may result in—

- a. warnings or other informal disciplinary actions;
- b. major disciplinary actions; and/or

c. criminal actions, if appropriate.

Rationale. Jail staff should be aware of telephone rules for enforcement purposes. Posting or otherwise providing inmates rules governing telephone access and use is necessary to—

- a. assist inmates to understand and comply with required and prohibited conduct;
- b. provide fair notice that there is no expectation of privacy and that telephones are subject to being monitored and recorded;
- c. serve as a basis for action against inmates who violate rules concerning telephone use; and
- d. better ensure that monitored calls can be used, if needed, to prosecute criminal action can be used without violating Title III.

Inmate telephone access and use has the potential of increasing the vulnerability of jail security and the safety of staff, inmates, and the public. To mitigate potential problems, telephone use must be handled in a manner that minimizes opportunities for escape, introduction of contraband, inmate violence, disruptions, and other actions that would be inimical to the legitimate penological interests of the jail.

The adoption, implementation, and strict enforcement of telephone rules and regulations are decisive means of—

- a. demonstrating the importance of proper conduct when using telephones;
- b. providing notice to inmates;
- c. punishing the abuse or other improper use of telephones by suspending the telephone privileges of inmates who are unwilling or incapable of complying with regulations; and
- d. ensuring that monitored conversations can be used to prosecute criminal actions and conspiracies.

Compliance. Compliance with this standard can be achieved by posting or providing written rules governing inmate access and use of telephones and including rules in policies and procedures.

D-306

Telephone Revenue. Any revenue earned from the operation of an inmate telephone system or outlets must be used solely for inmate welfare. Inmate welfare means items or programs that enhance the lives of inmates, to include education programs, job training programs, drug and alcohol programs, inmate exercise equipment, inmate television and cable subscriptions, electronic law library access, magazine subscriptions, books, microwaves for inmate use, religious staff or materials not required to be provided, special event meals or snacks for inmates, and board games for inmate use. Inmate welfare funds may be used to offset the costs of staff providing commissary services – for example to pay the salary for a staff member hired to manage and deliver commissary.

Inmate welfare funds may never be used for regular inmate meals, inmate clothing, medical care, security staff salaries, staff clothing, staff equipment, and facility maintenance.

Rationale. Revenue earned from inmate telephone calls is appropriately used to benefit inmates, and doing so makes being in jail a better experience for inmates and staff. Using these funds for items that the jail is legally required to provide – such as inmate food or clothing – basically requires the inmate and their families to subsidize the costs of jail operations.

Compliance. Compliance with this standard can be achieved by having a written policy defining inmate welfare in accordance with this standard, and requiring that all revenue earned from the operation of inmate phone systems or tablets be used exclusively for inmate welfare.

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SECTION E: SECURITY AND CONTROL

100 FACILITY SECURITY

E-101 Perimeter Security Checks. Policies and procedures should require staff members to make visual inspections of the security perimeter of the jail on routine and random basis, but no less than once per day. Perimeter security checks should include, but not be limited to—

- a. inspecting the outside walls, windows, doors, and other areas for damage, tampering, or other indications of attempts to breach security;
- b. looking for persons loitering or parking in close proximity to the jail, or otherwise acting in a suspicious manner; and
- c. potential security problems related to design, construction, or maintenance.

Rationale. Outside perimeter checks are essential for sound jail security because they protect the jail from security breaches from the outside.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require staff members to make visual inspections of the security perimeter of the jail on a regular basis, but no less than once per day.

E-102 Perimeter Lighting. Jails should have perimeter lighting that illuminates the area surrounding the facility.

Rationale. Persons intent on breaching security can easily approach and access recreation area fences, the windows, inmate housing areas, and other vulnerable locations (i.e., electrical transformers, natural gas equipment and valves, ventilation equipment, vents, etc.). Perimeter lighting does not allow persons to approach the facility under cover of darkness. Perimeter lighting does not solve perimeter security problems, but it is an important component to a jail's defense.

Compliance. In new facilities, perimeter lighting should be designed and constructed to ensure that parking approaches to the jail, exterior walls, doorways, the roof, utilities, and other vulnerable areas are illuminated brightly. In existing facilities, jail officials should ensure that at least the most vulnerable areas are illuminated.

E-103 External Barriers. Jails should have perimeter barriers that protect the area surrounding the jail. Barriers can include fencing, walls, landscaping, other structures, and signs that—

- a. prevent or reduce access to restricted areas; and
- b. route vehicle and foot traffic away from restricted areas.

Rationale. Barriers function to prevent persons from having unrestricted access to vulnerable or other sensitive areas. Signs and landscaping and other soft barriers will deter most persons. Only more formidable barriers and security will deter persons who are determined.

In existing facilities, officials should ensure that, at the least, the most vulnerable areas are protected reasonably. Where design, construction, location, required public access to adjacent facilities, or other problems create greater difficulty in protecting the facility, procedural efforts should be used to offset the greater vulnerability.

Compliance. In new facilities, external barriers should be designed and constructed to ensure that nonpublic parking areas, restricted approaches to the jail, exterior walls, doorways, the roof, utilities, and other vulnerable areas are protected.

E-104 **Facility Access. Policies and procedures should determine who may enter the secure areas of the jail and under what circumstances. Access into the nonpublic areas of the jail must be restricted and controlled to prevent unauthorized persons from entering into the secure areas of the jail.**

Rationale. Jails, by their very nature, must be tightly controlled. The ability to operate securely is diminished when access is not tightly controlled and restricted. Inadvertent and intentional security violations increase with the numbers of non-essential persons who have access to restricted areas.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that determine who may enter the secure areas of the jail and under what circumstances.

E-105 **Security Doors. Policies and procedures must require that security doors be kept closed and locked when not in use to permit only authorized movement of staff, inmates, and others. Policies and procedures should identify any exceptions to the rule.**

Rationale. One of the most frequent breaches of security in jails and prisons is the failure of staff to keep doors closed and locked when not in use. Security doors are left open for a variety of reasons (i.e., to allow staff member movement, laziness, a lack of understanding of the risk to personal safety and facility security, complacency). Open doors have led to escape, death, and even the loss of entire facilities to inmate take over (i.e. the New Mexico prison riot). Security doors and doors

- a. allow access in and out of the secure perimeter;
- b. prevent inmates from accessing areas that they are not authorized;
- c. compartmentalize the jail to prevent inmates from gaining control of any one area;
- d. guard critical supplies or equipment from inmate access.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require security doors to be kept closed and locked when not in use, and identify any exceptions to the rule.

E-106 **Firearms. Policies and procedures must require that all persons, including peace officers, must remove and secure their firearms before entering the secure perimeter of the jail where inmates are, or may be present, except in emergency situations.**

Rationale. State law prohibits the carry or use of firearms in the secure perimeter unless authorized by the administrator of the facility under emergency circumstances.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that requires the routine secure storage of firearms outside the secure perimeter of the jail in a secure gun locker or the trunk of a vehicle, except as authorized in emergency situations.

ORS 169.076(6)

E-107

Temporarily-Issued Jail Weapons. Except for those permanently issued, firearms, batons, shields, chemical agents designed for mass application, or other weapons, must be stored in the jail armory or other secure location.¹ Policies and procedures should include—

- a. the location, access, and security procedures for the armory or other storage area;
- b. procedures for temporarily issuing and returning stored weapons on a routine or emergency basis;
- c. authorization for the use of firearms or other stored weapons by staff in the jail facility;
 1. Who may authorize use of the weapons in the jail and under what circumstances
 2. Documentation required to memorialize the authorization, justification and application
- d. at least quarterly inventory and inspection of stored weapons;
- e. procedures for repair and maintenance of stored weapons;

Rationale. Firearms and other weapons, if obtained by inmates, would create an enormous risk to the lives and safety of staff members. Any laxity or inattention to the manner in which weapons are stored provides an opportunity for inmates to exploit. Safety and security demand very strict and formal procedures for issue, return, and storage of weapons. Chemical agents, such as pepper spray designed for individual and specific application, have proven effective in resolving staff and inmate injuries.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that govern the authorization, issue of weapons, and use in the secure perimeter as well as secure storage and accounting for weapons.

ORS 169.076(6)

E-108

Defensive Tools Authorized for Routine Carry in the Secure Perimeter. Staff must be given clear guidance under policy, procedure and training on the permitted use and carry of defensive tools allowed within the secure perimeter of the jail. Policy and procedure will address, at a minimum:

- a. Authorization for the routine carry of defensive tools
- b. Type of tools permitted
- c. Areas of authorized carry
- d. Limitations on carry
- e. Prohibited use and carry
- f. Documentation required when defensive tools are used in the secure perimeter

Rationale. Chemical agents, batons, electronic control devices and other defensive tools designed for individual and specific application, have proven effective in quickly resolving use of force events. Facility designs, training, and practices will influence the types of defensive tools authorized in each facility.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that govern the carry and use of defensive tools into the jail.

E-109 **Key Control. The jail must have key control policies and procedures. The policies and procedures should include, but not be limited to—**

- a. storage of keys not currently issued in a locked location that is inaccessible to unauthorized persons;
- b. accounting procedures for issuing and returning keys;
- c. procedures for repair and maintenance of keys and locks;
- d. procedures for key inventory that include—
 - 1. identifying each lock by location; and
 - 2. the number and location of keys for each lock; and
- e. procedures for maintaining a complete set of duplicate keys separate from the location in which keys are stored for use by staff.

Rationale. Locks and keys are fundamental components of jail security. Proper maintenance and control of keys is essential to ensuring that security and safety are not compromised. Lax key control may result in inmates gaining possession of keys or the unavailability of critical keys in an emergency.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that govern the control, maintenance, and issuing of keys.

E-110 **Emergency Keys. The jail must have policies and procedures for identification and storage of emergency keys. A set of emergency keys that can be retrieved quickly and made available in case of an emergency should be stored in a secure location. Keys necessary for unlocking doors needed for egress must be individually identifiable.**

Rationale. In the event of a fire or other emergency requiring rapid evacuation, persons responding to the emergency will need immediate access to a set of keys to enable them to move quickly through the facility. Emergency keys are particularly important during fires and other exigencies where electrical systems are affected. There are numerous examples of lost lives and unnecessary injuries that have resulted from the inability of rescue workers to open doors during fires.

In addition to having the keys available, consideration should be given to the fact that fire fighters and other emergency workers who are not members of the staff will not be familiar with the key and locking systems. Color or other coding of keys and locks will permit rescue workers to perform the evacuation, entry, and other functions that require use of the keys in a faster and more efficient manner. Keys needed for egress must be identifiable in conditions of low light or heavy smoke and by people with color blindness.²

Compliance. Compliance with this standard can be achieved by assembling a set of emergency keys and adopting policies and procedures that govern the control, maintenance, and emergency release of the keys.

ORS 169.076(3)

E-111 **Inmates Prohibited from Handling Security Keys. Policies and procedures must prohibit inmate use, control or possession of, or access to jail security or vehicle keys. Staff must not allow intentional or inadvertent access to a security key by an inmate. Policies and procedures should address both staff and inmate disciplinary requirements for violating this standard. Such violations should be considered a serious disciplinary offense.**

Rationale. Locks and keys are fundamental components of jail security. Proper control of keys is essential to ensuring that security and safety are not compromised. Allowing inmates any access to jail keys goes against well-established inmate management principles and requirements and has a very deleterious effect on jail security and safety.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that do not permit inmates to have access to keys, and identifies as a serious disciplinary offense—

- a. possession of any jail key by an inmate; and
- b. permitting an inmate access to jail keys, whether intentional or due to negligence.

E-112

Tool and Material Control. The jail must have tool and material control policies and procedures. These policies and procedures should include, but not be limited to—

- a. storage of tools and materials within the secure perimeter that are not currently in use should be stored in a locked cabinet, drawer, safe or other secure place that is inaccessible to unauthorized persons;
- b. issuing and returning tools and material;
- c. conducting a comparison inventory of tools brought into and taken out of the secure perimeter to identify missing tools;
- d. reporting and initiating efforts to locate missing tools or material;
- e. repair of tools and equipment, as needed;
- f. requirement that any use of tools, equipment, and materials by inmates be under the direction and/or supervision of staff; and
- g. procedures for inventory of tools and other supplies, including, but not limited to—
 - 1. maintenance tools;
 - 2. kitchen tools;
 - 3. cleaning compounds;
 - 4. hazardous materials; and
 - 5. other items that in the possession of inmates are potentially hazardous.

Rationale. The operation and maintenance of a jail requires the availability of tools, equipment, chemicals, and other items that, in the hands of inmates, may be hazardous or used to defeat jail security and safety. Proper maintenance and control of tools, equipment and material is essential to ensuring that security and safety are not compromised. Lax control may result in inmates gaining possession of these items to be used in escapes, assaults, or other actions that would defeat or compromise security and safety.

Compliance. Compliance with this standard can be achieved by adopting and enforcing policies and procedures that govern the control, maintenance, storage, and use of tools and potentially hazardous materials.

200

SURVEILLANCE AND SUPERVISION

Staffing. The jail must have a policy to staff the jail 24 hours per day whenever at least one inmate is present. Minimum staffing must be no fewer than two per shift,

one of which must be certified. Some small jails may have periods of time during which they have no inmates.

Rationale. Staff must be present in the jail facility 24 hours per day to be able to respond to—

- a. safety and security of the institution;
- b. medical emergencies;
- c. injuries (resulting from fights, falls, and other accidents);
- d. assaults/escapes;
- e. suicide attempts;
- f. fires;
- g. risk management issues; and
- h. other exigencies;
- i. Courts have also required 24-hour coverage.

Compliance. Compliance with this standard can be achieved by adopting a policy of 24-hour staffing of the jail.

See PREA 115.13, 115.62, 115.82

ORS 169.076(1)

E-202

Inmate Monitoring. Policies and procedures must require staff members to observe each inmate individually by frequent and irregular rounds, but in no case, less than the Oregon statutory minimum of once every sixty minutes. Staff must document each round.

Rationale. Frequent, irregularly scheduled surveillance rounds make it more difficult for inmates to freely engage in actions that violate the law or jail regulations. Diligent deputies may be able to catch inmates who are engaged in prohibited actions and/or observe the results of their actions. A failure of corrections deputies to make timely rounds can result in liability in the event of harm to an inmate if plaintiffs can prove deliberate indifference on the part of the jail.

Rounds should be made on an irregular basis to make it more difficult for inmates to predict visits and exploit that predictability.

Podular-designed jails, do not require staff to walk from one housing unit to another. Instead, they allow staff to view virtually all inmates and space in the common areas at all times. With podular designs, it is easy to become complacent due to the ease of supervision. Staff in podular jails should be required to identify each inmate in the living area early on at least an hourly basis.

Inmate surveillance rounds should include, but not be limited to—

- a. verifying the presence and apparent well-being of inmates;
- b. looking for evidence of previous misconduct (i.e., fighting, damage to the facility, contraband); and
- c. discovering potential security problems related to inmate conduct.

Documentation of inmate surveillance is important for staff to be able to prove that rounds or other surveillance and supervision were carried out according to policies and procedures.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require staff members to make and document visual inspections of inmates at least once in every hour.

ORS 169.076(1)

E-203

Cross-Gender Surveillance and Supervision. Policies and procedures concerning surveillance and supervision of inmates must be constructed in a manner that balances the equal employment interests of women against the sexual privacy interests of inmates. Jail officials should make a reasonable effort to minimize the degree of sexual privacy intrusions that occur because of cross-gender supervision. Cross-gender supervision may be used in jails if—

- a. deputies are not assigned to posts or assignments that result in routine close observation of inmates of the opposite gender while in the shower or using the toilet;
- b. viewing of unclothed inmates of the opposite gender is—
 - 1. inadvertent;
 - 2. occasional or infrequent; and/or
 - 3. at a distance; and
- c. reasonable accommodation is made to reduce the scope of the intrusion.

Rationale. Equal employment opportunities for female deputies and candidates for employment are required by federal law. It is unlawful for an employer to fail or refuse to hire or to discharge anyone or to discriminate with respect to the person's compensation, terms, conditions, or privileges of employment, based on gender. Applicants or employees must not be deprived of employment opportunities, nor must their employment status be adversely affected, because of gender. The courts have ruled that women must be permitted to work in corrections facilities, even with male inmates, on virtually the same basis as male staff members.

The heavy imbalance of male and female inmates means that complying with the requirement of Title VII, which ensures that hiring is essentially gender neutral will inevitably result in female deputies being assigned to posts and positions that could intrude on the sexual privacy of inmates.

The increased involvement of women in corrections is not without conflict, however. Inmates face with the combination of limited privacy in jails and increasing number of females functioning as corrections deputies have sued to protect what they perceive as protected sexual-privacy rights, including—

- a. showering, using toilet facilities, and changing clothes without being observed by deputies of the opposite sex; and
- b. freedom from searches by the deputies of the opposite sex that involve—
 - 1. observation of naked genitals or buttocks during unclothed searches; and
 - 2. touching through clothing of genital or anal area during clothed or frisk searches.

Granting male inmates complete sexual privacy from female deputies would seriously reduce the number of women who could work in corrections, because more than 90% of all inmates in the United States are male. To meet the equal employment opportunities for women demanded by federal law and protect the county from discrimination claims, jail administrators have a strong interest, and a responsibility to open employment to women, even at the cost of some infringement of male inmates' privacy interests.

Women should be permitted to supervise male inmates, even if the result is that women occasionally see men nude using showers or toilet facilities or changing clothes. While female employment rights generally outweigh the privacy of male inmates, there should be a reasonable accommodation to reduce the extent and frequency of sexual privacy intrusions.

Whether observation of inmates of the opposite sex in the nude or on the toilet occurs on a routine basis, or is inadvertent or occasional is the key consideration. As a general rule, cause of action may be stated if staff regularly or routinely view inmates of the opposite sex undressing, using toilet facilities, or showering. Observation that is inadvertent, occasional, or infrequent should not rise to the level of a constitutional cause of action. A policy that requires inmates to wear minimum clothing at all times except when showering will help reduce instances of viewing opposite sex inmates while they are unclothed.

The extent that inmates retain sexual privacy rights in jail is by no means clearly established. Some courts have taken the position that inmates have little or no lawful expectation of sexual privacy. Other courts have ruled that inmates have a fundamental right of sexual privacy. The safest policy course would be to permit female deputies to perform most jail functions, while providing reasonable accommodation of the inmate's sexual privacy interests.

While women should be afforded wide latitude in assignments within correctional facilities, certain positions or posts absent physical privacy barriers (such as close supervision of male showers or medical exams) may be inappropriate for cross-gender supervision because of their proximity or closeness to the exposed inmate. The distance at which an inmate is observed when nude or using toilet facilities is an issue considered by the courts. The closer the proximity of the staff member to the inmate during such observations, the greater the potential for a prohibited sexual privacy intrusion. Distance also depersonalizes the observation.

Caution should be exercised, however, in ensuring that any sexual privacy accommodations provided do not compromise physical safety or security interests. For example, announcing that a deputy of the opposite sex is about to begin a surveillance route would destroy the element of surprise important to good security. "Covering the shower area (to protect male inmates from being observed in the nude by female staff) would cut down on the guards' ability to determine whether an assault had occurred in the showers . . . [and] would enhance the possibilities of such assaults."

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that clearly set forth the duties and limits of cross-gender supervision. Female deputies should be allowed to function in virtually the same manner as male deputies, while limiting the scope of intrusion on the sexual privacy interests of inmates.

See PREA 115.15

E-204

Female Inmates. The jail must have policies and procedures to protect female inmates from unnecessary sexual privacy intrusions, including being subjected to a pat, frisk or strip search by male deputies in non-exigent circumstances.

Rationale. A greater effort to limit the functions of male staff members and protect female inmates' sexual privacy interests is justified because¹—

- a. with a majority of inmates being male, male deputies are not as limited in employment opportunities;
- b. while Title VII creates justification for some infringement on the sexual privacy interests of male inmates to further the employment rights of female employees and applicants, it is difficult to justify such intrusions by male deputies who already hold more than 80 percent of corrections positions; and

- c. as a practical matter, courts have been much more protective of the sexual privacy interests of female inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that protect female inmates from unnecessary sexual privacy intrusions by male staff members.

See PREA 115.15

E-205

Use of Cameras . The jail should have policies and procedures for the use of cameras in the surveillance of inmates. Cameras should supplement and not replace personal surveillance of inmates. Jails that use cameras as a component of jail security should use it primarily as a means of monitoring and controlling doors, hallways, points of ingress and egress from one security zone to another and restricted access areas.

Rationale. Cameras can be an effective tool if its use is limited to monitoring movement through the jail, verifying the identity and purpose of persons attempting to enter or egress the jail or security zones within the jail, and monitoring limited-access areas. Cameras can also be useful in supplementing supervision of inmates; however, there is an over reliance on cameras it may become a substitute for personal surveillance. Anything that diminishes personal surveillance will negatively affect security and safety. Staff may not continually monitor cameras due to other duties. Cameras may tend to create a false sense of security, and end up being used as a poor substitute for personal supervision of inmates in their living areas. Monitors cannot smell the environment (for smoke, sanitation problems, drugs, etc.), detect the subtle changes in inmates' actions that occur when staff members appear, see areas outside of a camera's view, or clearly hear and distinguish sounds.

Compliance. Compliance with this standard can be achieved by jails that use cameras by adopting policies and procedures that ensure that cameras supplements rather than replaces personal surveillance of inmates.

See PREA 115.13, 115.18, 115.19

E-206

Frequency of Counts. Jail must have policies and procedures that require inmates be counted at least once each shift. Policies should include—

- a. assigning responsibility for conducting counts;
 - b. the process for conducting and reconciling the count; and
- when the count will be conducted (at least once each shift).

Rationale. Inmate counts are required to ensure that all inmates who are supposed to be incarcerated are currently in custody.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for scheduling and conducting inmate counts.

E-207

Reconciling Counts. Jail officials must reconcile the count against the total number of inmates who are currently on the jail roster. Policies and procedures should include at a minimum—

- a. locking all inmates down and fully securing the jail security perimeter;

- b. initiating a new count with each inmate being counted at his or her bunk; and
- c. checking out-count logs to determine if any inmates not accounted for are in court, at a medical facility, or other authorized location.
- d. notification requirements if it is determined an inmate is missing, that at a minimum, should be the following:
 - 1. the jail commander;
 - 2. the sheriff; and
 - 3. area law enforcement agencies.
- e. actions to take if escape is confirmed, that at a minimum, should be the following:
 - 1. providing descriptions and photographs to area law enforcement agencies, and, if approved by the sheriff, to the news media;
 - 2. securing each escaped inmate's cell as a crime scene area; and
 - 3. initiating an escape investigation to determine how the inmate escaped and to apprehend the inmate.
 - 4. notification of known victims or others who may be put at risk, such as witnesses, should be made as soon as reasonably possible.

Rationale. Inmate counts are required to ensure that all inmates who are supposed to be incarcerated are currently in custody.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures to be followed if the count cannot be reconciled to the number of inmates who are listed on the jail roster and notification and actions to take for missing or escaped inmates.

300 CONTRABAND AND SEARCHES

E-301 Contraband Control. Jail officials must have policies and procedures for the control, disclosure and removal of contraband from the jail. Policies and procedures should include:

- a. detecting contraband;
- b. placing inmates on notice—
 - 1. of items authorized for possession by inmates;
 - 2. that all items not specifically approved are considered contraband; and
 - 3. of jail officials' intent and determination to enforce rules prohibiting contraband aggressively;
- c. using routine and random searches of—
 - 1. inmates;
 - 2. the facility; and
 - 3. deliveries and other items entering the jail;
- d. providing notice to persons entering the facility that they are subject to search; and
- e. training staff concerning search requirements.

f. Documenting instances when contraband is found inside the jail.

Rationale. When drugs, weapons, and other items of contraband are introduced in the jail facility, security may be seriously degraded and safety risks are increased for staff, inmates, and the public. Even seemingly innocent items (such as ballpoint pens, paper clips, dental floss, and gum) can create substantial problems for jail officials in the hands of inmates. The obvious difficulty of ridding the facility of contraband or even reasonably controlling its introduction requires formulation and implementation of specific and aggressive policies, procedures, and strategies.

The Supreme Court has held that the restrictive Fourth Amendment search and seizure "reasonableness" standard does not apply to prisons or jails. Documenting each instance when contraband is found will help in the event that the jail is sued related to a search, and provides command staff with a method for evaluating whether security measures are adequate.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures intended to control, detect, and remove contraband from the jail, and documenting when contraband is found.

E-302

Inmate Personal Property. Policies and procedures should require jail staff conducting searches to respect inmate interests in protecting authorized personal property and prohibit jail officials from searching inmate property at the request or direction of law enforcement officials without a warrant.

Rationale. Although it is difficult for inmates to establish a constitutional cause of action for loss of property while in a jail or prison, jail officials should make every effort to protect authorized personal property because:

- a. the loss or destruction of legal papers may create a cause of action for interfering with meaningful access to courts or counsel;
- b. there may be a cause of action if the loss or destruction is perceived by the court to be retaliatory or intended to prevent an inmate from exercising other rights;
- c. policies and procedures may inadvertently have created a liberty interest (right or entitlement) for the inmate to possess certain items of property; and
- d. unneeded, destructive searches breed anger and resentment that may result in future problems for jail officials.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit staff members from destroying, damaging, or seizing authorized property without justification.

E-303

Basic for Conducting Searches. The jail must have policies and procedures for conducting searches of inmates on a routine and random basis and in high-risk situations. Special attention should be given to inmates—

- a. at the admission process;
- b. returning to the facility from court, medical and dental transports, and other venues outside the jail;
- c. moving between security zones in the jail;
- d. whose cells or living areas are being searched;
- e. working as inmate workers; and
- f. being transported from the jail to other venues.

Rationale. Searches are a critical element of jail security and should be conducted as part of a set routine, but augmented with random searches to keep inmates from being able to anticipate when searches will or will not occur. Inmates have no expectation of privacy while incarcerated, and, thus, are not protected from aggressive search procedures.¹ Searches are particularly vital when inmates or others are capable of bringing contraband in from the outside, moving contraband from one location to another within the jail, or being prepared for transportation from the facility.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require routine and random searches and that identify high-risk areas and inmates that require a heightened need for initiating searches.

E-304

Scope of Intrusion and Justification. The jail must have policies and procedures that require justification for intrusive searches. The greater the scope of intrusion for a search, the greater must be the justification for conducting the search. For arrestees who may still have release options, an unclothed search is an intrusive search that must be justified. For inmates who have been locked in the jail, random unclothed searches are acceptable if done for legitimate penological reasons.

Rationale. The U.S. Supreme Court has ruled that, "Courts must consider the scope of the particular intrusion . . . [and] the justification for initiating it." Courts generally have been concerned about the "humiliation," "embarrassment," and "dehumanizing" aspects of highly intrusive searches; thus, requiring greater justification for intrusive searches.

The justification required for the various types of searches is discussed in more detail in the standards of this Inmate Searches topic.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require justification for intrusive searches.

E-305

Individualized Reasonable Suspicion Not Required. The jail must have policies and procedures that address when individualized reasonable suspicion is not required for unclothed searches (visual body-cavity searches always require individualized justification). Individualized suspicion is not required if the inmate is received—

- a. under remand from a court;
- b. as an in-transit inmate;
- c. as a transfer from another corrections facility;
- d. from the Oregon Department of Corrections or a federal law enforcement or corrections agency; or
- e. for violation of probation or parole.

Rationale. Court decisions requiring reasonable suspicion before conducting intrusive searches during the admissions process apply only to pretrial arrestees being booked for nonviolent offenses.

Compliance. To comply with this standard, the jail must adopt a policy that permits unclothed and visual body-cavity searches of inmates consistent with this standard.

E-306

Manner of Search. The jail must have policies and procedures that require searches to be conducted in a professional manner. Policies and procedures should address staff members—

- a. having adequate training to legally and properly conduct the various types of searches;

- b. taking adequate sanitation precautions, when appropriate;
- c. not making taunting, degrading, dehumanizing, or other inappropriate comments to inmates while conducting searches; and
- d. providing an appropriate degree of privacy for intrusive searches or other searches that by their nature would tend to be exceptionally embarrassing or humiliating; intrusive searches should be done in a manner that reasonably ensures that inmates being searched are observed only by—
 - 1. staff members conducting or assisting with the search;
 - 2. staff members working in the area; and
 - 3. other inmates being searched at the same time.

Rationale. When deputies perform searches in a professional manner, it improves the likelihood that challenged searches will be upheld; conversely, unprofessional searches may result in otherwise proper searches being found to be in violation of inmates' constitutional rights. For example, in *Vaughn v. Rickard*, where prison officials were found to have sufficient cause to conduct a search and found explosives hidden in inmates' rectums, the court ruled against the searches because of how they were conducted. It said: "Regardless of the strength of the officials' justification, the manner in which . . . the searches were conducted violated clearly established standards."

Detailed information about privacy, sanitation, and qualifications to conduct the various types of searches is provided in the other standards within this Inmate Searches topic.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures and providing training that provides staff with the information, techniques, and skills necessary to conduct the various types of searches in a manner that is consistent with professional and constitutional requirements.

E-307

Clothed Searches. All inmates are subject to clothed searches at any time during their incarceration. For purposes of this standard a clothed search is defined as a search in which a deputy touches or pats the subject's body over the subject's clothing to attempt to detect contraband. It includes a careful manual search of the genital anal, and breast areas over the inmate's clothing. In addition to the general requirements to conduct such searches, policies and procedures should direct that clothed searches are required for every inmate—

- 1. entering, leaving, or returning to the facility;
 - 2. entering or exiting the inmate's living area;
 - 3. as a part of a cell search;
 - 4. leaving for, while working at, and/or returning from work release, inmate worker assignments, or other program activities;
 - 5. for whom there is any reason to believe is in possession of contraband; and
 - 6. on a routine, selective, and/or random basis.
- b. Search procedures and training should prepare deputies to protect themselves from the risks that result from the physical contact that is a necessary aspect of clothed searches. Risks include—
 - 1. assaults by inmates;
 - 2. exposure to contagious disease and vermin infestation; and

3. skin punctures from needles hidden in clothing or other possessions.

- c. Although clothed searches are relatively unintrusive, male deputies should never conduct clothed searches of female inmates except in emergencies or when exigent circumstances exist.

Rationale. The courts have recognized the importance of searching inmates to maintain facility security. They consider clothed searches as relatively unintrusive, and permit their use on virtually an unlimited basis.

Because clothed searches involve a low degree of intrusion, no justification is required other than the incarceration of the inmate, and privacy is not ordinarily a requirement for clothed searches. If the inmate is wearing only under garments, the court will consider the search a strip search, particularly if the search involves touching of the genital, anal or breast areas.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures and training that provide staff direction to determine when clothed searches are to be done and how to conduct them.

E-308

Unclothed Searches. The jail must have policies, procedures and training that provide staff direction on how and when to conduct unclothed searches properly. For purposes of this standard, unclothed searches are defined as searches that involve the visual inspection of a disrobed subject, and may include the visual inspection of the anal or genital areas.

Unclothed search policies and procedures must—

- a. require that during the admissions process, deputies must not subject an arrestee brought to jail on non-violent minor offenses to an unclothed search unless the deputy has individually and reasonably suspected the arrestee—
 - 1. may be in possession of a weapon; controlled substance; criminal evidence; or other contraband that would present a threat to the safety of staff or other persons in the jail or to the security of the facility and could not be found with a less intrusive search; or
 - 2. has a health condition requiring immediate medical intervention, and a less intrusive search is required to confirm the information; or
 - 3. has a current arrest charge for a felony drug offense, or a violent or use-of-weapons felony crime; or
 - 4. has a history of a felony drug offense, or violent or use-of-weapons felony crime arrest within the past 10 years; or
 - 5. has a history of escape within the past 10 years.
- b. require that unclothed searches during the admission process be documented to include articulating the reasonable suspicion that formed the basis for the search in that documentation.
- c. require unclothed searches of lodged or in-transit inmates when such searches further legitimate penological interests. Circumstances for which searches would ordinarily be appropriate may include, but are not limited to, inmates—
 - 1. returning from contact visits;
 - 2. in or leaving administrative segregation (or other restricted area);
 - 3. prior to transportation to court, medical clinic or other such venues;

4. returning to jail from outside activities;
 5. received in transit while being transported by other criminal justice agencies;
 6. leaving for, while involved in, and/or returning from work release, inmate worker assignments, or other activities that provide an opportunity for inmates to introduce or transport contraband;
 7. returning from other security zones or activities within the facility;
 8. having their cells shaken down; or
 9. reasonably believe to be in possession of contraband
- d. require that unclothed searches of lodged or in-transit inmates be documented if contraband is discovered; jail policy may require additional documentation.
 - e. In the event that staff discover contraband in a body cavity during a visual body-cavity search, they must contact medical staff or ask the inmate, if appropriate, to remove the items from the body cavity unless there is a clear exigency as established by agency policy.

Rationale. The courts have recognized the importance of searching inmates to maintain facility security; however, they have found unclothed searches to be highly intrusive, more so than clothed searches. Therefore, greater justification is required for staff to conduct unclothed searches. Though intrusive, unclothed searches are a useful and necessary tool for the protection of jail security and safety because—

- a. inmates are capable of hiding weapons, drugs, and other contraband on their bodies in ways that substantially reduce the likelihood that the hidden items will be found in a clothed search; and
- b. unclothed searches add a dimension to the search that permits visual examination of the subject in a manner that, if done competently, ensures that contraband hidden on the body will be found and in some instances, may lead to discovery of contraband hidden in body cavities.

Because they are intrusive, the courts have consistently held that arrestees cannot be subjected to unclothed searches unless there is individualized reasonable suspicion that an arrestee has contraband.

Unclothed searches may also be justified where there is reason to believe that an inmate has mental health problems or is concealing evidence of medical problems or past suicide attempts. The need to protect the inmate from himself or herself and to protect others from infectious illness justifies a more intrusive search.

The court's rationale in limiting searches for arrestees is that persons who are not part of the criminal subculture (such as those brought in on nonviolent misdemeanor offenses) may not be subjected to an unclothed search absent an individualized determination of reasonable suspicion to believe that inmates who are briefly in jail awaiting payment of security or recognizance release for minor offenses should not be required to endure the humiliation of the search. They will likely be released within a very few hours and are not, therefore, a great risk to the security of the facility. The restriction on unclothed searches is relaxed after arrestees have exhausted their options to gain pretrial release and have become a part of the jail population. Each facility should define when an arrestee has exhausted all reasonable release opportunities and becomes an inmate, as well as defining what the term general population includes (for example does it include medical cells, segregation cells, or any area where an inmate is housed where they may have contact with other inmates?)

Compliance. Compliance with this standard can be achieved by adopting policies, procedures, and training that provide staff direction to determine when unclothed searches are to be done and how to conduct and document them properly.

See PREA 115.215

E-309

Intrusive Body-Cavity Searches. The jail must have policies and procedures for determining when intrusive body-cavity searches are appropriate and the conducting of such searches. Corrections deputies may ask medical personnel to conduct an intrusive body-cavity search when they have a reasonable suspicion an inmate has drugs or other contraband hidden in the rectum or vagina. Corrections deputies will never conduct intrusive body-cavity searches. The searches will be conducted in private by trained medical staff and must be documented. Unclothed searches require the visual inspection of body cavities, and some courts have described unclothed searches as “visual body-cavity searches”. For purposes of this document, unclothed searches must not be confused with intrusive body-cavity searches, as unclothed searches do not involve physically touching the inmate.

Rationale. For purposes of this standard, intrusive body-cavity searches are defined as searches that involve the probing of the vaginal and/or rectum using a gloved finger or other instrument to search for contraband. The courts have recognized the importance of searching inmates to maintain facility security; however, they have found digital body-cavity searches to be the most intrusive and demeaning type of search. Because of this, the courts will evaluate intrusive body-cavity searches carefully. Intrusive searches remain a viable search option, because—

- a. the use of body-cavities by inmates to hide or transport contraband is not uncommon among persons who are handled by corrections officials;
- b. while visual body-cavity searches may on occasion detect indications that contraband is hidden in a body cavity (such as the end of a balloon or condom protruding from the anus), in most instances the detection of contraband in a body-cavity is only be possible with an intrusive search;
- c. when inmates become aware that intrusive searches are infrequently used, they quickly learn to hide contraband in the rectum and/or vagina;
- d. intrusive body-cavity searches often result in discoveries of hidden contraband;
- e. use of intrusive searches increases the risk to inmates who violate contraband regulations and may deter some of the prohibited activity.
- f. increased use of body scanners in jails result in staff identifying more internally secreted contraband, particularly dangerous narcotics such as heroin, suboxone, and methamphetamine. In most cases, the inmate will be asked to voluntarily remove the contraband, but in those cases where an inmate will not or cannot cooperate, an intrusive body-cavity search is required to remove the contraband and prevent the introduction of dangerous contraband into the jail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide staff direction to determine when intrusive body-cavity searches are appropriate and the conducting of such searches by medical personnel.

See PREA 115.81

E-310

Exigent Circumstances. The jail must have policies and procedures that address the criteria for exigent circumstances that may justify unclothed searches, visual body-

cavity searches, or intrusive body-cavity searches that would not ordinarily justify such searches.

Rationale. Emergencies and other circumstances that require immediate action to meet safety or security needs create an exception to the limits on intrusive searches.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that permit more intrusive searches when justified by exigent circumstances and provide the criteria for when exigent circumstances exist.

See PREA 115.15

E-311

Frisk and Clothed Searches of Male Inmates by Females. The jail must have policies and procedures that permit female staff members to conduct frisk and clothed searches of male inmates. Policies must address—

- a. allowing female deputies to conduct frisk and clothed searches of male inmates;
- b. defining a frisk search as a search in which a deputy touches or pats the inmate's body over the inmate's clothing, but that avoids deliberate touching of the male genital and anal area;
- c. defining a clothed search as a search in which a deputy touches or pats the subject's body over the subject's clothing to attempt to detect contraband. It includes a careful manual search of the genital area, and breast areas over the inmate's clothing; and
- d. allowing more intrusive clothed searches (deliberate touching of the genital and anal areas) when exigent circumstances exist that require the more intrusive search to further the jail's legitimate security and safety interests.
- e. Defining a search of an inmate who is dressed only in undergarments as a strip search, not a clothed search.

Rationale. Because Title VII prohibits gender-based employment discrimination and a majority of all inmates are male, women must be permitted to conduct as many of the duties of corrections as possible. Limiting female participation in searches—

- a. may create an undue work load and burden on male staff members;
- b. restricts female deputies from the opportunity of gaining the work experience that aids in future promotion or assignments; and
- c. may reduce safety or security by limiting the number of expeditious and random searches of inmates conducted by jail staff.

As a general rule, cross-gender searches by female deputies have been upheld by the courts. The courts have differed on the scope or level of intrusion. Some courts have permitted female deputies the same latitude as granted to male deputies searching male inmates. Other courts have been more cautious.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that define and allow for cross-gender searches by female deputies, except when the inmate is nude or wearing only under garments.

See PREA 115.15

E-312

Unclothed Searches of Male Inmates by Females. The jail must have policies and procedures that regulate female staff member's participation in unclothed and visual body-cavity searches of male inmates. For purposes of this policy, an unclothed

search includes a frisk or pat-down of an inmate wearing only underwear, as the 9th Circuit has held such a search is equivalent to a strip search. Policies and procedures should—

- a. require that the involvement of female deputies in unclothed searches of male inmates be—
 - 1. infrequent;
 - 2. non-routine; or
 - 3. indirect or at a distance.
- b. permit the involvement of female deputies in unclothed searches of male inmates when exigent circumstances exist that require such searches to further the jail's legitimate security and safety interests;

Rationale. Because Title VII prohibits gender-based employment discrimination and most inmates are male, women must be permitted to conduct as many of the duties of corrections deputies as possible. Limiting female participation in searches—

- a. places a disproportionate workload and burden on male staff members;
- b. restricts female deputies from the opportunity of gaining the work experience that aids in future promotion or assignments; and
- c. may reduce safety or security by limiting the number of expeditious and random searches of inmates conducted by jail staff.

Limited participation of female deputies in unclothed searches of male inmates has been upheld by courts; however, some courts have ruled that routine involvement of female deputies in cross-gender unclothed searches would likely violate the rights of male inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate female staff member participation in unclothed and visual body-cavity searches of male inmates.

See PREA 115.15

E-313

Male participation in searches of female inmates. The jail must have policies and procedures that regulate male staff member participation in frisk, clothed or unclothed searches of female inmates. Policies—

- a. must restrict male deputies from conducting random or routine searches of female inmates.
- b. must restrict male deputies' participation in searches of female inmates to circumstances where exigent circumstances exist, or in which the female inmate refuses requests to submit to a lawful search and/or is aggressive, fighting, physically resisting the search and acting in a manner that creates reasonable cause to believe—
 - 1. the female deputy might be injured without assistance from male deputies; and/or
 - 2. the search cannot be completed without assistance from male deputies.

Rationale. The requirements of Title VII that justify cross-gender searches by female staff do not justify males searching female inmates. Male deputies are justified in participating in searches of female inmates only under very limited exigent circumstances or when a female inmate intentionally removes her own clothing or otherwise acts in a manner that amounts to a voluntary waiver of sexual privacy interests. In the event that a female

inmate is actively resisting or attempting to assault officers, the incident becomes a use of force, and male officers may assist in a use of force incident involving a female inmate without regard to whether she is clothed or unclothed. Once the inmate is controlled, male deputies should promptly leave the area or take steps to protect the inmate's sexual privacy – such as providing a blanket or smock to cover up with. In the event that a female inmate is actively resisting or attempting to assault officers, the incident becomes a use of force, and male officers may assist in a use of force incident involving a female inmate without regard to whether she is clothed or unclothed. Once the inmate is controlled, male deputies should promptly leave the area or take steps to protect the inmate's sexual privacy – such as providing a blanket or smock to cover up with. The intent of the provision is to make it clear that once an inmate resists a search or attempts to assault deputies, it ceases to be a search incident and becomes a use of force incident. For use of force incidents, the gender of deputies involved no longer matters as jail safety and security concerns require that the inmate be brought under control.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit male staff member participation in searches of female inmates, except when justified by exigent circumstances.

See PREA 115.15

E-314

Documentation of Cross-Gender Unclothed Searches. The jail must have policies and procedures that require cross-gender unclothed searches to be documented. Documentation should include, but not be limited to—

- a. the name of the inmate being searched;
- b. the names of the deputies participating in the search;
- c. the date, time, and location of the search;
- d. the justification of the search;
- e. the type of search;
- f. whether force was used;
- g. what contraband, if any, was found, and
- h. any significant factors.

Rationale. Cross-gender unclothed searches involve a substantial potential for litigation, adverse publicity, and, if improperly handled, personnel actions. Deputies should protect themselves and their agency by carefully documenting any cross-gender unclothed searches.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require documentation of cross-gender unclothed searches.

See PREA 115.15

E-315

Inmate-Accessible Areas. The jail should have policies and procedures that require frequent routine and random documented searches of—

- a. inmates' cells, dayrooms, and other living areas; and
- b. other areas of the facility to which inmates have even occasional access.

Rationale. Inmates who possess or traffic in contraband may infrequently keep the contraband on their persons. The length of time an inmate personally holds contraband on his or her person increases the risk of being caught. Thus, inmates often hide contraband

in their cells and other living areas. An aggressive system of cell searches is necessary to control contraband.

The Supreme Court has recognized that it would be contrary to the purpose of incarceration to provide inmates Fourth Amendment rights in their cells. "A person confined in a detention facility has no expectation of privacy with respect to his room or cell and [the Fourth Amendment] . . . therefore provides no protection for such a person." "The recognition of privacy rights for inmates in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions."

No level of suspicion is required, and cells can be searched for any reason or no reason at all.

Work areas, program areas, storage areas, recreation areas, and other locations to which inmates have even limited access may be exploited for contraband drops or hiding places. No area of the jail to which inmates have access should be considered an inmate-accessible target for searches.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide staff direction to determine when to conduct searches of cells, and living area areas, and other inmate-accessible areas.

E-316

Transportation Vehicles. The jail must have policies and procedures requiring the searching of vehicles used for transporting inmates. Vehicles must be searched prior to and after each transportation run. When a jail purchases or otherwise obtains a new transport vehicle after December 31, 2019, the vehicle must be equipped with seatbelts for all passengers – including inmates—and seatbelts must be in use when the vehicle is in motion.

Rationale. Inmate transportation vehicles must be searched prior to each transport of inmates to ensure that no weapons or escape devices have inadvertently or intentionally been left in the vehicle for inmate use. In case contraband is found in a vehicle following an inmate transport run, it is important that a prior search was made to counter inmate claims that someone else left the contraband item in the vehicle. The prior search will make it easier to use the evidence found in a criminal trial or disciplinary hearing.

Failing to provide seatbelts in transport vehicles can result in inmate injuries due to the inmates not being properly restrained while wearing restraints.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide staff direction regarding searches of transportation vehicles, requiring that a new transport vehicle obtained after December 31, 2019 be equipped with seatbelts, and requiring the use of seatbelts in any transport vehicle that is equipped with seatbelts.

E-317

Deliveries. The jail should have policies and procedures for searching all deliveries and other items entering the jail.

Rationale. Deliveries and other items brought to the jail provide a means of introducing contraband to the jail. Some contraband items may enter inadvertently; however, family members or associates of inmates or other persons may find ways to include contraband in such deliveries.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide staff direction regarding searches of materials, food, supplies, donated books, and other deliveries to the jail.

E-318

Visitor Searches. The jail should have policies and procedures that address visitor searches. All visitors should be subject to search or security screening as a precondition for visiting. Important elements of policies and procedures should include—

- a. doing searches and screening in a manner that will detect contraband;
- b. criteria to decide how extensive a search to conduct that considers the type of visit and visitor, such as a contact social visit, contact attorney visit, barrier social visit, supervised member of the public on a tour, or an unsupervised maintenance worker;
- c. requiring reasonable suspicion to exist before asking for consent for a search;
- d. not forcibly searching a visitor who refuses to be searched, unless probable cause exists that a crime has occurred or is about to be attempted;
- e. denying a visitor a visit that day if the visitor refuses a search and barring future visits if a jail official has some suspicion the visitor is a security risk or has attempted to introduce contraband, assist an inmate to escape, or threaten security;
- f. not asking a visitor to submit to an unclothed search as a precondition to a visit, unless a jail official has individualized reasonable suspicion the visitor is concealing contraband or otherwise engaged in or attempting to violate jail rules or presents a safety and security risk;
- g. identifying the authority to authorize an unclothed search of a visitor before or after a visit; and
- h. requiring searches or requests for searches of visitors to be fully documented, including the justification for a search and any actions taken.

Rationale. It is not uncommon for visitors to attempt to introduce contraband into corrections facilities during visits; particularly contact visits. Courts have ruled, however, that a visitor cannot be required to submit to an unclothed search or visual body-cavity searches as a precondition to being granted a visit without individualized reasonable suspicion that the visitor is concealing contraband or is otherwise engaged in or attempting to violate safety or security regulations.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing searches of visitors.

E-319

Professional Visitors. The jail must have a policy requiring that the professional visiting log be kept confidential and not shared with law enforcement, prosecutors or the public absent a court order. The jail must have a policy addressing how professional visitors will be screened, normally by use of a metal detector, prior to a contact visit.

Rationale. Courts have recognized that sharing the contact information of professional visitors with law enforcement or prosecuting attorneys can provide the prosecutor with an unfair advantage in that they can learn which expert witnesses the defense is likely to use.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring that professional visit logs be maintained as confidential, and addressing how professional visitors will be screened prior to contact visits.

E-320

Body Scanner Searches. Jails that use body scanners must have policies that address

the maximum number of scans an inmate may be given per year, procedures for inmates who are or who claim to be pregnant, procedures for disabled inmates, procedures for how staff will address the removal of contraband when it is discovered, and requiring that all scans be performed by an operator of the same gender as the inmate being scanned, except in exigent circumstances, and restrict viewing of body scans to legitimate correctional reasons.

Rationale. Many jails are obtaining body scanners, and it is necessary to put in place policies to provide guidance to staff on predictable issues. Body scans provide a clear outline of body parts, and same sex operators are needed to address the inmate's privacy rights.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures addressing the elements of this standard, and requiring same-sex operators for body scanners except in exigent circumstances.

400 CRIMINAL ACTS

E-401 Jurisdiction. Policies and procedures must identify which jurisdiction should be assigned to handle or take the lead in investigating and prosecuting the case when a criminal act occurs at the jail.

Rationale. When a criminal act occurs, staff should be able to respond to the matter in a timely manner. If the agency responsible for jail investigations is determined by policy, the response to a criminal incident can be initiated without delay or confusion. If the appropriate jurisdiction for investigating criminal acts in the jail will vary according to the circumstances, criteria should be established to guide staff when such questions arise.

Most sheriffs or facility administrators may prefer to have their own deputy sheriffs' handle the investigation and the district attorney prosecute. They may also request other jurisdictions to investigate or assist with the investigation—

- a. when there is suspected staff involvement;
- b. to utilize the resources of other agencies; or
- c. when the criminal acts appear to—
 - 1. involve inmates incarcerated in other jails or prisons; or
 - 2. be tied to other ongoing investigations by other agencies; or
- d. for other reasons unique to a specific situation.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that identify who must be called to investigate criminal conduct in the jail or provide the criteria for determining the appropriate agency.

See ILEA 115.61, 115.71

E-402 Protection of Evidence and Crime Scenes. Policies and procedures should provide direction to jail staff regarding the protection of crime scenes and the preservation of evidence. It is particularly important that jail staff preserve and collect all evidence in incidents involving –

- a. Use of force resulting in injury or death
- b. Jail suicide
- c. Injury to staff or inmate, including significant medical events

- d. PREA events
- e. Riot or hostage situation
- f. Escape or attempted escape
- g. Other events that may lead to litigation

Rationale. Failure to properly protect the crime scene or preserve evidence relating to a criminal act in a jail may result in the case being compromised to the point that the case cannot be prosecuted or, if prosecuted, a conviction is less likely. Depending on the event, evidence may include witness statements, video or other electronic records, photos, reports, logs, inmate rosters, physical evidence, recorded phone calls, etc. Consideration should be given to capturing a video record of significant events or crime scenes as early as possible. Failure to collect evidence related to a serious incident that results in litigation may result in a finding that the evidence would have been adverse to the county.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures concerning evidence preservation and crime scene protection and evidence handling.

See PREA 115.64, 115.65 and 115.71

500 **USE OF FORCE AND RESTRAINTS**

E-501 Use of Force. There must be policies and procedures that govern the use of force.

- a. **The policies and procedures relating to use of force should include, but not be limited to—**
 - 1. justification for use of force;
 - 2. determining the appropriate level of force to be used in a given situation;
 - 3. prohibition against using force as a punishment;
 - 4. use of restraints and other control devices;
 - 5. after-action requirements;
 - 6. notification for use of force; and
 - 7. documentation.
- b. **Policies and procedures should limit the use of force to the following:**
 - 1. self-defense;
 - 2. protection of others;
 - 3. preventing escapes;
 - 4. restoring and maintaining order and discipline; and
 - 5. protection of property.
- c. **Policies and procedures must prohibit the use of canines in the jail except for contraband detection, in the event of a life-threatening emergency, or therapy animals. A canine will not be prohibited from physical contact with an inmate for purposes of drug detection.**

Rationale. Policies and procedures are necessary to ensure that staff members understand the criteria for, and limits of, the use of force. Situations often occur in jails that require the use or threatened use of force to protect persons and property and to respond to disturbances, escape attempts, and physical resistance to the lawful orders of jail staff.

Situations requiring the use of force may not always provide staff with adequate time to fully consider the benefits and drawbacks of all possible options. Comprehensive policies and training will help to ensure better preparation of staff to make rational judgments under circumstances that may require the use of force.

Policies and procedures should assist jail officials to identify circumstances that may require the use of force and formulate strategies and options in advance of the crisis.

Corrections deputies are justified in using force against another person when and to the extent that the deputy reasonably believes that such force is necessary to—

- a. defend himself or herself against the use of unlawful force;
- b. defend a third person against the use of unlawful force;
- c. restore or maintain order and discipline;
- d. prevent the commission of a forcible felony;
- e. defend property; or
- f. prevent escape.

"Corrections deputies must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates." Use of force may not be malicious, wanton, purposeless, or unnecessary. "In determining whether the use of force was wanton and unnecessary, it may also be proper to evaluate the need for application of force, the relationship between that need and the amount of force used, the threat 'reasonably perceived by the responsible officials,' and 'any efforts to temper the severity of a forceful response.'

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide direction to staff concerning the lawful use of force, and prohibiting the use of canines in jails except as allowed by this standard.

E-502

Use of Deadly Force. Policies and procedures must limit the use of deadly force to—

- a. self-defense or defense of a third party when the corrections deputy reasonably believes that deadly force is necessary to prevent death or serious bodily injury; or
- b. preventing an escape from custody, where the corrections deputy reasonably believes that deadly force is necessary to prevent escape, and the deputy has probable cause to believe that the inmate poses a threat of death or serious bodily injury, or that the inmate has committed a felony involving the use or threatened imminent use of force against a third person.

Rationale. Deadly force is such an extreme action that the justification for its use is narrowly limited to situations in which the deputy reasonably believes that it is necessary for self-protection or protection of another person from felonious use of force. In corrections settings, the Supreme Court has recognized that the safety of deputies and others is seriously threatened by hostage situations and disturbances by inmates—particularly armed inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures strictly limiting the circumstances under which deadly force may be employed to those described in this standard.

E-503 Prohibited Use of Force and Physical Punishment. Policies and procedures must prohibit deputies from using force in a malicious or sadistic manner for the purpose of causing harm and prohibit the use of physical punishment in any circumstances.

Rationale. Use of force in violation of this standard may violate the constitutional rights of the inmate against whom the force is used.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit use of force in a manner prohibited by this standard.

ORS 169.076(4)

E-504 Use of Restraints. Jails must have policies and procedures that should address—

- a. when restraint devices should be used to secure inmates, such as during—
 - 1. transport to and from the jail;
 - 2. who are in custody outside the confines of the jail facility;
 - 3. during the pre-admission phase of the booking process;
 - 4. during confinement after admission to jail, or any other time in custody, when necessary to—
 - (a) protect an inmate from self-inflicted injury; or
 - (b) prevent a violent inmate from harming others or destroying property.
- b. criteria and authority for approving use of restraints to control violent inmates; and
- c. training of staff on the use, application, and removal of restraint devices the supervision of restrained inmates, and documentation and other follow-up needs.

Rationale. The use of restraints to control inmates during transport, while in custody outside the facility, and during the pre-admission process is necessary to ensure the safety of the arresting officers, booking staff, and inmates and to provide sufficient security and control to prevent inmates from escaping.

In addition to the routine uses as set forth above, restraints may also be used to secure inmates who are violent and require greater control than could be provided without the use of restraints. Restraints provide a practical and humane option for handling violent inmates with a reduced risk of physical or psychological trauma. Restraints involve a much lower level of force than using punches, kicks, batons, stun guns, or chemical agents.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures on the use of restraints and providing documentation on restraint training.

E-505 Restraint Devices. Restraint devices include any device used to secure or control the hands, arms, feet, legs, head, or torso of an inmate. Policies and procedures must—

- a. list the available types of restraints and the circumstances for which they may be appropriate;
- b. provide for the use of soft restraints to restrain violent inmates whenever possible and soft restraints are available and appropriate.

Rationale. When restraints are used to protect violent inmates from self-inflicted injury, the use of soft restraints is preferable to hard restraints because the inmate is less likely to injure him or herself fighting or straining against soft restraints. Even if some injury does occur from the use of soft restraints, the degree of the injury will generally be considerably less. It must be recognized, however, that soft restraints may not be available or appropriate for all situations.

There are many types of restraints. Hard restraints include, but are not limited to handcuffs, leg irons and chains, and belly chains. Soft restraints include, but are not limited to—

- a. restraint chairs;
- b. helmets (such as football helmets) or spit shields;
- c. straight jackets;
- d. padded or leather belts and cuffs;
- e. restraint boards;
- f. thumb less, padded gloves that are secured by a strap or wrap around the wrist; and
- g. restraining sheets consisting of a wide piece of strong fabric secured over the arms, legs, and torso of the inmate.

Staff members who are likely to use restraints should be trained in their use. The procedure, safety precautions, and other information necessary to use available restraint devices should be provided in policies and procedures.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures surrounding use of restraints.

E-506

Restraint Chairs or Restraint Wraps. The jail must have policies, procedures, and training for use of a restraint chair or restraint wrap. One is available for staff to restrain violent or out-of-control inmates. Policies and procedures must—

- a. provide criteria for determining whether the restraint is appropriate for the situation;
- b. provide for staff instruction in the proper method of securing a violent inmate in a restraint;
- c. provide crisis intervention requirements;
- d. explain requirements for observing, supervising, and managing any inmate who is secured in the restraint ; and
- e. prohibit the use of the restraint as punishment, and ensure that inmates are only kept in the restraint as long as necessary to control their behavior.
- f. require that a command officer be notified if an inmate is kept in a restraint chair over four hours, and that the notification be documented

Rationale. The restraint chair or restraint wrap provides a practical and humane option for handling violent inmates with a greatly reduced risk of physical or psychological trauma. These restraints involve a much lower level of force than using punches, kicks, batons, stun guns, or chemical agents. Facilities are encouraged to adopt procedures to have inmates in these restraints checked by medical if they remain in the device for an extended period of time, and to have procedures for allowing release of limbs periodically for stretching and range of movement opportunities. No device is absolutely foolproof; however, if properly used, these restraints are capable of controlling the violent inmate while—

- a. reasonably ensuring the inmate's safety by—
 - 1. restricting the inmate's violent movements with soft, passive restraints;
 - 2. preventing the inmate from hitting his or her head on the floor, walls, or other surfaces;
 - 3. reducing the potential for serious harm to the inmate while controlling the inmate;⁴
- b. reducing the staff intensity of the effort to control and monitor the inmate; and
- c. allowing staff to move and handle the inmate with virtually no risk of harm to the deputy, inmate, or other persons.

Compliance. Compliance with this standard can be achieved by adopting policies, procedures, and training that regulate the use of restraint chairs or wraps.

E-507

Crisis Intervention. When it is necessary to use restraint devices to control a violent inmate, crisis intervention should be initiated after the inmate has been restrained and brought under control. Policies and procedures should provide for requests to mental health providers for an assessment of inmates who are sufficiently violent or out of control that restraint devices have been required. Jail staff may request that medical or mental health staff consider whether the use of chemical restraints would be appropriate if the inmate remains out of control after being restrained.

Rationale. Inmates whose actions require the use of restraint devices may be acting out as a result of mental illness, personality disorders, or other emotional problems that require mental health intervention. When an inmate's mental condition is serious and requires treatment, the jail should refer the inmate for assessment and treatment by mental health professionals.

Not all inmates who act out in a violent and, seemingly, irrational manner are mentally ill. Some inmates may do so to manipulate their environment or corrections deputies. Others may do so as a result of low impulse control or a belief that they can act out with relatively minor consequences. Even for inmates who are not thought to be mentally ill, it is in the interest of jail officials to initiate a mental health assessment.

Medical or mental health staff may conclude that chemically restraining an inmate is a safer alternative than the use of mechanical restraints.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for crisis intervention. Because chemical restraints are not commonly available, there is no requirement that policy provide for requests for the use of chemical restraints during crisis intervention.

E-508

Supervision of Inmates in Restraints. Policies and procedures must address the supervision of inmates in restraints. While in restraint, the inmate must be observed frequently. During extended periods of restraint, the inmate should be permitted to use toilet facilities and flex and stretch muscles. If the inmate is restrained in a chair or other device for more than two hours, the inmate's legs should be freed each hour to briefly stretch and flex muscles. If an inmate is restrained in a chair or similar device for more than four hours, a supervisor should document the reasons continued restraint is necessary.

Rationale. While restraints are intended to control violent inmates, thus preventing injuries to inmates and staff, an inmate may conceivably injure himself or herself by struggling against the restraints. Frequent supervision may aid in the prevention or discovery of problems that result from the restraints (such as circulation or breathing problems). They

also may aid staff members in avoiding liability arising from claims that staff members were deliberately indifferent to the restrained inmate's needs, or that restraints were used in a malicious, unreasonable, and/or wanton manner.

Supervision should be sufficient to reasonably ensure that the inmate being restrained will not further injure himself or herself. There can be no guarantee that inmates will not suffer varying degrees of injury because of their struggles; however, policies, procedures, and training should be geared to reducing and controlling that risk.

If an inmate is allowed out of restraints to use the restroom or stretch, and does not get out, staff should carefully consider whether it is appropriate to put a cooperative inmate back into restraints.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for supervision of inmates being confined with restraint devices.

E-509

Restraint and Supervision of Pregnant Inmates Policies and procedures must address the supervision and use of restraints for inmates who are known to be pregnant. Generally, a pregnant inmate should be restrained solely with handcuffs in front unless further restraint is required to protect the inmate or other detainees. While in restraints, a deputy must directly observe a pregnant inmate at all times.

Except in extraordinary circumstances, an inmate who is known to be pregnant may not be restrained during labor, during transport to a medical center or birthing center for delivery, or during postpartum recovery. "Extraordinary circumstance" means that reasonable grounds exist to believe the inmate presents an immediate and credible: (A) serious threat of hurting self, staff or others; or (B) risk of escape that cannot be reasonably minimized through any method other than restraints.

Information packets detailing requirements required by policy shall be provided to the deputy involved in the transportation of pregnant inmates and medical providers attending to pregnant inmates and to inmates who have recently given birth.

Definitions

Labor: When physical signs indicate that contractions are progressing to closer than three minutes apart, resulting in cervical effacement and or imminent delivery.

Postpartum Recovery: Period of time within two hours post delivery or longer based on the inmate's specific medical condition as determined by the physician.

Rationale. While restraints are intended to prevent escape and control violent inmates, in preventing injuries to inmates and staff, a pregnant inmate may conceivably be injured by the use of restraints or the restraints could unduly restrict medical processes. Thorough review of circumstances particular to inmate's specific medical condition and security risks is essential. Correctional facilities shall only consider extraordinary circumstances in the use of restraints of pregnant inmates to avoid liability arising from claims that staff members were deliberately indifferent to the restrained pregnant inmate's needs or that restraints were used in a malicious, unreasonable, or wanton manner. This restriction should remain in place for a period of time as determined by the attending physician and with the approval of the jail commander or designee.

In the event the deputy determines that extraordinary circumstances exist, the deputy should be required to fully document the circumstances that led to the use of restraints, including the rationale for selecting the restraints that were applied.

When conducting a risk assessment, considerations should include:

- Criminal charge and history
- Classification level
- Disciplinary history
- Special housing needs
- Assault history
- Escape history
- Potential for external threat discovered through jail intelligence information

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for supervision and use of restraints on pregnant inmates and those in postpartum recovery.

E-510

Medical Examination and Treatment. Policies and procedures must address the requirements for a timely medical examination following a use of force incident and any needed treatment for any inmates against whom physical force was employed.

Rationale. Timely treatment of serious medical needs is constitutionally required.¹ Medical examination should be provided for involved inmates as soon as reasonably feasible following a use of force action to—

- a. identify obvious injuries requiring treatment;
- b. discover and treat undetected injuries;
- c. document the absence of injuries; and
- d. provide medical documentation to protect jail staff members from false or exaggerated claims of injury.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for providing medical examinations and, when needed, treatment of inmates against whom it was necessary to use physical force.

E-511

Documentation Requirements. Policies and procedures must address the documentation requirements for incidents involving use of physical force or restraints other than handcuffs and for capturing physical and electronic evidence related to force. Use of force reports must be completed for any use of force even other than compliant handcuffing, and must be approved by a supervisor. Use of force reports must contain:

- a. A justification for the use of force or restraints;
- b. names of involved staff and adults in custody (AIC);
- c. the events that led to the use of force;
- d. how the force and/or restraints were employed;
- e. what efforts were made to achieve compliance, maintain discipline, or assert control prior to the use of physical force or restraint devices;
- f. what alternatives, if any, were considered prior to using force,
- g. if no alternatives to using force were considered, an explanation of why not (e.g. spontaneous attack and no time for consideration)

- h. what warnings were given to the AIC prior to using force, if any, and the wording of any warnings given;
- i. if no warnings were given prior to using force, an explanation of why not
- j. any injuries resulted to involved AIC and staff and care or first aid rendered as a result;
- k. the actions of the involved AIC(s); and
- l. other information necessary for criminal complaints and prosecution, disciplinary proceedings, or defense of civil litigation.

Rationale. Events, actions, or other information that are not documented may result in greater difficulty in defending the proper use of force. Thorough use of force reports are essential to preserve for future criminal, civil, or administrative proceedings to protect the agency from liability and involved staff from potential criminal or civil liability.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for documenting incidents involving use of physical force or restraint devices and requirements for capturing physical and electronic evidence related to use of force.

E-512

Planned Use of Force Events. Policies and Procedures must provide that any planned use of force event where sufficient time exists to document the use of force must take place only after notification of a supervisor, arranging for video recording of the event, arranging for medical care after the event, consideration and documentation of alternatives to using force, providing the adult in custody with a clear warning of the consequences of failing to comply with directives, and giving the adult in custody a reasonable opportunity to comply with the warning. The person in charge of the planned use of force must provide, on camera, prior to the use of force:

- an explanation of the issues that have resulted in the planned use of force
- the threat to the safety and security of the facility that justifies the use of force,
- the steps that have been taken to de-escalate or avoid the use of force,
- a description of alternatives to using force considered,
- an explanation of why those alternatives were rejected
- a description of the personnel involved in the planned use of force event, their names, rank and role in the operation
- a description of the general plan for using force
- a description of warnings given to the adult in custody

The video recording of the planned use of force should continue until the completion of the event and any medical treatment or evaluation immediately following the event. The person in charge of the planned use of force should, prior to ending the video, note the time that the event concluded.

Rationale. Oregon law now requires that when feasible, alternatives to using force must be considered, and a warning and opportunity to comply must be given. Planned use of force events almost always provide an opportunity to consider alternatives, obtain additional resources and provide warnings to the adult in custody prior to using force. Failure to

adequately document the rationale for and the steps taken as part of a planned use of force can result in adverse consequences for involved staff and the agency.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the requirements for planned use of force incidents and requirements for capturing physical and electronic evidence related to use of force.

600 ***EMERGENCY PLANS***

E-601 **Emergency Planning.** As required by ORS 169.076(3), a facility must have written guidance in the form of policies, plans, or other directives of a strategic and tactical nature that cover the various emergency situations that staff may encounter in the operation of the jail facility. This includes but is not limited to—

- a. fires;
- b. inmate disturbances;
- c. hostage situations;
- d. escapes and escape attempts;
- e. civil disturbances and demonstrations;
- f. natural disasters, including floods, earthquakes and weather-related emergencies;
- g. hazardous material spills;
- h. disruption of utilities, computer, or communications systems;
- i. bomb threats;
- j. medical emergencies; or
- k. perimeter or security breaches related events.

Rationale. Written guidance is necessary to ensure that staff members are prepared during emergency situations. Waiting to begin the planning of a response to jail emergencies after the emergency occurs offers a significantly lower probability of an effective response. Under the best of circumstances, emergency situations tax the capability of persons to respond in a satisfactory, timely, and effective manner; however, in a jail the difficulties involved in emergency responses are exacerbated, because—

- a. the potentially dangerous nature of inmates—
 - 1. limits evacuation options;
 - 2. requires members engaged in emergency operations to interact with a high risk population under very taxing conditions; and
 - 3. increases the potential for death or serious injury of staff or inmates; and
- b. the high-security design and construction of jails—
 - 1. increases the time and effort required to execute an evacuation;
 - 2. makes the rescue of hostages is much more difficult; and
 - 3. requires special equipment, expertise, and time to breach doors, walls, and windows.

Compliance. Compliance with this standard can be achieved by adopting written guidance covering the various emergency situations that might be encountered in the operation of the jail facility.

ORS 169.076(3)

See PREA 115.81 and 115.82

E-602

Evacuation Plan. As a part of the jail's emergency response guidance, there must be a comprehensive evacuation plan and/or other evacuation directive. The evacuation plan should include but not be limited to the following:

- a. emergencies requiring evacuation of all or part of the inmate population;
- b. evacuation routes, including—
 1. posting of evacuation routes;
 2. marking/lighting of routes;
 3. keeping routes clear; and
 4. points of egress, including—
 - (a) marking/lighting exits; and
 - (b) keeping exits clear;
- c. emergency keys, including—
 1. maintaining a separate set of emergency keys containing all keys necessary to effect an emergency evacuation;
 2. the location and accessibility of these keys;
 3. release of door locks and other emergency actions occurring as required by the *Oregon Fire Code* occupancy condition code for the detention facility (for most facilities this will be within two minutes of an alarm);¹
- d. interaction with fire fighters, police, emergency rescue teams, and available tactical units;
- e. containment of evacuated inmates, including—
 1. inside containment locations;
 2. out-of-door containment locations within the security perimeter; and
 3. short- or long-term containment areas away from the facility (such as National Guard armories, tents, or facilities set up at predetermined sites); and
 4. availability and location of emergency equipment/supplies necessary to execute the evacuation and contain inmates in the short or long term.

Rationale. Most new jails are designed to defend in place by—

- a. installing ventilation systems that rapidly evacuate smoke and fumes;
- b. using dampered ventilation systems and replacing bars with glazing to prevent intra-facility migration and re-circulation of smoke and fumes;
- c. limiting fuel loads in cells and other locations in inmate living areas; and
- d. avoiding the use of combustible synthetic materials that create heavy smoke obscuration and potentially lethal fumes when burned (like polyurethane).

These precautions not only create a safer environment in the jail but also, in case of a fire, may permit officials to control the emergency without the need to evacuate. There are, however, potential emergencies that would require evacuation no matter how the jail is designed. Such emergencies may include, but are not limited to, a toxic chemical spill near

the jail, highly explosive gasoline fumes in sewers under or adjacent to the jail, or an earthquake that destroys the structural integrity of the facility.

Compliance. Compliance with this standard can be achieved by adopting an emergency evacuation plan.

E-603

Distribution of Emergency Directives. Policies and procedures must address emergency directives having controlled and restricted access to prevent them from being compromised by inmates and others.

Rationale. Effective response to emergency situations in jails is demanding at best, but may be an extremely difficult and high-risk process without prior planning. Because emergency directives will include, by necessity, information of a sensitive nature and that could seriously jeopardize security if in the hands of inmates or other unauthorized persons, such information should be restricted and not releasable to the public.

If inmates learn the details of emergency directives (such as hostile rescue, riot suppression tactics and strategies, and emergency communication plans), there is a substantial risk they will—

- a. develop strategies and tactics to counter emergency responses; and/or
- b. exploit emergency responses to escape or otherwise defeat the legitimate security and safety interests of the jail.

The need to prevent the compromise of emergency directives should not be carried to such an extreme that staff have inadequate preparation and training for emergencies.

Depending on the size, staffing, and resources of the jail, specialized response teams may be developed. Some jails in Oregon are too small for such specialization; however, outside agencies may be willing to assist in preparing joint response plans with local jails.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for the distribution of emergency directives.

E-604

Drills and Training. Staff members must be given training in emergency response requirements, including regularly scheduled drills in evacuation and other selected procedures. Staff must receive refresher fire recognition and response training every six months for their assigned duties. Staff-only fire drills must occur at least quarterly on each shift.

Rationale. Proficiency in executing emergency procedures will be greatly enhanced as a result of regularly scheduled and documented training and drills. Practicing procedures under nonemergency circumstances permits staff members to gain proficiency in emergency procedures without errors resulting in potentially fatal outcomes. Drilling allows required procedures to be committed to memory by staff and increases the potential for proper execution of required actions during an actual emergency.

Drills and other training should be provided at a level that ensures that staff can demonstrate adequate proficiency in adopting emergency procedures. Training should also, include use of force during riots, hostage situations, inmate disturbances, and other exigencies. Use of force requirements in emergency situations are different in some respects from the force that may be used in nonemergency situations.

Emergency procedures for jails under the *Oregon Fire Code* mandate the frequency of fire training and drills.

Compliance. Compliance with this standard can be achieved by adopting training for staff, including evacuation and other emergency drills.

SECTION F: INMATE SERVICES

100 LEGAL AID

F-101 **Assisting Inmates' Access to Courts.** The jail must have policies and procedures that facilitate access to courts for filing legal claims. Access may include providing for a law library orientation, legal aid, or assistance for illiterate or non-English speaking inmates. Jail officials must not obstruct access.

Rationale. Indigent inmates cannot afford to hire attorneys to represent their legal interests. To provide access to the courts, the U.S. Supreme Court has determined that the corrections officials must provide reasonable and adequate opportunity to file non-frivolous legal claims.

The Supreme Court specifically identified the types of legal actions to which inmates are entitled to assistance, including—

- a. current criminal trials or challenging criminal sentences on appeal or post-conviction relief;
- b. habeas corpus actions for release from confinement; and
- c. conditions of confinement claims or civil rights claims, such as a 42 USC 1983 suit against the County.

Inmates in jails are generally represented in defending their criminal charges by private counsel or public defenders, and the jail is not obligated to provide them with additional legal assistance such as access to a law library for these claims. If the inmate is not represented on other claims, such as habeas corpus, the jail will be obligated to provide access to the law library for these claims— even if the inmate has an attorney for a criminal case. There is no obligation to provide legal assistance or access to the law library to inmates for other types of claims, but the jail cannot prevent an inmate from pursuing the claims either. The U.S. Supreme Court has stated that the law:

...impair[ing] inmates the wherewithal to transform themselves into litigating machines capable of doing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration. *Lewis v. Casey*, 518 US 343 (1996).

The Supreme Court stopped short of setting specific requirements. Instead, they encouraged experimentation. The Court discussed a range of possible approaches for meeting legal assistance requirements including providing forms with which to file actions and assistance to the illiterate or non-English-speaking individuals in understanding the forms, or a law library and legal assistance.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that address a method for inmates to access courts for legal claims.

-102 **Writing Materials.** Indigent inmates must be provided, upon request, paper, and pencils to prepare legal papers for courts.

Rationale. **The U.S. Supreme Court has required that writing materials are provided for inmates, upon request, to prepare legal papers for courts and to communicate with counsel.**¹ (See standard D-105 for writing materials and postage for corresponding with court and counsel.)

The Supreme Court mentions "paper and pens"; however, the Oregon courts accept pencil-written drafts. Typewriters, personal computers, and other such equipment are not required.

Inmates are not entitled to unlimited supplies. The jail should provide sufficient quantities to meet inmate reasonable needs.

Compliance. Compliance with this standard can be achieved by ensuring that indigent inmates are provided paper and pencils to prepare legal papers.

F-103

Law Libraries. If law libraries are used as the means of providing inmate legal assistance—

- a. inmates must be provided reasonable direct access to facility library materials located in the facility, and provision should be made for facilitating access to a supplemental wider range of research resources in the county law library at inmate expense (with due regard for the needs of indigent inmates);
- b. the facility library should contain a basic starter set of state and federal research materials pertaining to an appropriate selection of civil and criminal subject matter;
- c. the contents of the law library should be reviewed periodically by county counsel or law library authority to determine the adequacy and currency of the contents; and
- d. unless penological reasons exist, facility library must be accessible to all inmates, including those who are illiterate, do not speak English, are locked down, segregated, or who have a disability that precludes use of the library, and inability to use the library, alone, denies them access to the courts.

Rationale. **The current Supreme Court standard is that the jail must provide inmates reasonable facility library access to file non-frivolous legal claims challenging confinement and conditions of confinement.** It is not required that inmates be able to browse for any civil legal actions that might occur to them or become litigation machines. However, county jails that seek to discharge that constitutional duty through facility law libraries cannot achieve that goal of meeting constitutional requirements unless—

- a. inmates have reasonable direct access to the facility library, and some reasonable provision is made for facilitating access to a supplemental wider range of research resource material; and
- b. the facility library contains a constitutionally adequate inventory of basic legal research resource materials pertaining to an appropriate selection of civil and criminal subject matter.²

The following is a suggested list of hard copy books and legal research materials for a basic law library directly accessible to inmates; county jail administrators should consult with county counsel when making substitutions, and may consider the use of computer equivalents that may offer updating services on a more cost-effective basis:

- a. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2241 to 2253-Habeas Corpus;

- b. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2255 to 2280 - Habeas Corpus;
- c. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2254 - Habeas Corpus;
- d. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2241 to 2253 - Cumulative Annual Pocket Part;
- e. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2254 - Cumulative Pocket Part;
- f. United States Code Annotated - Title 28 - Judiciary and Judicial Procedure 2255 to 2280 - 1988 Cumulative Annual Pocket Part;
- g. *Black's Law Dictionary*;
- h. *Appeal and Review* (Oregon CLE [Continuing Legal Education]) (Two volumes);
- i. *Legal Research in a Nutshell* (Cohen and Olson);
- j. *Criminal Law* (Oregon CLE), Two volumes with supplement;
- k. Oregon State Bar Membership Directory;
- l. *Oregon Cases*, paperback advance sheets, for Oregon Supreme Court and Oregon Court of Appeals, back seven years;
- m. *Oregon Revised Statutes*, (all volumes including annotations, index, and tables.) Replace each biennial legislative session and update with yearly Annotations update volumes between sessions;
- n. *Oregon Rules of Court: State* (West Group); and
- o. *Oregon Rules of Court: Federal* (West Group).

The failure to provide inmates with adequate legal research time can defeat the purpose and expense of maintaining a facility law library. One approach is to allow inmates unlimited access to the facility law library during specified hours, limited by the access interests of fellow inmates.

Many county jails avoid the expense of an expanded facility library by maintaining the above list of starter volumes, and by using a "paging system" to provide supplemental access to a wider range of legal research materials (located in the county law library, on CD-ROM, or accessible via a computerized legal research service like West Law or Lexis) that may be relevant to inmates on a less frequent basis.

Paging is a system that requires inmates to request copies of statutes, reported judicial opinions, special court rules, etc. Jail officials should then provide the requested copies on a timely basis specified in facility policies and procedures. Inmates may be charged for these copies, provided that indigent inmates are allowed a certain amount of free copies, such as \$10 per incarceration. It should be noted that not all courts are enthusiastic and give deference to paging systems, particularly for convicted inmates; therefore, jail administrators might find it prudent to err on the side of according greater access to the county law library or paging system in the case of indigents, where the inmates are convicted.

Compliance. The jail must provide a system for inmates to access legal information in law libraries or other sources. Options can include the appointment of an attorney, the provision of persons trained in the law to provide assistance, such as law students, or the provision of a law library. There is no obligation to provide more than one of these options.

200 FOOD SERVICES

F-201 Providing Food Services for Inmates. The jail must have policies and procedures that provide food services for inmates by—

- a. preparing and serving meals in a suitable jail food services area;
- b. contracting with a private institutional food services provider; or
- c. purchasing meals from a local restaurant, hospital, or other food service provider.¹

Rationale. Inmates are dependent on jail officials to ensure that their nutritional needs are met. The Eighth Amendment prohibits jail officials from denying inmates food or serving a nutritionally inadequate diet.

Compliance. Compliance with this standard can be achieved by setting forth the basic operational function and requirements of the food service operation. Jail policies and procedures should reasonably ensure that inmates receive nutritionally adequate and sanitary meals.

ORS 169.076(7)(a-d)

F-202 Supervision of Food Service. Jail officials should assure that the facility's food service operation is supervised adequately.

- a. If meals are planned, prepared, and served by the jail, the designated staff member should be qualified by education, training, and/or experience to handle the management of the food service operation.
- b. If a private institutional food services contractor provides meals, the management of the food service operation will be provided as a part of the contract. Jail officials should assign a staff member as liaison to monitor the contractor's performance.
- c. If meals are purchased from a restaurant, hospital, or other local provider, a staff member should be designated to monitor menus and the quality of the meals served.

Rationale. Food services are an essential necessity of life. Courts look at food service as one of the primary indicators of whether jail conditions meet the requirements of the Eighth Amendment. To ensure that food service meets operational and constitutional requirements, a staff member must be designated to manage food service.

Compliance. Compliance with this standard can be achieved by setting forth the supervisory responsibility for the food service operation.

F-203 Inmate Meals. Jail menus for inmate meal service must be evaluated by a certified dietitian. Jail policies and procedures should require that—

- a. at least one hot meal be on each day's menu;
- b. a certified dietitian plan or review and approve menus for the facility;
- c. menus to be based on the Recommended Dietary Allowances of the National Academy of Sciences or equivalent authority;
- d. menus be reviewed and updated on at least on an annual basis; and

- e. **there should be minimal deviation from serving the planned menu for a meal without justification.**

Rationale. Inmates are entitled to meals that meet minimum nutritional requirements to sustain their health while incarcerated. Meals that do not include adequate nutritional value may, over a sustained period of time, adversely affect inmates' health.

Correction deputies are not ordinarily trained to know the minimum nutritional requirements that should be provided to inmates. While there is no clearly established constitutional requirement defining who must prepare menus, and common sense could result in generally adequate menu development, by using a nutritionist or dietitian to plan menus:

- a. there is a greater likelihood that the menus will be adequate; and
- b. menus will be more defensible in court.

While the courts as a rule have not mandated minimum education and training levels for persons who approve jail menus, relying on certified dietitians to assist with menu development is an added margin of safety.

Food service is one of the aspects of jail life that significantly influences inmate attitudes and defines quality of life. Good food tends to create positive inmate attitudes. Poor food can result in discontent, frustration, and anger. Serving one nutritious, well-prepared hot meal each day can help create a positive jail environment.

It is not a violation of these standards if the jail occasionally serves more than one meal per day cold (such as sandwiches, salads, and gelatin desserts). There is no clearly established right to receive hot meals.² What is important is ensuring that inmates' health does not suffer because of inadequate food service.³

Compliance. Compliance with this standard can be achieved by ensuring that a certified dietician evaluates all menus used for inmate meals and having policies and procedures that should address requirements of this standard. Occasional cold meals for all meals in a day are acceptable. If nutritional deficiencies are noted in the menu evaluations, the agency must take steps to resolve them.

ORS 169.076(7)

F-204

Special Diets. The jail must have policies and procedures for providing special diets for inmates. The policies should include requirements for the following:

- a. **Special Diets.**
 - 1. A process should be established for the physician or other medically qualified person to direct jail officials concerning the diet requirements.
 - 2. Inmates claiming a requirement for a religious diet must have a means of requesting the exception to ordinary food service.
- b. **Disciplinary Diets.** If the jail chooses to use special disciplinary or control diets (such as nutraloaf, finger food, or sacked meals) the alternative food selection must be—
 - 1. evaluated by a nutritionist or dietician to ensure that it is nutritionally adequate; and
 - 2. used pursuant to carefully controlled procedures.
- c. **One-Week Menus.** Food service staff should have on file one-week menus for inmates who—
 - 1. for religious reasons, are not permitted to consume pork, meat, coffee, and/or certain other food items;

- 2. **require diets low in salt, fat or sugar; or**
- 3. **have other medically prescribed dietary requirements.**

Rationale. The jail must have policies and procedures in place in advance of medical staff orders or inmates' requests to ensure that requests can be accommodated in the manner required and with a minimum of effort.

Obliging special diet requests is constitutionally required when such diets are necessary

- a. to implement the medical instructions of appropriate medical authority' or
- b. to accommodate inmates' religious needs.

Special disciplinary diets such as nutraloaf have generally been upheld by courts as a valid disciplinary sanction, especially for throwing food or other disciplinary infractions involving food services.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures authorizing and governing special diets.

ORS 169.076(7)(c)

F-205

Serving Meals. The jail must have policies and procedures for regulating inmate meal service.

- a. **Meals must be provided three times per day with no more than 14 hours between each meal.**
- b. **Inmates must be allowed at least 15 minutes of eating time per meal.**
- c. **Meals should be served in a canteen or other dining area located away from the immediate proximity of inmate toilets.**

Rationale. While inmates arguably can be provided a nutritionally adequate diet with fewer than three meals per day, inmates must be provided three meals per day, because—

- a. some courts have required three meals per day; and
- b. reducing meals to two or fewer meals per day would likely result in a negative impact on inmate attitudes.

Inmates should not be rushed during meals that they cannot finish eating. Neither should inmates be forced to eat so quickly that they suffer serious harm. Inmates can quite easily consume a meal in fifteen minutes. Many corrections facilities that have common dining areas find that if meal periods are limited to obtaining and eating food that inmates easily finish their meals within 15 minutes. At least one court has required a minimum of 15 minutes per meal.

Compliance. Compliance with this standard can be achieved by adopting food service policies and procedures that regulate meal service.

ORS 169.076(7)(a-d)

F-206

Outside Food Service Providers. Jails that do not have kitchen facilities must—

- a. **contract with an institutional food service provider and adopt service requirements that the private provider must meet; or**
- b. **purchase meals from any private provider that meets county sanitation and health codes.**

Rationale. Small jails may find that it is not cost-effective to operate a full-service kitchen and would benefit from contracting with a local restaurant, hospital, or other provider for

meals. Even large jails may elect to contract for food services from one of the institutional food service providers. There are several national corporations that specialize in providing nutritionally adequate meals at very competitive costs to corrections facilities.

Compliance. To comply with this standard, jail officials who chose to contract for meals must adopt food service requirements that the private provider must meet.

F-207 **Staff Supervision. Meals prepared inside the jail should be prepared and served under the supervision of staff. Jails should require the supervision include**

- a. the preparation and serving of meals; and
- b. clean up and sanitation of the kitchen area.

Rationale. Inmates acting as kitchen inmate workers may assist with the preparation of food; however, to ensure proper quality, quantity, and sanitation control, the process should be closely monitored and supervised by staff.

Compliance. To comply with this standard, jail officials should require staff to supervise meal preparation and cleanup.

F-208 **Accounting for Supplies and Utensils. There must be policies and procedures for accounting for food supplies and utensils.**

Rationale. Strict accounting and control of food supplies and kitchen tools is necessary to prevent inmates from putting them to improper use. Utensils (such as, knives, ladles, spoons, and forks) can be used, or modified, as weapons. Extra food may be sold by kitchen inmate workers to other inmates. Certain food supplies may be used to make illegal alcoholic beverages (such as yeast, sugar, bread, and fruit), and other ingredients such as vanilla and nutmeg may be converted for use as contraband.

Compliance. To comply with this standard, jail officials must provide accounting and control policies and procedures for kitchen tools, utensils, food supplies and cooking ingredients.

F-209 **Sanitary Food Health Code. Jails must—**

- a. ensure proper sanitation in the jail kitchen per ORS 624.041;
- b. ensure food is stored, thawed, prepared, and served in ways that prevent food contamination and that meet health code requirements; and
- c. provide evidence of having passed health inspections.

Rationale. Inmates are entitled to meals that are prepared in a sanitary manner to sustain their health while incarcerated. Food that is not properly stored, thawed, prepared, and served may become contaminated with bacteria, some of which can result in illness—even serious illness. While not every instance of sanitation problems in food preparation will rise to the level of a constitutional violation, systematic or frequent sanitation problems may be found to violate the rights of inmates. Jails must provide inmates with a healthy environment, including providing nutritionally adequate food that is prepared and served under conditions that do not present an immediate threat to the health and well-being of inmates. What is important is ensuring that inmates' health does not suffer because of unsanitary food service.

Compliance. To comply with this standard, jail officials must ensure that food supplies are stored, thawed, prepared, and served in a sanitary manner and according to health code.

ORS 169.076(7)(d)

ORS 624.041 – compliance required by DOC inspection

300 COMMISSARY (OPTIONAL)

F-301 General Requirements. There should be policies and procedures for providing commissary for inmates, including indigent inmates. The commissary—

- a. **must stock basic hygiene items, writing paper, envelopes, pencils, and postage; and**
- b. **may stock other toiletries, snack items (such as candy and potato chips), drink mixes, and related items.**

Rationale. Inmates cannot go to a grocery or convenience store to buy needed items. The jail leaves the role of providing an inmate "store" to the jail. Some items are legal requirements for inmates to access courts and counsel.

Items that inmates may want to purchase will fall into three categories: things they are entitled to have; things that are traditionally made available to inmates; and things that are entirely discretionary, and may, in fact, be ill-advised depending on the circumstances.

Writing paper, envelopes, pencils, and postage are required items to ensure that inmates have access to courts and counsel, and to permit inmates to access the mail system. The jail may limit the kinds of materials it sells (or allows inmates, even if used for preparing legal papers. Inmates' envelopes may be stamped at a station from a jail.

Snack items have been traditionally stocked in commissaries for inmates and are helpful in influencing inmates' compliance with regulations, and in maintaining inmate morale. Caution should be used in selecting the items to be offered in the commissary. Flammable aerosol sprays, metal containers, gum (which may be used to disable locks), cutting tools, and other items may have a negative effect on security and/or safety.

Selling tobacco products is prohibited because Oregon jails are smoke-free. Jail officials may require that magazines be purchased only through the commissary as a means of enforcing the public use-only rule. If electrical entertainment equipment (such as TVs and DVD players) are allowed, the jail should require such equipment to be leased from the commissary rather than letting inmates use their own equipment.

Compliance. To comply with this standard, the jail should adopt policies and procedures setting forth the basic operational function and requirements of the commissary operation.

F-302 Commissary Schedule. Commissary should be offered to inmates at least once weekly.

Rationale. Offering commissary to inmates less than once each week—

- a. **results in newly arriving inmates and inmates who have only recently received money in their account to have to wait for several days before they can obtain commissary supplies, including necessary writing supplies;**
- b. **may encourage inmates with caches of supplies to sell commissary items (often at inflated prices) in violation of jail rules to inmates awaiting an opportunity to make legitimate purchases; and**
- c. **may lead to inmates storing large amounts of supplies, which may lead to such things as health problems, theft, or gambling.**

Compliance. To comply with this standard, the jail should provide commissary at least once per week.

F-303 **Product List.** Inmates should be provided a product list from which to order items from the commissary. Products available can be identified by—

- a. listing in the inmate rules;
- b. posting in individual cell blocks;
- c. issuing in the form of commissary order forms; or
- d. other means approved by jail officials.

Rationale. Providing inmates with a list of available products permits the commissary process to be handled remotely, rather than moving inmates to the commissary to make purchases. Even if inmates are escorted to the commissary for purchases, product lists provide inmates knowledge of which items may be purchased before actually arriving at the commissary, thus saving time required for the transactions.

Compliance. To comply with this standard, the jail should provide inmates a listing of the products available from the commissary.

F-304 **Purchase Record Keeping.** The jail should have policies and procedures for documenting the inmate purchase of commissary items and related transactions in the inmate account. Purchase records should include the following:

- a. order forms or receipts for commissary items received;
- b. the amount of the purchase (to be subtracted from the inmate account);
- c. the inmate's signature, if policy requires; and
- d. alternative arrangements for delivery or credit if the inmate is no longer in custody.

Rationale. All purchases should be carefully documented, including the inmate's signature to ensure that—

- a. inmate funds are properly handled; and
- b. inmates cannot make fraudulent or other mistaken allegations of misappropriation or mishandling of funds or purchased items.

Compliance. To comply with this standard, the jail should—

- a. adopt policies and procedures for documenting commissary purchases and the handling of the charges, deposits and credits to the inmate accounts; and
- b. have procedures for later delivery, temporary storage, or credit if the inmate has been released or is otherwise unable to take possession of a commissary purchase.

F-305 **Store Inventory Management.** Commissary store record keeping and inventory procedures should follow sound accounting procedures for ordering and storing of commissary stock. The jail should have policies and procedures that address the following:

- a. sound inventory and accounting procedures for commissary store operations;
- b. controlling access to the commissary stock; and
- c. doing periodic inventories to reconcile stock purchases, sales, and on-hand balances.

Rationale. Jail officials should take reasonable precautions against the possibility of embezzlement, theft, mishandling, and poor accounting procedures, and to be able to respond to false claims against the jail. Few corrections deputies have training or experience in operating a retail business, bookkeeping, or inventory procedures; yet, unless the commissary is operated according to sound business and accounting procedures, jail officials may be at risk to allegations of misconduct, theft, or incompetence.

To ensure that proper procedures are in place, jail officials may request the county auditor to review procedures or assist in modifying procedures.

Compliance. To comply with this standard, the jail should adopt policies and procedures that include the elements of this standard for inventory management.

F-306

Commissary Profits. Commissary profits must be used for a variety of programs, services, and activities that benefit the general inmate population. There should be a written directive on—

- a. Prohibiting the transfer of commissary profits to funds that do not directly benefit inmates
- b. Allowing commissary profits to be used for any of the following:
 1. Education programs;
 2. Alcohol and drug treatment and education programs;
 3. Costs associated with purchase of an inmate trust accounting system;
 4. Provision of postage and envelopes or writing supplies for indigent inmates;
 5. Provision of nonprescription over-the-counter health aids made available for inmate use;
 6. Libraries and book purchases designated for inmate use;
 7. Visitation room equipment, supplies and services;
 8. Equipment for television viewing or paying for access to cable or other television programming;
 9. Non-cash equipment, supplies and services provided for inmate use, such as microwave ovens, exercise equipment or playing cards;
 10. Repair of equipment purchased with commissary funds;
 11. Inmate rehabilitation or re-entry program costs;
- c. Indicating who is authorized to approve commissary profit expenditures; and
- d. Accounting for all commissary profit revenue and expenditures.

Rationale. Commissary funds must be applied to items, programs or services that benefit the general inmate welfare. Common applications include leisure or exercise equipment, religious programs and activities, televisions, and rehabilitative programs and services.

Compliance. To comply with this standard, there should be a written directive on what constitutes authorized purchases using commissary profits and proof of revenue collection and expenditure oversight, and prohibiting the use of commissary profits to provide any required items such as inmate clothing, food or medical care. Compliance may be demonstrated through approved budget documents or reports.

F-307

Debit Cards. If a jail uses debit cards to return money to inmates upon their release from jail, there must be at least one readily-available method for the inmate to obtain their money from the card without any fees or charges. Inmates must be provided with simple instructions at the time of release about how to access their money without incurring a charge or fee, and at least two locations where they can obtain their money without incurring a fee. Instructions must be available in both English and Spanish versions. Debit cards may not be used when an inmate is transferred to another correctional or detention facility, and the inmate must be given a check in that circumstance. The jail must annually request a list of all fees that are being charged for debit cards to ensure that inmates are not being taken advantage of.

Rationale. Inmates often have limited funds, and some inmates, particularly those who do not speak English as a primary language, have had difficulty getting their money from debit cards. Inmates who are being transferred to another correctional or detention facility will not have the opportunity to use their debit card, as it will be placed in their property; they will be subjected to maintenance fees during the time they are incarcerated.

Compliance. A jail may comply with this standard by having documentation showing that inmates have at least one method available to them to access the funds on issued debit cards without incurring any charges or fees, and having documentation showing inmates are provided with simple, understandable instructions in English or Spanish about how to access their money without a fee that includes at least two locations where they can do so. The jail must also have documentation that prohibits the use of debit cards for inmates who are sent to another correctional or detention facility. In the event that a jail discovers that the fees being charged to inmates for the use of debit cards are abusive or excessive, they must offer inmates a choice of the debit card or a check, and such time as another debit card vendor can be selected or the problem is addressed.

400

LAUNDRY SERVICES

F-401

General Requirements. The jail must provide laundry service. Laundry services may be provided as a function of the jail operation, or may be provided by a private vendor under contract.

Rationale. Inmates are entitled to the necessities of life.¹ Clothing and bedding are considered necessities. Failure to provide adequate clothing has been found to be a cause of infection. Clothing should not only be provided, but it should be laundered to protect inmates and the jail environment from vermin, odors, and other indications of inadequate hygiene.

While most jails elect to do their laundry in-house, some may find it to be more cost effective to contract for laundry services. One benefit of doing laundry in the jail is the creation of jobs for inmates.

Whether it is provided as an in-jail function, or is provided by private contractors, makes no difference. All that is required is that the services are adequate.

Compliance. To comply with this standard, the jail should set forth the basic operational function and requirements of the laundry services for the jail.

F-402

Laundering Personal Clothing of Newly Admitted Inmates. The jail should have policies and procedures outlining when personal clothing will be laundered prior to storage for newly admitted inmates, however, the clothing—

- a. must be either laundered or destroyed if it is vermin infested, foul smelling, or heavily soiled;

- b. must be properly disposed of if contaminated with hazardous materials.

Rationale. Laundering of clothing helps the jail maintain a sanitary environment, reduces the likelihood of vermin infestation, and controls odors in the clothing storage area. Destroying clothing is necessary if the clothing is significantly vermin-infested or contaminated with toxic materials, and therefore storage poses too great a risk to staff and inmates.

Compliance. To comply with this standard, the jail should have policies and procedures for the laundering of an inmate's personal clothing.

F-403

Laundering Jail-Issued Items. Jail policies and procedures must require that jail-issued inmate clothing, towels, and bedding be laundered on a regular basis. A laundry schedule must provide that—

- a. clothing be exchanged and laundered twice per week;
- b. towels be exchanged and laundered twice per week;
- c. sheets be exchanged and laundered once each week;
- d. soiled blankets should be laundered as needed; and
- e. mattresses and blankets must be cleaned before re-issue.

Rationale. The laundering schedule should be determined based on what it takes to maintain inmate and facility cleanliness and hygiene. The schedule is less important to the courts than the result. If the jail laundry procedures produce an environment that is unhealthy and results in sanitation problems or has a direct detrimental impact on the health and well being of the inmates, the jail will be more vulnerable to litigation. Courts have upheld laundering

- a. sheets once per week;
- b. soiled blankets as needed; and
- c. mattresses and blankets before re-issue.

Compliance. The jail must adopt laundry policies and procedures consistent with the requirements of this standard and ORS 169.076.

ORS 169.076(8)(b)

SECTION G: INMATE HEALTH CARE

100 *ADMINISTRATION OF HEALTH CARE*

G-101 **Providing Adequate Health Care.** Jails are required by the Constitution and Oregon law to provide emergency medical and dental health care. Adequate health care screening, examination, diagnosis, and treatment must be provided to inmates. Health care includes medical, dental, and mental health care. The local medical director must determine what adequate health care is.

Rationale. Adequate health care for inmates is required by the U.S. Constitution. The requirement to provide access to health care does not mean that jails must provide perfect care. Jail officials have an obligation to provide reasonable and adequate care. Although the state has a duty to provide adequate medical care to its inmates, the Constitution does not require perfect treatment.

A health care system that ensures a reasonable effort to provide adequate health care and that does not demonstrate indifference to the health and safety of inmates will assist the county in withstanding claims of constitutional violations.

- a. To establish an Eighth Amendment health care claim of deliberate indifference, the inmate must prove by a preponderance of the evidence that—
 1. the inmate's health care needs were serious, and
 2. jail officials were deliberately indifferent to the inmate's health care needs.
- b. The health care case should be considered "serious" if it is—
 1. one that has been diagnosed by a physician as mandating treatment; or
 2. so obvious that even a lay person would easily recognize the necessity for a doctor's attention.
- c. Deliberate indifference is affected by the jail official's state of mind. An inmate must establish by a preponderance of the evidence—
 1. that the official knew of the inmate's serious condition;
 2. that the official deliberately or intentionally acted or refused to act in response to that condition; and
 3. that such conduct caused the inmate harm or unnecessary pain and suffering.

Compliance. Compliance with this standard can be achieved by providing inmates adequate health care screening, examination, diagnosis, and treatment as determined by the local medical director.

169.076(5)

See OREGA 115.81, 115.82, and 115.83

G-102 **Responsibility and Authority for Health Care Delivery.** Policies and procedures must designate a qualified health care professional or health care provider with responsibility and authority to administer health care to inmates in accordance with ORS 169.076. The facility's medical and dental plans must be reviewed annually by a licensed physician or nurse practitioner.

Rationale. Designation of administrative responsibility is crucial to ensure consistent delivery of quality health care, to eliminate any question of decision-making authority in the

event of questions or conflicts related to health care decisions, and generally ensure compliance with legal and medical requirements. Currently in corrections, there are a variety of options for managing health care available, within both government and the private sector.

Jail officials may opt to provide separate entities to manage medical, dental, and mental health care. If health care responsibility and authority is assigned to more than one entity, the responsibility and authority of each and the means of resolving disputes where the functions of each entity overlap, should be clearly defined.

Compliance. Compliance with this standard can be achieved by designating, in policies and procedures, a qualified health care professional or health care provider with responsibility and authority to administer health care to inmates, and by having medical and dental plans reviewed annually by a licensed physician or nurse practitioner. The responsibility and authority to administer health care may be assigned to a non-staff physician or health care administrator, a contract physician or health care administrator, a county health care agency; or a private health care provider.

ORS 169.076(5)(a)

G-103

Cost of Health Care Services. The jail must have policies and procedures that address any inmate reimbursement for the cost of their health care services. Inmates may be held responsible for the cost of their health care, but jail officials must ensure that necessary health care is not denied based on the inability to pay. Jail officials—

- a. may seek reimbursement from an inmate's insurance carrier following the provision of any health care;
- b. may require inmates to continue to assume financial responsibility as a condition of elective procedures, and for care provided by the inmate's own health care professionals; and
- c. may charge a reasonable fee for health care services, provided that jail officials—
 1. provide equal treatment to all inmates regardless of ability to pay, and may not deny non-elective, necessary health care on the basis of an inmate's inability to pay;
 2. establish a system that notifies the inmates of the fees, deductions to accounts, and what services are provided;
 3. establish a grievance system that allows inmates to challenge the deduction of a fee from their accounts and have the deduction reviewed by the facility medical staff;
 4. not require inmates to assume the financial responsibility for intake medical screenings, except as allowed by ORS 169.150 for healthcare screenings by medical staff; and
 5. not require inmates to assume financial responsibility for periodic health assessments or medical examinations required by jail policies.

Rationale. While the county cannot deny or unreasonably delay care for inmates' serious health care needs, there is no clearly established constitutional requirement that the county must pay for the care in all cases.³

- a. The experience of facilities that charge a fee for services has shown financial benefits, including the following:
 1. limited, but significant, compensation for services provided; and

- 2. a substantial reduction in health care delivery costs due to a sizable reduction in demand for services. (Inmates, who previously abused the system, limit their requests for care to those circumstances in which it is genuinely needed when faced with paying a reasonable fee for health care.)
- b. If a county opts to charge inmates fees or costs for health care services—
 - 1. fees should be limited to inmate-initiated medical visits;
 - 2. fees should be reasonable;
 - 3. policy should require an inmate to assume financial responsibility for surgery, treatment, or other costs for health care initiated by the inmate—
 - (a) for elective surgery; or
 - (b) provided by the inmate's private physician, dentist, or other provider and
 - (c) should ensure that the system does not deny care to inmates with serious health care needs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for the reimbursement of health care costs and that ensure that no inmate is denied health care. If the inmate is charged for health care services, charges must meet the criteria set forth in this standard.

ORS 169.150(2)

G-104

Informed Consent. The jail must adopt policies and procedures that permit an inmate to consent to or refuse health care and provide for when others may give informed consent for health care on the inmate's behalf.

Rationale. Examinations, treatment, and other protocols may be provided only with the informed consent of the inmate, except in the case of emergency health care. If the inmate is not competent, because of physical or mental condition, to provide or refuse consent, another individual authorized under Oregon law to provide consent may give consent. State law accords any person 15 years old or older the right to consent to medical treatment. A minor may consent to mental health or chemical dependency diagnosis and treatment with some stipulations under ORS 109.675. Adults—defined by laws for advanced health care directives as persons 18 years of age or older, who are adjudicated an emancipated minor, or who are married—the right to refuse health care. The U.S. Constitution may also provide a limited right to refuse treatment and to be informed of treatment options.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that permit inmates to consent to or refuse health care, and for others to give informed consent on the inmate's behalf.

G-105

Emergency Notification. In case of an inmate death, jail officials or their designee must notify the next of kin and/or other person previously designated by the inmate. In the case of life-threatening injury, condition, or illness suffered by an inmate, notification should be made to persons designated by the inmate. Policies and procedures should—

- a. require booking staff to request the names, phone numbers, and addresses of persons to be notified in case an emergency;

- b. provide jail officials with direction concerning when emergency notification is required and how it will be accomplished;
- c. require notification of the next of kin or other designated person in case of the death of an inmate;
- d. require notification to collateral agencies such as the district attorney, medical examiner, federal agencies, and consulates; and
- e. require the fingerprinting of deceased inmates and the forwarding of those prints to the Oregon State Police.

Rationale. In addition to the propriety of such notification, notice may be necessary—

- a. to obtain consent for health care from persons authorized to provide consent;
- b. to make arrangements for releasing custody of the body of a deceased inmate for burial; or
- c. to make other arrangements required by the inmate's circumstances.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures requiring notification of death or life-threatening injury, condition, or illness.

G-106

Contents of Health Records. The health care provider must document the health care delivery process by creating and maintaining individual health care files on each inmate in a timely manner. Health care files should include the following:

- a. initial health screening form (completed during the admissions process);
- b. medical and mental health evaluation reports, if prepared;
- c. inmate sick call requests;
- d. a chronological health record including the following:
 - 1. all contacts with jail health care providers;
 - 2. findings, diagnoses, prescriptions, treatments, and progress reports;
 - 3. the names of health care providers responsible for each health care transaction, and
 - 4. dates, times, and other information necessary to document the actions taken;
- e. medication records, including the following:
 - 1. prescription information (frequency, dosage, etc.);
 - 2. dispensing (when and by whom);
- f. records relating to outside referrals for health care;
- g. records documenting an inmate's refusal of health care;
- h. other information related to the inmate's health and health care; and
- i. release of information and records to any third party.

Rationale. Complete and accurate health care files prepared in a timely manner are critical to documenting the health care delivery process. Such records are necessary—

- a. to ensure continuity of care;
- b. to furnish health care providers an accurate history of the inmate's health care history while in the jail;

- c. to provide health care providers sufficient information to make proper diagnoses and/or treatment orders; and
- d. to document health care transactions in the event of litigation.

Compliance. Compliance with this standard can be achieved by maintaining accurate and complete health care files on inmates.

ORS 169.076(5)(c)

See PREA 115.81

G-107

Confidentiality of Health Care Records. The jail must have policies and procedures governing requests for, access to, use, safeguarding, and disclosure of the protected health information (PHI) of inmates that are consistent with the statutes governing the confidentiality of protected health information. All officials must maintain and treat inmate health care records and PHI as confidential material. Health care records must be kept separate from other inmate records. Policies and procedures must specifically address the following:

- a. limits on access to records and PHI to the following:
 - 1. jail medical personnel
 - 2. other jail and transport personnel to the extent that the information is needed for the staff member to properly complete required duties, which includes others such as staff assigned to transport health care providers and staff assigned to classify or handle persons with a communicable disease;
 - 3. persons for whom a written release has been obtained from the inmate;
 - 4. compliance with discovery requirements in preparing to defend inmate-filed litigation; and
 - 5. other circumstances consistent with ORS requirements for permitted disclosure;
- b. the process for receiving, processing, and appealing denied requests for access to records, including release from inmates; and
- c. staff protection of inmate PHI to prevent non-permitted disclosure.

Rationale. Records containing data on an individual describing medical history, diagnosis, condition, treatment, evaluation or similar medical data are deemed confidential.

The federal Health Insurance Portability Accountability Act of 1996 (HIPAA) (Public Law 104-191), and subsequent changes to Oregon statutes for protected health information (PHI) require a level of protection to assure the privacy of an individual's PHI. Though a jail may not meet the requirements of being a "covered entity" under HIPAA, the management of inmates may mean the need to share information with treatment and other entities that are covered entities. Compliance with Oregon PHI statutes (ORS 192.518 to 192.526) is required, regardless of the requirement no matter the covered-entity status under HIPAA.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that limit access to and protect inmate health care records and protected health information.

See PREA 115.81

G-108 **Health Care Services Personnel Qualifications.** Jail health care personnel are required to meet the same certification and licensure requirements as do health care professionals who provide services to persons not incarcerated.

Rationale. Certification and licensure are required by State law. The absence of licensed, certified staff may also place the county at risk if the unlicensed health care providers harm the inmates for whom they are providing health care.

Compliance. Compliance with this standard can be met by ensuring that health care personnel meet certification and licensure requirements.

See PREA 115.35

G-109 **Use of Interns and Students.** Policies and procedures must define the functions and supervision requirements for unlicensed assistance, such as interns, students, and other non-certified personnel, involved in the delivery of health services to inmates. If unlicensed assistants are used, they should be—

- a. permitted to work only under the direct supervision of a certified health care professional, such as a physician, nurse, physician's assistant, or nurse practitioner; and
- b. limited to those functions that are within the limits of their training and expertise.

Rationale. Not all tasks and functions that occur in the process of delivering health care to inmates must be done by certified personnel. There are a large number of functions that, under the direction of a health care professional, can be handled by students, interns, or others. If supervised and limited in what they can do, the students, interns, or trainees can handle such functions without risk to inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that define the functions and supervision requirements for unlicensed assistance.

200 **HEALTH CARE DELIVERY**

G-201 **Screening Follow-Up.** Jail must have a system for ensuring timely follow-up to problems and needs identified during the admission screening process. A formal system of review of screening documents must be developed and criteria written to provide guidance to staff to know when information gained from screening indicates the need for immediate action.

Rationale. The intent of the screening process is to identify problems and other matters that require the attention of jail administrators; thus, failure to have a means of ensuring that follow-up occurs defeats the purpose of the screening. See topic B-200 for the standards on the requirements of medical, mental health, and suicide screenings at admission.

Compliance. Compliance with this standard can be achieved by medical staff following up on information discovered in the screening process.

See PREA 115.81, 115.83

G-202 **Health Assessment.** There must be policies and procedures for a health assessment on inmates that should be completed within 15 days of admission and again in 12 months if still in custody. At a minimum, the assessment should include the following:

- a. a review of an inmate's health care record by a qualified health care provider;
- b. collection of additional medical, dental, and mental health history and vital signs;
- c. a tuberculin skin test (unless contraindicated);
- d. conducting a hands-on physical exam based on an inmate's risk factors, age, and sex;
- e. determining the need for laboratory or diagnostic tests for communicable diseases;
- f. an exemption from paying any fees for the assessment; and
- g. the option not to do the assessment on inmates readmitted to the jail within 12 months of a previous health assessment and the admission screening shows no change in health status.

Rationale. Health care providers need to assess and plan for the health needs of inmates that are likely to remain in the facility for an extended period. Inmates need to be evaluated for chronic disorders, communicable diseases, and mental illness so they do not go undetected while in the custody of jail officials. The assessment also provides an opportunity for initiating preventive medical practices and providing health education.

It is a public health interest to identify any medical or mental health condition of an inmate that could jeopardize the safety and health of staff, other inmates, and visitors and the public. Because of this and the need to provide necessary health care while in custody, the health assessment is mandatory under jail policy and therefore the inmate does not to pay fees for the assessment per standard 103. The inmate may be charged for any medications or health care items provided as a result of the assessment.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for a health assessment.

G-203

Emergency Response. The jail must have policies and procedures for handling health care emergencies, including emergency medical and mental health care for inmates.

- a. The jail must include, but not be limited to—
 - 1. first aid, CPR, and crisis intervention in the jail;
 - 2. emergency transportation to an outside health care provider if an adequate response to a serious health care emergency is not possible in the jail; and
 - 3. procedures governing the transportation of inmates for health care emergencies, including, but not limited to—
 - (a) an arrangement with medical, dental, and mental health providers for accepting inmates with emergency health care needs;
 - (b) the means by which transportation will occur in various situations (such as ambulance or jail or law enforcement vehicles); and
 - (c) security requirements.
- b. Jail staff should document the response to a health care emergency, including the names of staff involved, times, and a complete narrative of the circumstances, to protect the county in the event of litigation.

Rationale. Preparation, training, policies and procedures, and working arrangements must be in place at the time an emergency occurs. Once the emergency is underway, it is too late to begin learning what and how to deal with it.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for handling health care emergencies, and having documentation of health care emergency responses.

ORS 169.076(5)

See PREA 115.82

G-204

First Aid Kits. Jails must provide first aid kits that are readily available to jail staff on each shift. Jail staff will base the contents of the kits upon the kit's intended use and the types of injuries that could occur in an area; content may vary by location.

- a. The following areas as a minimum must have first aid kits either in or in close proximity to the area:
 1. the booking area;
 2. the food services area;
 3. any area where inmates work; and
 4. each housing area.
- b. First aid kits must be clearly marked;
- c. Policies and procedures should either list the necessary contents of first aid kits or require the listing on an individual inventory list kept in the kit or other suitable location.
- d. Policies and procedures should require jail staff to conduct periodic inspections of the kits to ensure that they are adequately stocked and that the content are not damaged, deteriorated, or contaminated.

Rationale. Many medical emergencies will require immediate action by staff to provide some type of first aid. The availability of properly stocked first aid kits will aid staff in responding to such emergencies.

Compliance. Compliance with this standard can be achieved adopting policies and procedures that address the location and contents of first aid kits and require periodic inspection of the kits.

ORS 169.076(5)

G-205

Requests for Health Care. The jail must have policies and procedures for a system for inmates or staff to bring inmate health care needs and complaints to the attention of the health care provider for a timely response. The system should include—

- a. written inmate medical requests to document the request and provide a means to start the health care process;
- b. screening of medical requests by a doctor, nurse, or other qualified health care provider; and
- c. follow-up on serious health care issues by the appropriate health care provider.

Rationale. Not all health care problems are of an emergency nature. That does not mean, however, that they should not receive timely attention from health care professionals. The

jail's medical program should have a system of receiving, evaluating, processing, and responding to the routine medical complaints of inmates to ensure that no inmate's serious medical needs fail to receive timely attention.

The exact nature of the system is less important than the system's ability to meet inmate health care needs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that ensure a timely response to requests for inmate health care requests.

ORS 169.076(5)(c)

See PREA 115.81

G-206

Pharmaceuticals and Medications. Jails providing pharmaceuticals and medication to inmates must have policies and procedures governing the prescribing, dispensing, administering, accounting, storing, control, disposal and security of pharmaceuticals, medication and medical supplies.

Rationale. Pharmaceuticals and medications are strictly regulated by state and federal requirements. To ensure pharmaceuticals and medications are handled in compliance with the regulations when provided to inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing the prescribing, dispensing, administering, accounting, storage, control and disposing of pharmaceuticals and medications. Policies and procedures must adhere to all applicable state and federal regulations regarding pharmaceuticals and medications.

ORS 169.076(5)(b)

G-207

Treatment Plans. Health care professionals providing medical, mental health or dental care to inmates with special needs, chronic diseases, or conditions that require continuing care must document the course of treatment for each inmate.

Rationale. Health care problems of inmates include a variety of complaints, many quite serious. To ensure continuity of treatment and appropriateness of treatment for an inmate with a chronic health condition, there should be a documented treatment plan to guide health care delivery to the inmate. A treatment plan is also of value to prevent an inmate from manipulating medical providers or playing one against another.

Compliance. Compliance with this standard can be achieved by requiring documentation of a course of treatment for inmate medical, mental health, and dental care.

See PREA 115.83

G-208

Elective Procedures. The jail should have policies and procedures governing elective procedures. Inmates do not have a right to obtain elective health care procedures, except that female inmates do have a right to obtain an abortion. Policies and procedures should—

- a. identify who has the final authority in determining which procedures are essential and which are elective;
- b. determine the circumstances under which elective surgery or other such procedures will be permitted;
- c. determine the process by which inmates may request elective procedures or essential procedures performed by personal doctors; and

- d. **set forth the process for ensuring that when inmates are allowed elective procedures; this may include being responsible for prepayment of the expenses.**

Rationale. The process for determining which health care procedures are necessary and which are not should be handled in a uniform, consistent manner. When inmates want health care that is elective (not essential) or want an essential procedure done by a personal physician, the county is not ordinarily responsible for the costs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing elective health care procedures and specifically allowing payment of the inmate's expense.

G-209

Dental Care. Dental care must be provided when a dental emergency exists or when otherwise medically necessary.

Rationale. Dental care is an aspect of medical care; thus, denying an inmate dental care for serious dental problems (i.e., trauma resulting from a fight, beating, or while incarcerated; pain resulting from a pre-existing dental condition) may state a constitutional claim.¹ By virtue of their incarceration, inmates do not suddenly develop entitlement to have a complete dental work up. To determine what should be provided for inmates in jail, the following factors should be considered.

- a. **Nature of Dental Need.** Pain, swelling, or infections resulting from dental problems are serious and should be treated in a timely manner. Likewise, recent trauma resulting in broken teeth or other serious problems should be treated as soon as can be scheduled. (On the other hand, it would not state a cause of action that the jail did not meet an inmate's request to have his or her teeth cleaned.)
- b. **Length of Incarceration.** Book-and-release inmates are capable of scheduling their own dental care, while inmates serving lengthy sentences cannot. If inmates are being released within a relatively short period of time (a few days), only emergency care would be necessary.
- c. **Seriousness of the Dental Need.** A dental cavity that is not causing pain and which is unlikely to result in infection or a tooth or other serious problem if left until after release, may not justify dental intervention by the county. A lack of dental care that could result in significant harm may not state a cause of action.

Compliance. Compliance with this standard can be achieved by providing necessary dental care to inmates.

G-210

Pregnancy-Related Care. The jail must have policies and procedures ensuring adequate medical care for women who are pregnant, who are or lactating, or who need postpartum care.

Rationale. Women who are pregnant or postpartum generally require additional medical services. It makes sense to provide additional medical attention during that time to reduce the possibility of medical problems related to pregnancy. Women during and after pregnancy should be referred to the jail health care professional for examination, even if the inmate does not request to see the health care professional. After the initial referral, it will be up to the physician to determine what additional follow-up may be required.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures ensuring adequate medical care for women during and immediately after pregnancy.

See PREA 115.81, 115.82

G-211 **Monitoring Health Care.** If the jail has an outside medical provider, the jail must have a contract with a third party to do an audit of some jail medical files to determine if the outside provider is providing adequate health care. If the third party finds deficiencies, they should be documented and the outside medical provider should be required to correct the problem. The files should be selected at random, but the jail should make sure the sample of files includes high-risk inmates with serious medical needs – such as those with chronic care needs or pregnant inmates

Rationale. Jail staff lack the medical training to determine whether an outside medical provider is providing adequate health care to inmates, and an outside medical provider may have a financial incentive to provide less care than is necessary. By having a third party audit random medical files, the jail can get an objective opinion about the quality of health care being provided.

Compliance. Compliance with this standard can be achieved by having a contract with a third party medical provider (doctor, nurse practitioner, physician assistant) to randomly audit some jail medical files, and a policy that requires the information be brought to the attention of the jail medical provider and remedied within a specific period of time.

G-212 **Monitoring Medical Requests.** The jail must have a policy that requires command staff to periodically monitor medical requests and responses to ensure that they are being addressed appropriately.

Rationale: Medical requests are addressed by medical providers, and jail command may have no visibility into whether the grievances are being addressed in a timely manner, or if they are addressed appropriately. Periodic monitoring by jail command staff will help ensure that medical grievance responses are timely and appropriate.

Compliance: Compliance with this policy can be achieved by having policies that require jail command to periodically review some medical grievances (selected per agency policy) and responses and take appropriate action if they are not being addressed in a timely manner, or are not being addressed appropriately.

G-213 **Medical Staffing.** Jail staff should know and verify that the number of medical staff who are supposed to be in the jail are actually there providing service on a regular basis.

Rationale: The Sheriff ultimately has responsibility to ensure that inmates are getting necessary medical care. If medical staffing is not maintained at a reasonable level, inmate care can suffer and expose the jail to civil liability.

Compliance: Compliance with this policy can be achieved by having policies that require periodic monitoring of health care staffing. In the event that the staffing is deficient, the policy should require that jail command notify the Sheriff and medical provider and document steps taken to remedy the situation. In the event of chronic understaffing, jail command staff should request additional resources.

G-214 **ACA and Private Health Insurance.** Jail staff should, either directly or through in-house or contracted medical providers, ensure that inmates that are medically risky (chronic conditions, diseases or pregnancy) are enrolled in the Affordable Care Act. The jail should also ensure that for pre-trial detainees who have private health insurance, that the insurance provider reimburses for health care provided in the jail.

Rationale: The ACA currently covers 100% of an inmate's hospital stay if the inmate stays over 24 hours. For medically risky inmates who are likely to go to the hospital, having them covered by ACA can drastically reduce the County's financial exposure for long-term

hospital bills. Oregon law requires private health insurers to continue to cover pre-trial detainees until they are convicted. Jails can reduce medical costs by ensuring that private insurers are reimbursing for health care provided to covered inmates.

Compliance: Compliance with this policy can be met by having a policy that sets out when and how high-risk inmates will be signed up for the ACA, and that provides a mechanism for requesting reimbursement of health care costs provided to covered pre-trial detainees.

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SECTION H: SANITATION AND MAINTENANCE

100 *INMATE HYGIENE*

H-101 **Showers: Inmates in General Population. Jail policies and procedures should provide inmates in general population the opportunity for three showers per week and must require them to shower two times per week.**

Rationale. Daily showers may be more of a cultural preference than a hygiene or constitutional requirement. Less than three opportunities per week for inmates to shower would certainly not result in the "serious" harm required to meet the objective test for an Eighth Amendment cause of action. This standard exceeds constitutional requirements. ORS 169.076 requires each inmate to shower at least twice weekly.

Inmates who have access to a sink in their cell can wash in the sink as often as they deem necessary.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that should provide inmates the opportunity for three showers per week and requiring two showers per week.

ORS 169.076(9)

See PREA 115.14, 115.15, 115.42

H-102 **Showers: Inmates in Segregation. Jail policies and procedures must provide inmates in segregation the opportunity to shower two times per week.**

Rationale. The rationale in the preceding standard for showers for inmates in general population (H-101) applies for segregation inmates as well.

Current ORS requires two showers per week.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide segregation inmates the opportunity for two showers per week.

H-103 **Daily Hygiene Practices. Jail policies, procedures, and staff should encourage inmates to maintain good hygiene practices.**

Rationale. Many inmates who are booked into jail have poor hygiene habits. While one trip to jail is not likely to change that, the jail stay can be a learning experience. Poor hygiene habits outside the jail may lead to problems in gaining employment and in having success in other social interaction. In the jail, good hygiene helps maintain the sanitation of the facility and prevents offensive body odors from building up in the facility.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require staff to encourage good hygiene among inmates and to enforce hygiene requirements, when necessary.

H-104 **Hair Care Services. The jail should have policies and procedures addressing hair care services available to inmates. Inmates should be permitted to shave and receive haircuts on a regular basis.**

Rationale. For inmates, shaving and haircuts may be necessary for inmates to comply with grooming and hygiene requirements. All inmates should be encouraged to maintain a clean, well-groomed appearance.

Jail officials should also check with the licensing officials to determine what regulations may be required to cut hair in the jail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide for hair care services.

H-105

Hygiene items. The jail should have policies and procedures for inmate use and access to authorized personal hygiene items. To facilitate good hygiene, each inmate who is likely to be held for 24 hours—

- a. must be provided the following regardless of ability to pay:
 1. toilet paper;
 2. soap;
 3. a razor (blade razors should not be shared among inmates);
 4. a tooth brush and toothpaste;
 5. a comb; and
 6. for women, sanitary napkins or tampons; and
- b. should additionally be able to purchase the following:
 1. shampoo;
 2. lotion; and
 3. deodorant.

Rationale. The items listed in this standard are basic ingredients for meeting personal hygiene needs. Shampoo, lotion, and deodorant do not have to be routinely provided at no cost to the inmate, because:

- a. inmates can use soap to wash hair;
- b. lotion is needed, for medical reasons, it can be ordered by the jail medical providers; and
- c. inmates who have underarm odor problems can wash in the sink as often as they deem necessary.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for use and access to authorized personal hygiene products.

ORS 9.076(8)(a)

H-106

Clothing and Bedding. The jail must have policies and procedures for providing inmates with jail-issued clothing and bedding. To facilitate good hygiene, each inmate who is going to be incarcerated beyond the booking process must be provided the following:

- a. a uniform or jail-issued clothing set;
- b. adequate bed coverings;
- c. one blanket (more if required by temperature of living area); and
- d. one towel.

Rationale. Clothing and bedding are among the basic necessities of life. Failure to provide clean clothing and bedding for a significant period of time might, depending on the totality of circumstances, state a cause of action under the Eighth Amendment. Inmates should be issued jail clothing and not permitted to wear personal clothing—

- a. to protect against lice, other vermin, and filth being introduced to living areas from outside;
- b. to prevent inmates from bringing weapons and other contraband into the jail inside personal clothing;
- c. to help prevent escape—
 1. by reducing the potential for inadvertent release;
 2. as a result of inmates being more easily monitored and recognized; and
 3. by making inmates easier to track and identify following an escape; and
- d. to ensure more efficient and effective clothing handling procedures.

Clean bedding and towels that are regularly laundered help maintain a clean jail environment and reduce potential for the spread of disease.

Female inmates may be issued sports bras or allowed to wear personal bras. If personal bras are allowed, they should be examined to ensure that they do not have wire supports or other hidden contraband. Inmates must be given clean clothing twice weekly.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for providing inmates with clean jail-issued clothing and bedding.

ORS 169.076(8)(b)

H-107

Mattresses. Jail policies and procedures require mattresses to be cleaned and sanitized prior to being reissued. Mattresses must be intact and made of a material that is fire-retardant and easy to clean and sanitize.

Rationale. Mattresses, including mattress covers, must be cleaned and sanitized before being reissued to inmates to prevent the spread of disease.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require mattresses made of fire retardant materials and that are cleaned and sanitized after each use and prior to being reissued.

ORS 169.076

H-108

Vermin-Infested or Washable Biohazards. Policies and procedures must be established for the gathering, storing, washing, or disposal of soiled clothing, bedding, or mattresses to help prevent the transfer of vermin and biohazards. Policies and procedures must address the following:

- a. separation of vermin-infested clothing from all clean clothing supplies;
- b. collection and storage of contaminated clothing in a bag clearly marked with biohazard precautions (such as a clear plastic bag with a red stripe);
- c. training to inmate workers responsible for handling and washing contaminated items prior to receiving laundry assignments;
- d. the process for properly decontaminating soiled or infested mattresses; and
- e. the process for properly washing, decontaminating or disposing of soiled or infested clothing.

Rationale. Improper handling of vermin-infested or contaminated clothing may result in the spread of vermin or disease to the clean clothing supply and to other people.

Compliance. To comply with this standard, jails must have policies and procedures that regulate the handling of soiled clothing, bedding, and mattresses.

ORS 169.076(2)(g)

H-109 **Equipping Living Areas. General population living areas must be equipped with easily accessible toilets, sinks, showers, and mirrors.**

Rationale. Toilets, sinks, showers, and mirrors must be easily accessible.

Compliance. Compliance with this standard can be achieved by providing inmates with the necessary facilities to maintain their sanitation and hygiene needs.

H-110 **Hot and Cold Running Water. Water for showers and sinks should be thermostatically controlled to provide cold water and hot water that should not be below 100 degrees and not to exceed 120 degrees.**

Rationale. Hot and cold running water is required for sinks and showers in inmate living areas. The temperature of hot water should be controlled to prevent accidental or intentional injury. Accidental scalding can occur when showers are not equipped with pressure control valves and a toilet is flushed that suddenly decreases cold-water pressure while an inmate is taking a hot shower. Scalding injuries have been intentionally inflicted by inmates by throwing hot water on other persons or forcibly holding someone under hot water.

Compliance. Compliance can be achieved by controlling water temperature in inmate living areas to ensure that the maximum temperature is at or below 120 degrees. The maximum temperature should exceed 100 degrees to provide inmates safe hot showers.

H-111 **Biohazard Training for Staff. Jail policies and procedures must require staff that may come in contact with biohazard materials be provided initial and annual refresher training regarding proper handling and disposal of biohazard waste materials to prevent the spread of communicable diseases or exposure to infectious waste.**

Rationale. Staff aware of the dangers associated with biohazard waste and of proper handling and disposal procedures are less likely to compromise their own or another person's safety through mishandling of wastes. Oregon OSHA requires initial and annual refresher training on the hazards of blood borne pathogens, which includes the use and handling of biohazards.¹

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for the documented training of staff of all staff likely to come into contact with such materials.

ORS 169.076(2)(g)

H-112 **Biohazard Disposal. Jail policies and procedures must address a system for the transfer of biohazard waste to an approved waste disposal vendor either through an established schedule or on an as-needed basis. Policies and procedures must require—**

- a. biohazard waste containers be placed in easily accessible areas in the jail;

- b. biohazard containers to be closable; constructed in a manner to prevent leakage during handling, storage, and transport; and, puncture resistance if it is to contain sharps such as needles or used razor blades;
- c. initial disposal into properly labeled or color-coded bags or containers;
- d. placement of the initial container into a secondary container if outside contamination occurred or leakage is possible. The secondary container must meet the same labeling and construction requirements of initial containers in the preceding paragraphs.

Rationale. Specific types of biohazard waste containers must be readily accessible to staff attempting to dispose of such waste quickly because of the dangers of possible exposure to blood borne pathogens. Collection and further disposal of marked containers must be quickly and efficiently managed.

Compliance. To comply with this standard, jails must adopt policies and procedures addressing the system of storage, transfer, and disposal of all biohazard waste in approved containers.

H-113

Biohazard Control Officer. Jail policies and procedures should require the appointment of at least one staff member as a biohazard control officer to monitor compliance with biohazard waste procedures. The person must receive additional and specific training in biohazard waste procedures. Policies and procedures should require the duties and responsibilities of the biohazard control officer to include, at a minimum, to—

- a. make sure waste disposal containers are compliant with Oregon OSHA administrative rules and are inspected on a daily basis;
- b. investigate incidents where waste was disposed of inappropriately; and
- c. recommend remedial action necessary to ensure future compliance with administrative rules and policies.

Rationale. Care must be given to assure prompt removal of biohazard waste from jail premises and to ensure compliance with all local and OSHA restrictions. Assignment of this responsibility to specific staff members will allow for monitoring of biohazard waste storage areas and prevent jail command officers of dangerous practices.

Designated control officers should receive thorough training in biohazard waste disposal and Oregon OSHA requirements related to waste disposal and for monitoring removal of biohazard waste from jail premises.

Compliance. To comply with this standard, jails should assign a staff member to monitor practices related to biohazard waste procedures and have policies and procedures defining the main duties and responsibilities for the biohazard control officer position.

FACILITY SANITATION AND MAINTENANCE

H-201

Sanitation Plan. Jail officials must adopt a cleaning and sanitation policy and plan that should include the following:

- a. general sanitation requirements;
- b. a schedule for completing various cleaning and sanitation tasks; and
- c. identification of tasks required as a part of the sanitation plan including, but not limited to, the following:

1. sweeping floors at least once each day, scrubbing floors once each week, and waxing or sealing floors as needed;
2. scrubbing or washing:
 - (a) walls and ceilings as needed, but at least monthly;
 - (b) steel grille (bars), bunk bed frames, ledges, security screen, light fixtures, ventilation duct covers, radiators, and other exposed surfaces at least once per week; and
 - (c) day room tables, benches, and stools as needed, but at least once per day;
3. scrubbing or scouring toilets, sinks, showers, and drying areas each day and disinfecting at least once each week;
4. providing trash containers in living areas, and ensuring that they are emptied and cleaned at least once per day;
5. requiring inmates to clean their living areas and make their beds each morning;
6. prohibiting and enforcing prohibitions against inmates storing food in cells (except for packaged commissary items for which storage has been approved);
7. prohibiting pinups, posters, or other materials from being displayed on living area walls (however, jail officials may allow for a small designated wall area for displaying photographs or other authorized material);
8. providing inmates with cleaning equipment (brooms, mops, buckets, rags, brushes, etc.) and cleaning and disinfecting supplies (whenever possible should be non-poisonous, non-toxic, or caustic);
9. providing labeling, secure storage for, and proper disposal of cleaning and other materials that are poisonous, toxic, caustic, or are otherwise hazardous (but hazardous disposal is covered in topic H-1);
10. cleaning mops and other cleaning equipment and storing them in ventilated closets or other appropriate areas; and
11. spraying disinfectant as needed (as determined by inspections).

Rationale. The elements of a cleaning and sanitation plan outlined in this standard exceed Eighth Amendment requirements. Constitutional violations occur when sanitation problems have a serious effect on inmates¹. The standard for sanitation has been set higher than required because—

- a. in closed confinement, the possibility of the spread of infections/communicable disease is higher and high sanitation standards will help mitigate that risk;
- b. some areas (showers, pipe chases, toilets) of the jail are particularly susceptible to fungus, mildew, bacteria, and/or vermin;
- c. virtually all of the work required to maintain sanitation can be completed at very modest cost using inmate labor; and
- d. keeping inmates active on work assignments reduces idle time and may assist in developing a better work ethic for inmates while they are incarcerated.

Proper storage of cleaning equipment and supplies is necessary to—

- a. ensure proper drying of mops to avoid foul odors;

- b. avoid creating sanitation problems or safety hazards as a result of improper care and storage of cleaning equipment and supplies; and
- c. protect equipment and hazardous chemicals from accidental or intentional misuse by inmates.

Compliance. Compliance with this standard can be achieved by adopting a cleaning and sanitation policy and plan for the jail that include at least the requirements listed above. The policy should address at least the general sanitation requirement. The remaining items may be in the plan.

ORS 169.076(8)

H-202

Inmate Sanitation Responsibilities. Inmate sanitation responsibilities must be defined in policy.

- a. Pretrial detainees should be required to clean their own living areas.
- b. Convicted inmates should be required to clean their own living areas and can be required to participate in other jail work assignments.
- c. An inmate may be excused from engaging in cleaning responsibilities if, in the judgment of jail officials, the inmate's mental or physical condition makes it otherwise inappropriate to be assigned work duties.

Rationale. Inmates should play a key role in the jail cleaning and sanitation.

Compliance. To comply with this standard, inmate responsibility in regard to sanitation must be defined in policy.

H-203

Maintenance Plan. The jail must have a maintenance policy and plan for the facility that should include the following:

- a. general maintenance requirements
- b. a schedule for preventive maintenance tasks;
- c. responsibility for assigning and carrying out work assignments;
- d. specific tasks required as a part of a maintenance plan, including, but not limited to the following:
 1. inspecting and, when needed, repairing—
 - (a) plumbing;
 - (b) lighting and other electrical systems;
 - (c) heating, ventilation, and air conditioning systems;
 - (d) bunks, tables, and other furnishings;
 - (e) locks;
 - (f) steel grille (bars), doors, windows, walls and other security barrier components; and
 - (g) closed-circuit television and other control room equipment; and
 2. repainting or refinishing surfaces as needed to prevent deterioration.
- e. a process to prioritize maintenance requests to ensure that—
 1. life-threatening, security-threatening, and other emergency repairs receive immediate attention;

2. maintenance repair orders are prioritized to best protect facility interests; and

f. there is a system of ensuring timely follow-up on all maintenance problems.

Rationale. The elements of the maintenance requirements outlined in this standard exceed Eighth Amendment requirements. Constitutional violations occur when maintenance problems have a serious effect on inmates' safety and welfare. The standard for maintenance has been set higher than required because—

- a. in the closed confinement of a jail, inmates are less able to protect their safety;
- b. damage to walls, floors, ceilings, fences, and other areas may suggest the possibility of a pending escape attempt;
- c. when the integrity of the facility or its security components is degraded, the security and safety of the facility is diminished;
- d. plumbing, electrical, heating, ventilation, and air conditioning systems are critical in maintaining a proper living environment; and
- e. inadequate maintenance may be used by plaintiffs in combination with other problems to portray jail officials as indifferent to inmates' needs.

Compliance. Compliance with this standard can be achieved by adopting a maintenance policy and plan for the jail. The policy must address at least the general maintenance requirements; the remaining items may be in the plan.

See PREA 115.13

H-204

Testing of Emergency Equipment. Facility-installed emergency equipment must be routinely tested. Fire alarm, detection, and suppression systems should be tested according to Oregon OSHA standards. Emergency generators, emergency lights and other emergency systems should be tested every 30 days unless—

- a. the equipment has self-testing programs that test at a more frequent interval;
- b. the equipment has sensors that continuously monitor its operation to ensure it is working properly and are able to identify trouble and give a warning
- c. the manufacturer of the equipment recommends a different test frequency that may be more than 30 days.

Rationale. Emergency equipment is worthless if it is not functional at the time that it is needed. The need to ensure that equipment is in good working condition is greater in a closed environment like the jail.

Compliance. Compliance with this standard can be achieved by adopting a schedule for testing emergency equipment and documenting that it took place. The proper activation of an emergency generator or emergency lights because of actual power failure may count as a test for that test period.

H-205

Use of Inmates in Jail Maintenance. Jail policies and procedures should prohibit the assignment of inmates to maintenance tasks that would place them in a position that would provide them the means or knowledge to defeat jail security systems. Inmates may be used to complete jail maintenance tasks that do not present a security risk.

Rationale. There is a substantial risk that knowledge gained by inmate workers may be passed on to other inmates, and added to the general body of inmates' knowledge of jail security systems. Refer to topic I-4 for the general use of inmate labor.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that prohibit the assignment of inmates to maintenance tasks that would place them in a position to compromise jail security or gain special knowledge that could be used to learn how to defeat jail security.

H-206

Internal Inspections. Jail policies and procedures must require frequent, documented sanitation inspections to ensure that sanitation is maintained at a high level. Inspections should include a process of identifying and recording deficiencies to permit systematic follow-up. Inspections must be conducted—

- a. on a daily basis by shift supervisors; and
- b. at least every week by the jail commander or designee.

Rationale. It is easier to maintain a high level of sanitation and maintenance than to recover from having allowed a facility to deteriorate. If shift supervisors and command-level jail officials demonstrate to staff that sanitation is a high priority by routinely making sanitation inspections and then acting on findings, it is more likely that staff will play an active role in the process as well and take pride in the sanitation and appearance of the facility.

Inspections are of little value if there is no follow-up to correct deficiencies. In fact, if there is no follow-up on known deficiencies, it will be a signal to staff that sanitation is a low priority and may be maintained at marginal levels. Internal inspections also help prepare the facility for inspections by outside agencies. In large jails, officials may be able to hire a full-time staff member to handle sanitation and maintenance functions. Even if the jail has a full-time sanitation or maintenance officer, the appearance of the jail commander periodically inspecting the jail sends a positive message.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that require frequent, documented sanitation inspections.

H-207

Documentation—Sanitation and Maintenance. Jail officials should document the facility's sanitation and maintenance requirements and performance. Documentation may include—

- a. the contents of the sanitation and maintenance plans as provided in—
 1. a written plan; or
 2. policies and procedures setting requirements;
- b. efforts of staff by maintaining files, logs, or other reports that—
 1. document internal inspections and
 2. list sanitation and maintenance problems noted and the action taken to resolve any deficiencies.
- c. the results of adopting the sanitation and maintenance plan by providing—
 1. internal reports demonstrate timely response to problems; and
 2. internal inspections that show decreasing or very low incidence of problems.

Rationale. It is a common practice in jail conditions litigation for inmates to make general allegations of unsanitary conditions, filth, poor maintenance, and general neglect of the facility. Plaintiffs must allege more than unsupported claims to state a cause of action; however, counties defending such action should have the capability and preparation to offer, among other defenses to inmates' claims, documentation of sanitation and

maintenance plan requirements, and efforts to implement the jail's sanitation and maintenance plan in defending such litigation.

Compliance. Compliance with this standard can be achieved by maintaining documentation of the elements of the facility sanitation and maintenance policies and plans and staff performance and results.

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SECTION I: INMATE PROGRAMS AND ACTIVITIES

I00 **EXERCISE AND OUT TIME**

I-101 **Exercise Opportunity Required.** The jail must have policies and procedures that provide the opportunity for inmate exercise. Exercise opportunities must be provided to inmates who are in the jail seven consecutive days and to shorter-term inmates where medical staff notifies operational staff that there is a legitimate medical need for exercise.

Rationale. The U.S. Supreme Court and other federal courts have recognized exercise as "an identifiable human need." Written policies reasonably ensure that inmates will be provided an opportunity for exercise. Failure to do so may state a cause of action if it can be shown that the deprivation of exercise adversely affects an inmate's health. Incarceration for fewer than seven days without exercise is not sufficient to harm inmates and should not result in the "serious harm" that violates the Eighth Amendment to the U.S. Constitution.

Inmates who are incarcerated for fewer than seven days can exercise if they choose to make the effort, even if they are not included in the normal recreation process, by using dayrooms or even their individual cells during their limited confinement in jail.

There are situations where exercise is crucial or of significant benefit in managing a medical condition, such that jails should provide exercise opportunities to afflicted inmates even if their incarceration will be for less than seven days. Examples include, but are not limited to, brittle diabetes, certain heart conditions, and Turret's Syndrome.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide the opportunity for exercise for persons who are incarcerated for seven or more days.

I-102 **Frequency and Duration of Exercise.** Inmates, including those inmates in administrative or disciplinary segregation, should be permitted daily exercise, but must receive less than four exercise periods per week outside of their cell, unless urgent circumstances exist. Inmates should be provided exercise periods of one hour duration, but must be provided a minimum period of 45 minutes at a time for opportunity to exercise. There should be—

- a. policies and procedures that ensure the minimum number of required exercise opportunities;
- b. requirements for documentation of recreation and exercise; and
- c. procedures for medical staff to inform operational staff when a particular inmate requires a prescribed level of exercise for medical reasons.

Exercise opportunities for a particular inmate may be suspended if that inmate presents a specific threat. Exercise opportunities for a group of inmates based upon their status may be acceptable for short periods of time, but a blanket policy denying a group of inmates the opportunity for exercise based upon their status (i.e., all inmates in ad seg or disciplinary seg) for more than 21 days is prohibited.

Rationale. Exercise is one of the basic human necessities protected by the Eighth Amendment. See *LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993). The 9th Circuit made it clear that when inmates spend the majority of their time in their cells, such as

inmates in segregation, they will closely scrutinize how many exercise opportunities the inmates are given. See *Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008) finding 90 minutes of exercise per week for ad seg inmates unconstitutional.² In *May v. Baldwin*, 109 F3d 557 (1995), the 9th Circuit upheld a 21-day deprivation of outdoor exercise for disciplinary reasons, but noted that longer deprivations could be 8th Amendment violations.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures related to duration and frequency of inmate exercise, and ensuring that all inmates, including those in segregation, are given opportunities for out-of-cell exercise unless exigent circumstances exist which justify a temporary restriction.

I-103

Refusal to Participate. Inmates must be permitted to decline to participate in exercise activities. If an inmate elects to remain in his or her cell or remain inactive while in the exercise area, the inmate has voluntarily waived the opportunity to the exercise and its potential health benefits. Policies and procedures should—

- a. permit inmates to refuse to participate in exercise and other recreation activities; and
- b. require documentation that inmates were provided the opportunity for exercise outside their cell.

Rationale. The Eighth Amendment requires jail officials provide the opportunity to exercise. Thus, if the opportunity is provided and the inmate declines, it is not necessary to enforce the exercise requirement on an unwilling inmate.

Since it is not necessary to force inmates to exercise, compliance will be achieved by providing the opportunity for exercise. If an inmate elects to remain in his or her cell or remain inactive while in the exercise area, the inmate has voluntarily waived the opportunity to the exercise and its potential health benefits.

Compliance. Compliance can be achieved by adopting policy and procedures that provide the opportunity for exercise.

I-104

Exercise Supervision. The jail must have policies and procedures that provide for sufficient staff supervision to ensure that inmates consistently receive at least the minimum opportunity to exercise.

Rationale. Policies and procedures are required to ensure that staff members fully understand the jail's policies and procedures for providing inmates an opportunity to engage in physical exercise. Depending on the design of the facility, varying numbers of staff will be required to ensure that inmates receive the required opportunities for exercise. Staffing is required for both the logistics and the security for exercise. Staff may also be used to actually direct exercise activities.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures to ensure sufficient staff or volunteers to ensure that the minimum inmate exercise requirements are met.

I-105

Exercise Areas. The areas provided for inmate exercise must be adequate for the function and sufficient to permit inmates to vigorously exercise their cardiovascular system and large muscle groups. No specific square-foot-per-inmate ratio is required. Policies and procedures should—

- a. provide for indoor and/or outdoor exercise areas; or

- b. in jails that lack exercise areas, require the development of a formal exercise program that provides inmates the opportunity for aerobic exercise in the space available. This may include access to dayrooms for an extended length of time each day or allowing exercise in their cells.

Rationale. The most manageable, effective, advantageous, and efficient means of providing exercise is in exercise rooms and/or yards that offer space that facilitates the exercise process. Jail officials operating facilities that lack exercise rooms or yards should be permitted to devise programs that meet inmates' exercise and health needs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide sufficient space to give inmates the opportunity for cardiovascular and large-muscle group exercise.

I-106

Outdoor Exercise. Outdoor exercise should be provided in facilities having outside exercise yards. Access to outdoor exercise may be restricted to accommodate classification, circumstances, and the differences in physical plant design for outdoor exercise areas offered in individual jails. Policies and procedures should address—

- a. outdoor exercise requirements for inmates in general population and segregation status;
- b. the criteria for determining when staff may allow or deny inmate access to outdoor exercise, which may include—
 1. all inmates during inclement weather;
 2. those inmates who present too great an escape risk to permit access to the facility's outdoor exercise areas;
 3. those inmates who have medical restriction for such activity;
 4. those inmates who are too dangerous to release into the outdoor exercise areas; and
 5. all inmates when situations or conditions exist that would jeopardize the safety of the facility or other legitimate interests of the facility;
- c. alternative means to provide exercise to those inmates not eligible for outdoor exercise.

Rationale. While outdoor exercise may be more pleasing and enjoyable, existing jails that cannot provide outdoor exercise can meet the cardiovascular and big muscle exercise requirements indoors.² Facilities that do have outdoor exercise may have to restrict and regulate access. In Oregon during the winter months, inclement weather often makes outdoor exercise impractical. Access to the exercise yard for high-risk inmates may present an unreasonably high risk of escape or danger to the safety of others. The harsher the living conditions an inmate faces, and the more hours an inmate is confined to a cell, the greater the likelihood that a court will find that the inmate has a constitutional right to outdoor exercise. The 9th Circuit has found in several cases that keeping inmates in segregation for long periods of time without outdoor exercise is a violation of the Eighth Amendment right to be free of cruel and unusual punishment. See *Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008); *Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979); *Toussaint v. Yackey*, 722 F.2d 1490 (9th Cir. 1984); *Allen v. Sakai*, 48 F.3d 1082 (9th Cir. 1994).

Compliance. Compliance with this standard can be achieved in jails that have outdoor exercise areas by adopting policies and procedures for inmate use of the area.

I-107 **New Construction Exercise Space. If a jail is designed and constructed after 1999, it should include both indoor and outdoor exercise facilities, including outdoor exercise facilities for segregation housing units.**

Rationale. Open areas are among the least expensive parts of the jail to construct. Outdoor exercise areas are the least expensive of all. Considering the additional benefits to inmates of exercising outside, newly constructed facilities should provide for both indoor and outdoor exercise.

Compliance. Compliance with this standard can be achieved by designing and constructing new jails with both indoor and outdoor exercise areas. Dayrooms can be a component of the indoor exercise delivery system. Photographs, blueprints, or preservation of exercise facilities may serve as proof of compliance. Jails designed and constructed in or before 1999 need only show proof of the jail construction date to receive automatic exception.

I-108 **Inmate Out of Cell Time. To the extent possible given staffing and security concerns, all non-disciplinary inmates should be given 2 hours of out of cell time per day. For inmates with serious mental illness or intellectual disability (SMI / ID), to the extent possible given staffing and security concerns, they should be given at least three hours out of cell time per day. Jails should track how much each out-time each inmate gets each day.**

Rationale. Jails have a legal obligation to provide out of cell time. For SMI / ID inmates, it is a known fact that being housed in a jail often causes them to decompensate. These inmates may be protected by the Americans with Disabilities Act, and may be entitled to reasonable accommodations. Providing additional out time for these inmates, and prioritizing their out time over that of non SMI / ID inmates is legally defensible and should be done when possible.

Compliance. Compliance with this standard can be achieved by having policies and procedures that require daily tracking of out of cell time for all inmates, providing out of cell time to the extent possible of at least 2 hours a day for all non-disciplinary inmates, no less than 3 hours a day for SMI / ID inmates, and when out time is limited it is prioritized so that SMI / ID inmates are given more out time than non SMI / ID inmates.

200 ***LEISURE ACTIVITIES***

I-201 **Leisure Activities. Jail officials should provide leisure-time activities to reduce inmates' idle time and help ensure order and discipline in the facility. Policies and procedures should address the purpose and types of leisure activities and materials accessible to inmates and rules for participation or use. They should also permit inmates to take part in leisure activities when not locked down or engaged in other activities. Leisure activities may include—**

- a. library services;
- b. card or board games; and
- c. television or radio.

Rationale. Inmates with too much idle time on their hands are more likely to experience boredom and frustration. Some courts have discussed a link between idle time and violence. While the Constitution does not require inmates to be provided with every amenity to avoid mental, physical, and emotional discomfort, certainly, idle time does leave inmates more time to be involved in activities that are contrary to security, safety, order,

discipline, and rehabilitation treatment goals. Providing activities for inmates' leisure time directly benefits facility interests.

Planning for inmates' leisure time activities also provides jail officials with an opportunity to evaluate those activities objectively before making them available to inmates, rather than letting inmates set the agenda. The very process of actively participating in the provision of leisure activities increases supervision and control of inmates and their actions.

Standard I-204 provides rationale for library services.

Card and board games provide a means of reducing idle time while providing inmates with a structured process of interacting in a social setting. Televisions, DVDs, and radios provide inmates—

- a. a means of staying current on what is occurring in the world (such as news, magazine shows, and current events programming);
- b. educational programs; and
- c. entertainment.

Care must be taken to prevent inmates from turning card and board games into gambling. Gambling generally violates jail rules and state law. Gambling may also result in violence because of inmates accruing gambling debts or attempting to collect gambling debts.

Jail officials may allow one or more kinds of electronic entertainment equipment, including television, DVD and video players, or radios. Officials may, if they choose, limit such equipment to that which is provided by or rented from the jail. If electronic equipment is allowed, jail officials should be aware that inmates can use the equipment to manufacture weapons and aids to escape. To prevent excessive noise, jail regulations may require all such equipment to be fitted with earplugs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that set forth the purpose and types of leisure activities and materials allowed and associated rules.

I-202

Regulating Leisure Activities. If offered, jail staff must regulate leisure activities. Policies and procedures should define staff responsibilities concerning—

- a. the supervision and management of leisure activities and use of facilities, community resources, equipment, books, and supplies; and
- b. enforcement of rules and requirements.

Rationale. All activities in the jail must be under the control of jail staff to ensure that jail rules and policy requirements are enforced and to protect the jail's legitimate operational interests.

In large jails, a full-time assignment may be required to handle these activities. In small jails, individual corrections deputies may assist; however, even in small jails, it may help to have a corrections deputy coordinate inmate leisure activities in addition to the deputy's security duties.

Compliance. To comply with this standard, the jail should adopt policies and procedures that regulate inmate leisure activities.

I-203

Facilities for Leisure Activities. The jail should provide facilities and equipment for leisure activities that at a minimum include the following—

- a. a library or book storage and distribution service;

- b. a common area (such as multipurpose room or dayroom);
- c. tables and seating for inmates playing cards or board games, watching television, reading, writing, sketching, or engaging in arts and crafts,¹ or other activities that require seating, tables, or other equipment; or
- d. other facilities or equipment appropriate to the activities approved by jail officials.

Rationale. Tables, seating, other equipment, and facilities are helpful to facilitate leisure activities authorized by jail officials. Approving activities without providing inmates means to enjoy the activities serves little purpose.

Compliance. Compliance with this standard can be achieved by providing facilities and equipment to facilitate inmate leisure activities.

I-204

Library Services. Some form of library services should be available on an ongoing basis. Policies and procedures should provide inmates with sufficient reading material to meet educational and leisure reading needs.

Rationale. Idle time is constant, so library services should be available at all times that inmates are not scheduled for sleep. The jail should maintain a library of books for inmates. Jail officials can fill a library without significant, if any, purchase costs. There are numerous sources of free books, including books being removed from the collections of public and school libraries, discontinued textbooks from schools or publishers, public donations of used books, and unsold paperback books from wholesalers. In addition, assistance can often be obtained in cataloging books and other assistance from libraries, colleges, or community volunteers. In some venues, bookmobiles may even service the jail.

Some courts have found libraries to be required. Library services help provide inmates who do not have funds to purchase reading material from outside sources with reading material. Library materials can include educational, reference, religious, and leisure reading material. Legal research materials are discussed in standard F-103 Law Library.

Inmates should be permitted to check out a sufficient number of books to meet their reading needs. If inmates trade with other inmates problems may develop if books checked out to one inmate are lost, destroyed, or damaged by another inmate.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures allowing and facilitating library services.

300

EDUCATIONAL AND REHABILITATION PROGRAMS

I-301

Educational Programming. Jail policies and procedures should identify the types of educational programs that may be offered to inmates and eligibility requirements. Jail officials should provide educational programming for inmates designed to enhance their capability to function in society lawfully. The types of programs will depend on—

- a. the availability of community educational resources;
- b. the average daily population and average length of stay of the facility;
- c. a determination of the educational needs of the jail's general population; and
- d. the extent to which those services can be accessed by the jail.

Rationale. Some courts have found a constitutional right for inmates to receive educational programming; however, in *Rhodes v. Chapman* the U.S. Supreme Court has ruled:

Although job and educational opportunities diminished marginally as a result of double ceiling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain; deprivations of this kind simply are not punishments. We would have to wrench the Eighth Amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution.

Educational programming is of value for reasons other than claimed constitutional requirements. Many inmates lack the education and other tools necessary to make them competitive for employment after release. While it is not realistic to expect that your neglect of educational needs will be remedied as the result of the limited time of an inmate's incarceration, some progress can be made that will benefit those inmates who are willing to commit to the education process. Education may increase the potential for some inmates to stay out of jail.

The jail also may benefit from reducing idle time. Reading and other studying can be a very productive use of idle time for inmates. The extent to which the jail will be able to provide educational programs will depend upon the available resources in the community, especially the state and local Educational Service District. A large number of inmates with similar educational deficiencies can be served in a most cost effective manner.

Jails with very small populations will not enjoy the same economy of scale as will exist in the larger jails; therefore, they may find it more difficult to arrange and administer education programs.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that identify the types of education programs that may be offered to inmates and eligibility requirements.

I-302 Involving the Educational Service District. Jail officials should work with local Boards of Education, Educational Service Districts, or contract service providers, to assist with providing required GED and other education programming for appropriate inmates.

Rationale. The Oregon legislature has created statutory responsibility for local school districts or Educational Service Districts to provide or cause to be provided educational services to certain inmates in county jails.

Compliance. Compliance with this standard can be achieved by contacting local Boards of Education or Educational Service Districts and requesting assistance in developing educational programs to meet the specific requirements of appropriate inmates in the jail.

I-303 Rehabilitation Programs. Jail policies and procedures should identify the types of rehabilitation programs that may be offered to inmates and eligibility requirements. Jail officials should provide rehabilitation programs for inmates who qualify for them. The types of rehabilitation programs must be at the discretion of the sheriff or designee.

Rationale. While some courts have found a constitutional right for inmates to receive rehabilitation programs,¹ In *Rhodes v. Chapman* the U.S. Supreme Court ruled:

Although job and educational opportunities diminished marginally as a result of double ceiling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain; deprivations of this kind simply are not punishments. We would have to wrench the Eighth Amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution.²

Rehabilitation programming should be provided for reasons other than supposed constitutional requirements. Many inmates have alcohol, drug, sexual, or other problems that may require rehabilitation or counseling. While it is not realistic to expect that rehabilitation programs will drastically alter the values, attitudes, and behavior of inmates, some inmates may benefit to some extent from rehabilitation and counseling efforts. Rehabilitation may increase the potential for some inmates to stay out of jail.

Since there is no constitutional right to rehabilitation, or to specific rehabilitation programs, jail officials must have sole discretion in determining which programs should be authorized.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for the types of rehabilitation programs available and eligibility requirements.

I-304

Program Oversight. The jail should have policies and procedures for coordinating, controlling, and supervising inmate educational and rehabilitation programs. Staffing for programs may involve in-house employees or persons not employed by the jail. All outside staff must work within the security, safety, operational, and policy requirements of the jail. Policies should include—

- a. provide the rules and procedures that inmates and providers must follow;
- b. define staff responsibilities concerning—
 1. the facilitation and management of educational and rehabilitation programming and the use of facilities, equipment, books, and supplies; and
 2. enforcement of rules and requirements; and
- c. assure that all outside providers receive security orientation by jail staff.

Rationale. All activities in the jail must be directed and controlled by jail staff to ensure that jail rules and policy requirements are enforced and to protect the jail's legitimate operational interests.

In large jails, a full-time assignment may be justified to facilitate and coordinate these activities. In small jails, individual corrections deputies may all assist; however, even in small jails, it may help to have a corrections deputy, in addition to his or her security function, coordinate with program providers.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for providing program oversight that addresses the elements of this standard.

I-305

Program Facilities. The jail should provide facilities and equipment for educational and rehabilitation programs that include—

- a. a library or book storage and distribution service;
- b. a common area (multipurpose room, dayroom, etc.);
- c. desks, tables, chairs, whiteboards, and other required equipment; and
- d. other facilities or equipment appropriate to the activities approved by jail officials.

Rationale. Tables, seating, and other equipment or facilities will be needed to permit inmates to participate in school functions. Programs cannot operate without some space being provided for instruction, storage, and other functions.

Compliance. Compliance with this standard can be achieved by providing facilities and equipment to facilitate jail program activities.

400 WORKING INMATES

I-401 Inmate Work Programs. The jail should have policies and procedures that govern inmate work programs and assignment of inmates to work. They should—

- a. provide work assignments for inmates where feasible and consistent with safety and security;**
- b. have the scope and nature of inmate work programs being entirely within the discretion of jail officials; and**
- c. be written in a manner that does not create a protected liberty interest for inmates to have or keep a particular job or any job at all.**

Rationale. Work programs for inmates are not constitutionally required, but are desirable because they can—

- a. reduce inmate idle time;
- b. provide inmates an opportunity to work;
- c. teach the work ethic and develop work habits; and
- d. reduce maintenance, sanitation, food preparation, laundry, and other labor costs.

In *Rhodes v. Chapman*, the court said:

Although job opportunities diminished marginally and limited work hours [does] not inflict pain, much less unnecessary and wanton pain, deprivations of this kind simply are not punishment. We would have to wrench the Eighth Amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution.

Inmates have no constitutional right to any particular job or to any job at all. Inmates may also be transferred into or out of work assignments. Transfers and termination of work assignment may be done without due process, if done for administrative, as well as disciplinary, reasons. Since inmates have no protected liberty interest, the discretion for establishing and setting policies for inmate work programs resides with jail officials.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing inmate work programs and assignments and include the elements of this standard.

I-402 Pretrial Detainees. Pretrial detainees may be allowed to work in the jail, but should not be assigned to work involuntarily. However, pretrial detainees must be required to perform general housekeeping duties such as cleaning their individual living areas. Policies and procedures should—

- a. allow pretrial detainees to work voluntarily as inmate workers or perform other work assignments;**
- b. prohibit involuntary assignment of pretrial detainees to jail labor; and**
- c. require pretrial detainees to perform routine housekeeping duties (such as cleaning individual living areas).**

Rationale. Involuntary servitude is prohibited by the Thirteenth Amendment to the U.S. Constitution, except as a punishment for convicted inmates. Forcing an inmate to work may be considered punishment for purposes of the Fourteenth Amendment. Since pretrial detainees have not been convicted, they cannot be punished. The prohibition against punishment includes involuntary jail work assignments. The courts have recognized that

inmates can be required to perform housekeeping functions, such as cleaning their living area.² Since inmates cannot expect free housekeeping services in their homes in the community, they should not expect such services while incarcerated in jail.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing work assignments by pretrial detainees.

I-403

Convicted Inmates. The jail should have policies and procedures governing work assignments for convicted inmates, which can include jail work projects, prison works projects, and general housekeeping duties such as cleaning their individual living areas. Policies and procedures should—

- a. require a cleaning and sanitation schedule be developed for working convicted inmates;
- b. assign convicted inmates to daily functions, such as food service, laundry, and cleaning;
- c. require all convicted inmates whose classification permits to be delegated to work assignments; and
- d. require convicted inmates to perform routine housekeeping duties.

Rationale. Sentences given to convicted inmates allow them to be assigned to work projects in addition to general housekeeping. Jail labor is consistent with the punishment aspect of sentences for conviction of criminal violations.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that govern work assignments for convicted inmates.

I-404

Compensation for Inmates. The sheriff or warden must determine what, if any, wages or other compensation may be provided for working inmates. Policies and procedures should—

- a. govern wages or benefits for working inmates;
- b. state what, if any, additional benefits will accrue to inmate workers; and
- c. specify circumstances that will warrant such benefits.

Rationale. Inmates should know whether compensation will be provided for labor and, if so, what that compensation will be. Compensation or benefits that may accrue to working inmates include but are not limited to—

- a. work credits;
- b. wages; or
- c. extra privileges.

If wages are given, deductions may be made from those wages for lawful purposes. Jails may permit expanded privileges for inmate workers (such as additional recreation or later evening lock down).

Courts may also decree that the inmate not be compensated or benefit given for work performed in custody.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for determining compensation (if any) and other benefits for inmate workers.

I-405 **Work Credit. Policies and procedures should establish if any credit for time off a sentence will be given to sentenced inmates who engage in any work either inside or outside the facility. Jail officials must determine which work programs are eligible to earn work credits and the amount of credit that an inmate may earn. The amount of time given must comply with ORS 169.120 and applicable court orders.**

Rationale. Giving inmates time credit for work can serve as an incentive for inmates to perform productive and quality work. The community and facility can benefit from the low cost labor that inmates provide. Reduced sentences brought about from work credits can free up jail beds needed for other inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for determining work credit for inmates participating in a work program.

I-406 **Inmate Worker Safety. Jail officials must make reasonable efforts to provide a safe work environment for inmates. Policies and procedures should—**

- a. govern their safety;
- b. make a reasonable effort to provide them safe working conditions; and
- c. ensure that jail officials are not deliberately indifferent to their safety.

Rationale. Inmates are committed to the care of jail officials. Jail officials should exercise reasonable care to protect inmate safety. "When the State, by the affirmative exercise of its power, so restrains an individual's liberty that it renders the person unable to care for himself or herself, and at the same time fails to provide for the person's basic human needs—e.g., . . . reasonable safety . . . transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." To prevail in an Eighth Amendment claim, plaintiffs will have to demonstrate that jail officials were deliberately indifferent to the safety and well-being of inmates.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that make a reasonable effort to ensure inmate worker safety.

I-407 **Supervision. Jail policies and procedures should address supervision requirements for inmate workers. Working inmates should be supervised by staff when they are involved in work.**

Rationale. Working inmates should be carefully supervised to reasonably ensure safety and security. Close supervision is important to—

- a. facilitate safety;
- b. prevent escape;
- c. deter contraband smuggling;
- d. discourage inmate-on-inmate violence; and
- e. deter other improper activities.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that address supervision requirements of inmates involved in work projects.

I-408 **Violations of Work-Release Agreement. If an inmate violates his or her work-release agreement or violates jail rules, jail policies and procedures should—**

- a. govern responses to rule violations by work-release inmates;

- b. require a jail disciplinary process for allegations of inmate misconduct; and
- c. ensure notification of the appropriate authority of the findings of fact and any sanctions ordered by jail officials.

Rationale. A jail disciplinary process is appropriate, because the jail can discipline the inmate for violations of its administrative regulations. Notifying the appropriate authority of the findings of the jail's disciplinary hearing may assist the appropriate authority in determining the appropriate action.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for inmate work-release agreement or rules violations.

I-409

Access to Services. If a work release program exists within the jail, policies and procedures must address access to jail services, except that—

- a. recreation need not be supplied to inmates who are released from the jail each week;
- b. visiting is not required for inmates who are released from the jail each week, if during release they are not prohibited from visiting family members; and
- c. other non-essential services need not be accessible to inmates while in the jail if they have adequate access to those services during periods of time when they are on work release.

Rationale. The requirement to provide services to inmates is based on the inability of inmates to obtain those services on their own while incarcerated. Depending on the conditions applied to an inmate's work release agreement, the inmate may be able to access many of those services while outside the facility, or attain the benefit in question as a direct result of release (such as exercise).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate access to services for work release inmates within the jail.

500

ACCESS TO RELIGIOUS SERVICES

I-501

Opportunity to Exercise Religion. The jail must have policies and procedures that provide inmates the opportunity to exercise religion, subject to the limitations imposed by their incarceration and compelling governmental interest.

Rationale. An inmate's exercise of religion is protected by both the 1st Amendment to the US Constitution and by federal statute – the Religious Land Use and Institutionalized Persons Act (RLUIPA) (42 USC § 2000 et seq.) RLUIPA provides that “[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability,” unless the government demonstrates that the burden is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that . . . interest.”

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide the reasonable opportunity to exercise religion. The exercise of religion should only be restricted where compelling governmental interests exist, and the jail must use the least restrictive means to protect that governmental interest.

ORS 169.076(13)

I-502

Regulating Inmate Access. The jail must have policies and procedures that allow inmates regulated access to—

- a. clergy;
- b. religious services or other opportunity for worship;
- c. religious reading material
- d. other religious materials necessary for the practice of the inmate's religion that do not impose a threat to institutional safety and security (examples might include allowing a Jewish person to wear a Yarmulke, allowing a Muslim female to wear a Hijab, allowing a Native American inmate to possess a medicine bag or eagle feather, or allowing a person who practices Islam to carry a picture of their Kirpan with them at all times.

Rationale. To meet constitutional requirements, jail officials must allow inmates religious practices unless compelling justification for regulation exists.

- a. Access to clergy is important to religious practice. Inmates obviously cannot go to the clergy, so some accommodation must be made to permit the clergy to visit inmates. Access to clergy can be regulated. Courts have held that—
 - 1. failure to provide a minister for each religious sect does not violate the Constitution;
 - 2. requiring the presence of outside clergy before allowing congregational services is permitted; and
 - 3. facilities do not have to grant access to clergy who have been convicted of felonies.
- b. Jail officials must provide an opportunity for religious worship. Multipurpose rooms, classrooms, recreation areas, individual cells and other such spaces may be used to accommodate religious services.

Jail officials should regulate the access and may deny congregational services to inmates if there is a compelling reason to do so to protect security, safety, classification, and other legitimate penological interests. Justification for denying access to congregational services available to the general inmate population include, but are not limited to the following:

- a. inmates in disciplinary isolation;
- b. inmates in administrative segregation;
- c. situations in which institutional security is threatened;
- d. implementing classification requirements; and
- e. inmates who have a history of disruptive activity.

Inmates should be allowed to receive religious materials unless—

- a. there is a compelling interest based on safety, security, or rehabilitative or other penological needs; or
- b. an inmate is attempting to receive a hard-bound Bible, Quran, Book of Mormon, or other religious book from a source other than the publisher or other source permitted under the publisher-only rule.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that restrict the rights of inmates to practice their religion only when there is a compelling governmental interest and the restriction is done in the least restrictive way possible.

I-503 **Religious Diets. The jail must have policies and procedures that provide for reasonable accommodation for an inmate to meet the basic tenets of the inmate’s religious dietary principles. Inmates should be able to request religious diets.**

Rationale. Inmates are entitled by the Eighth Amendment to nutritious food, and by the First Amendment to the free exercise of religion. Courts have ruled that jail officials should make reasonable accommodations to inmates’ religious dietary requirements.¹

Inmates should not be permitted to dictate specific menu items; however, jail officials should develop, and maintain on file until needed, special pork-free and vegetarian diets. There are many protein sources other than pork or other meat, such as peanut butter, legumes, eggs, cheese, and soy products).

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for accommodating inmates who request special religious diets.

I-504 **Hair Length and Grooming. The jail should have policies and procedures that provide for reasonable accommodation for an inmate to meet the basic tenets for hair length and grooming required by the inmate’s religion unless there is a compelling governmental interest to require otherwise. Restrictions must be imposed in the least restrictive manner.**

Rationale. An inmate’s exercise of religion is protected by both the First Amendment to the US Constitution and by federal statute – the Religious Land Use and Institutionalized Persons Act (RLUIPA) (42 USC § 2000 et seq.) RLUIPA provides that “[n]o government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability,” unless the government demonstrates that the burden is “in furtherance of a compelling government interest” and is “the least restrictive means of furthering that . . . interest.”¹

Compliance. Compliance with this standard can be achieved by adopting policies and procedures governing reasonable accommodation for inmate hair length and grooming standards for religious purposes. Compliance with this standard can be achieved by adopting policies and procedures that provide the reasonable opportunity for inmates to meet the basic tenets for hair length and grooming standards for religious purposes. Restrictions on hair or grooming should only be in place where compelling governmental interest exists, and the jail must use the least restrictive means to protect that governmental interest.

600 ***VOLUNTEERS AND COMMUNITY RESOURCES***

I-601 **Utilizing Community Resources. Jail officials should have policies and procedures that regulate the use of available community resources to provide services and programs for inmates. Jail officials should consider the use of volunteers, student interns, clergy, community based programs, contract providers, and other community resources to—**

- a. provide otherwise unavailable services and programs to inmates and the jail operation; and
- b. reduce the cost of operating the jail.

Rationale. Jail budgets are rarely adequate to meet operational and service programs for inmates. Community resources may be available to the jail upon request. Many students, retired people, and professionals may volunteer to provide or assist in providing services and programs. These resources, if properly managed to protect facility security and

operational integrity, can provide a substantial benefit to the jail. Money saved by utilizing existing community resources can be used for other operational needs.

There are many services and programs, some required and others not, that jail officials may determine to be worthwhile for inmates and of benefit to the jail operation for which the jail budget cannot provide. One means of providing such services and programs is to look to the community for support and assistance. There are many beneficial programs and services that are not constitutionally required,¹ and, thus, should not receive funding at the expense of those things required by law. Volunteers and other community-based resources may offer jail officials a means of providing such services and programs at little or no cost to the jail budget.

There are also functions that clearly further rights guaranteed to inmates by constitutions and laws of the United States and/or State of Oregon that can best be provided by seeking volunteers and other community resources. Such services and programs should include, but not be limited to—

- a. mental health services;
- b. medical services;
- c. religious services;
- d. substance abuse, sex abuse, or other rehabilitation treatment;
- e. legal assistance for inmates;
- f. library and leisure recreation
- g. exercise; and
- h. inmate educational needs

Compliance. Compliance with this standard can be achieved by adopting policies and procedures for services and programs that can be provided with the aid of volunteers or other community based providers.

I-602

Working Arrangements. Volunteers and other community-based service or program providers must perform at the pleasure of those responsible for the operation and management of the jail and must be carefully supervised and regulated. Policies and procedures should

- a. supervision and regulation of volunteers and other providers; and
- b. termination of access to those persons who by word or action demonstrate an unwillingness or inability to fully obey the rule and policy requirements of the jail.

what, if any, funding or other compensation will be provided.

Rationale. The services rendered by volunteers and, other community-based providers are potentially of substantial benefit to the jail operation. There are, however, potential difficulties associated with allowing persons other than staff to work inside the jail facility. Volunteers and other community providers—

- a. have not had the benefit of corrections pre-service or in-service training;
- b. may see the jail operation through the narrow view of their own mission in the jail, often viewing necessary jail safety and security regulations as unreasonable impediments to service delivery and unfair restrictions of the human rights of inmates;

- c. are vulnerable to being manipulated by inmates, even to the extent of violating rules and policy requirements; and
- d. may engage in actions that they deem of minor consequence, but that will have a substantially adverse affect on safety, security, or other legitimate facility interests.

Careful supervision and control of providers can greatly minimize the potential problems associated with their involvement in the facility. Providers who cannot support and adhere to rules become a liability to the security and safety of the facility.

Written policies should clearly establish that volunteers enjoy no protected interest in working inside the facility. Volunteers should be notified that their access to the jail can be terminated for any reason or no reason at all.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that regulate access, termination, and compensation of volunteers and community-based resource providers.

I-603

Qualifications and Screening. Jail officials must have policies and procedures regulating qualifications for volunteers and other non-staff providers. Jail officials must screen candidates before they can be permitted to work in the jail facility. As a part of the minimum qualifications, persons should ordinarily be rejected if—

- a. a relative or close friend is incarcerated in the jail;
- b. there is reason to believe that the candidate—
 - 1. not obey the policy and rule requirements of the jail;
 - 2. be vulnerable to intimidation or manipulation; or
 - 3. for philosophical, moral, or other reasons have difficulty strictly supporting and following security requirements; and
- c. other justifications that may exist related to the legitimate interests of the jail operation.

Rationale. Just as staff members are screened prior to hiring, volunteers should also be screened before being allowed access to the facility.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that define the minimum qualifications and background requirements for persons to work as volunteers or to otherwise provide services inside the jail.

I-604

Rules and Orientation. The jail must provide rules, policies, and orientation for volunteers and other outside providers prior to allowing them to function in the jail. Rules and policies should include strict requirements concerning disclosure of information learned because of working in the jail facility.

Rationale. Volunteers and other outside providers, no matter how well motivated and diligent, will not be able to avoid violating rules and policy requirements unless they have been provided information about those requirements.

Unauthorized disclosure or discussion of information obtained from jail records or as a result of observations and discussions may—

- a. undermine jail safety or security;
- b. violate protected privacy interests;
- c. undermine community confidence in the jail operation;

- d. have a disruptive effect on the jail operation; and
- e. result in spreading of inaccurate or misleading information as a result of the limited knowledge and experience of the person communicating the information.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that provide volunteers and other outside providers access to policies and procedures and rules, and an orientation session to ensure that there is adequate understanding of jail requirements.

I-605

Regulation of Volunteers and Other Providers. The jail must have policies and procedures that regulate the movement and actions of volunteers and other providers and their access to such things as information, inmates, and facilities.

Rationale. It is necessary to carefully define and restrict volunteers and other providers to further the jail's legitimate security, safety, and other legitimate interests. Volunteers and other providers are given access to carry out specific functions and should be restricted to those limited functions.

Compliance. Compliance with this standard can be achieved by adopting policies and procedures that define the limits of the access, movement, and actions of volunteers and other providers while involved with jail functions.

Appendix 1: Jail Inspections

Introduction and General Information

The OSSA Jail Standards (OJS) provide nonbinding guidelines, voluntarily adopted by the Oregon State Sheriff's Association (OSSA) as a means of improving the operation and management of Oregon jails and reinforcing and enhancing staff professionalism. The procedures for inspecting jails for compliance with the standards are set forth in this appendix.

Inspection Costs and Schedules

The services provided through the inspection process provide for more efficient and safe operation of local jail systems. This process provides an opportunity for exchanges of model practices and procedures, an opportunity for training members of inspection teams, and an enhancement to the professionalism of the Oregon State Sheriff's Association. All involved benefit, so the cost of the inspections are shared as follows:

- a. Agencies being inspected are responsible for providing copies of materials requested to assist in the inspection process and for providing logistical support.
- b. The department of an inspection team member pays the team member's per diem and travel costs.

Each year at a regular business meeting, the Oregon State Jail Command Council membership will appoint an inspection coordinator. This can include extending the current coordinator for another one-year term or appointing a new person. The designated inspection coordinator will be responsible for scheduling the inspections and coordinating the inspection team assignments and training.

Self-Inspections

Jails are formally inspected for compliance once every two years. A jail must do one informal self-inspection in the off-year between formal inspections; it should occur no more than one year prior to the next planned formal inspection. The Jail Commander considers that doing an informal self-inspection somewhere in the middle of the time between formal inspections allows for a more consistent check on the system status and facility health. A jail may also conduct additional informal self-inspections at any time. All self-inspections should be documented on the individual OSSA Jail Standard inspection record in each standard file.

STANDARDS THAT ARE NOT APPLICABLE TO A FACILITY

Exceptions. A standard may be deemed an "exception" for an agency that does not provide a given service or function.

- a. the standard is clearly not applicable to a particular facility; for example, standard F2-C02 will be an exception for all agencies that have kitchen facilities;
- b. the county elects to not provide a particular program or service and the program is not required by law; or
- c. the service is provided by a separate department or agency that is not under the control of the Sheriff or Jail Commander; for example, a county-operated community corrections center or work release facility;

NOTE: When contracting services from a private vendor, the Jail Commander is still responsible for ensuring services provided are in compliance with the OSSA Jail Standards.

When an agency identifies a standard as an exception, a staff member should check the appropriate box on the inspection record and provide a brief explanation. They can also include a document if appropriate, such as a copy of an article from a collective bargaining agreement.

Exceptions will be reviewed by the inspection team leader and will not be included in the total number of standards when calculating the jail's compliance rate. For instance, an agency with one or more exceptions may still receive an overall inspection rating of 100% if all *applicable* standards are in full compliance.

Variations

Variations. A variance is an exception or exemption from complying with an OSSA Jail Standard. Variations are appropriate when—

- the standard is being met effectively through an alternative method that is substantially different than the compliance definition identified in the standard; or
- the agency cannot comply with the standard because of a court order (usually a consent decree) or a collective bargaining agreement that specifically requires procedures outside of OSSA Jail Standards.

Requests for Variance. A request for variance must be submitted in writing on the **Variance Request** form to the OSJCC Board via e-mail. (See page 190 for a copy of the form.) In making a variance request the requestor needs to—

- identify of the specific standard by number and title for which the request is being made;
- describe why the variance is needed;
- include specific documentation that includes reasons, rationale behind the request; and
- make the request at least 90 days in advance of the next formal onsite inspection.

The OSJCC will respond to the agency within 30 days with a copy to the Oregon State Sheriff's Association. If a variance is approved, it will remain in effect unless and until the situation is impacted by a change in law, standard, facility design, or factor with a bearing on the issue.

Standards with approved variances will not be rated by the inspection team, and will not be included in the total number of standards when calculating the jail's compliance rate. For instance, an agency with one or more variances may still receive an overall inspection rating of 100% if all other standards are in full compliance. (The same is true for a combination of approved variances and standards deemed not applicable.)

Variance Appeals. If an agency disagrees with the OSSA determination on a variance, they may appeal to the OSSA Commission within 30 days of the OSJCC final decision.

Documenting Compliance

Each jail commander is responsible for ensuring a file containing supporting documentation is prepared on each jail standard. Supporting documents may include, but are not limited to, policies and procedures, post orders, memoranda or electronic mail, variances, notes to file that compliance was observed, photos, and other documents. No one specific form of documentation or proof of compliance is required; for instance, although photos may be one way to show compliance, an agency is never required to supply photos over another type of proof. Supporting documents for a standard must be assembled in a single file. See appendix 2 for instructions on file setup.

Findings

Jail inspectors will rate each applicable jail standard with one of three findings: full compliance, partial compliance, or noncompliant. Variances and standards deemed not applicable will be reviewed but not rated, and will not be included in the total number of standards when calculating the jail's compliance rate. For instance, an agency with a variance and one or more standards deemed not applicable, may still receive an overall inspection rating of 100% if all applicable standards are in full compliance.

Full Compliance Finding. Full compliance must be established if all of the following exist:

- a. If required by the standard, written policies and procedures or other written directive that the agency is required to follow. Examples could include OAR, ORS, county policies that apply to the facility, local ordinances, etc.
- b. Evidence that jail staff are following policies and procedures or other standard-mandated directives. The inspector may confirm compliance by reviewing supporting documentation, interview of personnel, or direct observation. If the contents of a file do not fully demonstrate compliance, inspectors are obligated to take steps to attempt to verify compliance through interviews, observation, or by requesting additional information from the agency. Additional efforts by the inspector will be noted on the inspection sheet; and
- c. Confirmation of the agency's self-inspection no more than one year before the planned formal inspection. For example, if an agency performs self-inspection in January and its formal inspection is planned for December, they will not have to do another self-inspection if the formal inspection is delayed a month or two for circumstances beyond the agency's control.

Partial Compliance Finding. Partial compliance for a standard must be established when the inspector finds that—

- a. the practice of the facility complies with the standard but the practice is not supported through written policies and procedures (or other standard-authorized directive), or;
- b. a draft policy or temporary directive exists, and the practice in the facility is consistent with the draft policy or temporary directive; or
- c. the agency substantially complies with a standard but is missing one or more of the minor or technical elements required for full compliance.

Noncompliance Finding. Inspectors must find a standard noncompliant when—

- a. policies and practices related to the standard are missing, or
- b. policies and procedures are in place for the standard but the inspector is unable to verify the agency's practice complies with them.
- c. practice in the facility is different than the written policies and procedures or other directive.

Inspection Activities

Inspection Preparation. The following preparatory activities must be followed to assist the efficiency of a formal inspection:

- a. The inspection team leader may use the **Notice of Jail Inspection** form letter or a similar notice to confirm with the sheriff and jail commander the specific date and time for the next formal on-site inspection. The notice should also include a reminder to the agency to request new variances right away, if needed, and the applicable deadline. (See page 193 for a sample copy of the form letter.) The team leader must send this notice at least 90 days before the inspection date.

- b. The jail commander of the facility to be inspected will—
 - 1. send the last formal report, which should include the Agency Background Report from the last formal onsite inspection; and
 - 2. provide a new **Agency Background Report** to the inspection team leader before the inspection.
- c. Shortly before the inspection, the inspection team leader is responsible for—
 - 1. assigning specific sections of the standards to each member of the inspection team in the manner he or she sees fit, preferably at least a few days before the inspection;
 - 2. providing a Compliance Summary List for each inspector; and
 - 3. reviewing and providing a copy of the agency's most recent OJSA Jail Compliance Council statistics to the inspection team.

Inspection Logistics. The inspection team leader and the jail commander are responsible for logistical arrangements necessary for an efficient inspection process. A copy of the policies and procedures manual and inmate manual should be made accessible to the inspection team leader at the start of the inspection.

Formal Inspection Communication. The on-site, formal inspection is intended to have a very open line of communication between the inspection team, the sheriff, jail commander and the facility staff. This approach will help eliminate many of the concerns commonly associated with a jail inspection. All communication should allow for the exchange of information and questions that normally arise during the process.

Introductory Meeting. The inspection team leader is responsible for coordinating an initial meeting between the inspection team and designated personnel from the jail being inspected. This meeting should include all members of the inspection team, the sheriff, jail commander, and other persons as directed by the sheriff.

Preliminary Walk-Through. Inspection team members must conduct a thorough preliminary walk-through of the jail. Inspection team members should be familiar with facility protocols for moving from one section of the facility to another. Escort requirements, staff availability, and general facility familiarization should be considered.

Compliance Verification. At the start of the inspection, all standard files must be fully ready for inspection with no additional documentation needed.

Members of the inspection team must review the jail standard files, including the agency self-inspection document, policies and procedures, and documentation that verifies practices, to make a compliance determination.

Jail inspectors will rate each applicable jail standard with one of three findings: full compliance, partial compliance, or non-compliance. While inspectors must review the agency's files, when there is a question of compliance, inspectors should also request to view operations, interview staff, or otherwise seek to more fully understand current operations. This will help ensure an accurate inspection and allow the team to give more meaningful feedback to the agency during the exit interview.

It is the team leader's responsibility to personally review all standards in non-compliance or partial compliance, and to allow the inspector time to see clarification from jail staff to ensure a proper understanding of agency operations. As partial or non-compliance issues are identified, the team leader or an inspector should brief the sheriff or jail commander so there are no surprises during the exit interview.

The team leader will also review the agency's files for any standards with an approved variance or those deemed "not applicable". The purpose of the review is to simply verify and document the standard's status upon formal inspection.

Exit Conference. The inspection team leader is responsible for coordinating the exit conference with the sheriff, jail commander, the inspection team members, and other staff members as directed by the sheriff. The conference will include a brief verbal report outlining the findings of the team. The team member responsible for each section of the review should report on their specific section. A summary of post-inspection activities should follow.

Inspection Report

Report Preparation. Following completion of the inspection, the inspection team leader is responsible for completing the final formal report. The final report is due no later than 30 days after the formal on-site inspection. The inspection coordinator will provide each inspection team leader with a sample inspection report. The report must be professionally prepared and include the following:

- a. Section Compliance Summary List for each section of the jail standards including comments from the jail inspectors.
- b. Copies of other applicable documents.

Report Distribution. The inspection team leader must ensure the final report is completed and properly distributed as follows:

- a. Forward the original report to the sheriff of the county inspected.
- b. Send one copy of the report to the inspection coordinator.
- c. Send one copy of the report and all original inspection sheets to the Washington County Sheriff's Office to scan and send as an electronic document to OSSA. This allows OSSA to save space and only store current hard copy reports. Mail to: Washington County Sheriff's Office, Attention: Sheriff Pat Garrett, 215 SW Adams MS-32, Hillsboro, OR 97123.

Appeals and Grievances

Appeals. An appeal is a formal challenge to the findings of noncompliance or partial compliance. Appeals should be submitted to the OSSA as follows:

- a. The appeal must be in writing and must be submitted or approved by the sheriff of the jail inspected.
- b. The appeal must specifically identify the standard by title and number and include an explanation of why the findings are being challenged.
- c. The Executive Board of the OSSA will complete the initial review of the appeal at its next regularly scheduled meeting.
- d. The Executive Board may, at its discretion, rule on the appeal immediately. If the Executive Board members think there is a need for further investigation, it may refer the appeal to a person of its choosing for a technical review or investigation before ruling on the appeal. OJS inspection coordinators may be used for this process.
- e. Investigative or technical recommendation reports should be completed and returned to the president of the OSSA Executive Board within a reasonable amount of time. Normally, no longer than 30 days.
- f. The president of the Executive Board will forward the decision of the Executive Board to the appealing sheriff within 30 days of the decision.

- g. The president of the OSSA, in consultation with the appealing sheriff, may determine that an answer to the appeal question must be answered in an expedited fashion. If so, the Executive Board may meet in special session and or telephonically to answer the appeal.
- h. In all cases, the Executive Board of the OSSA must make the final decision regarding appeals.

Grievances. A grievance is a formal complaint regarding the inspection process. If the sheriff of the county being inspected has an issue with the manner in which an inspection was conducted, the selection of inspectors, the conduct of the inspectors, or issues related to the inspection process a grievance should be filed in the following manner:

- a. Grievances must be made in writing and filed with the president of the OSSA.
- b. OSSA will process grievances in the same manner as identified in the appeals process.

Inspection Forms. To provide consistency to the reporting process, only those forms included with *OSSA Jail Standards* or provided by the inspection coordinator should be used. The president of the OSSA Jail Command Council may direct the inspection coordinator to create the reports and forms as necessary.

APPENDIX 2: OJS FILE SETUP

Folder Setup

Each OSSA Jail Standard (OJS) must have its own folder containing inspection and compliance documents that are setup in an orderly fashion. Inspectors should, for most standards, be able to locate, read, and verify that the facility is compliant with a standard in a few minutes.

- Use one file folder per standard.
- Include the following documents in each folder:
 - * Copy of the OSSA Jail Standard Inspection Sheet with the respective standard (provided)
 - * Copy of any approved variance
 - * Compliance documents
 - * Copy of most recent self-inspection

Compliance Documents

Set up compliance documents in a way that presents a quick and easy road map for an inspector to review—show them what you want them to see! An inspector only has a couple minutes to review a folder to determine compliance with the standard.

- Compliance documents are only intended to verify compliance with standard at a given point. Files should be thin and containing clear, accurate, easy-to-understand links between OJS and facility policy and practice.
- Minimize contents. One or two well-tailored documents that clearly address the standard is sufficient for the file. For example, select one or two pages of a monthly report noting that they are samples and that all reports are available for review in the “XXX” file. Support documents must cover the current inspection period and have dated materials. Do not use support documents from the previous formal inspection unless they are still applicable.
- Place primary and secondary documents that show compliance with a standard in a logical order, but primary documents should come before secondary ones. (More on these documents is on the next page.)
- (Optional) Place tabs on the documents to help an inspector find documents quickly.
- Use a highlighter to highlight those sentences and paragraphs of documents that show compliance with the standard. Do not highlight large sections of policy; highlighting headings will suffice.
- For a standard that has subparagraphs (such as subparagraph a, b, and c), write the specific subparagraph letter of a standard in the margin by the highlighted area that applies

Primary Documents

POLICIES

- **Compliance with OJS may only require one policy.** If there is more than one policy that covers the same criteria, it is not necessary to include those policies in the file. You may simply note this fact on a secondary document or not mention it all.
- Make single-sided copies of the applicable policies.
- Highlight each paragraph or sentence of a policy that validates compliance.
- If an entire policy validates compliance, note that on the first page rather than highlighting the whole policy. Include the entire policy in the file.
- Place only the first page and the other pages of the policy that contain applicable compliance paragraphs or sentences in the folder. Example: pages 1, 3, and 4 of a 6-page policy.

OTHER POLICIES, MANUALS, CONTRACTS, REPORTS, OR PUBLICATIONS

- Make a copy of the title page or cover of the publication unless the document title appears on a copy of the page used for compliance. Highlight the document title.
- Follow the same guidance for selecting, assembling, and highlighting the applicable compliance pages and paragraphs after the title page that you use for policies.

Secondary Documents

- Secondary documents are such things as copies of completed forms, memos, logs, or reports; pictures; or interviews with staff that validate compliance with the standard. Do not put items in folders as secondary compliance documents unless they are paper or photographs. A memo that large items such as binders can be found at a certain location can suffice as documentation.
- Use a memo to explain such things as gaps in documentation, local authority or codes that differ from the standard, or other pertinent information. You may write the memo on a document or use a separate piece of letter-size paper.
- Highlight those parts of the document that apply to the standard.
- Do not put the original copy of any official document in a standard file because of differences in retention requirements.

APPENDIX 3: FORMS

Variance Request

Agency Background Report

Notice of Jail Inspection Sample Form Letter

Do Not Copy

Variance Request

Number and Title of Standard: _____

Requesting Agency: _____

Address: _____

Sheriff: _____ Jail Commander: _____

Contact E-Mail Address: _____ Contact Phone: _____

Reason:

Jail Command Council's Recommendation

President, OSJCC

Date

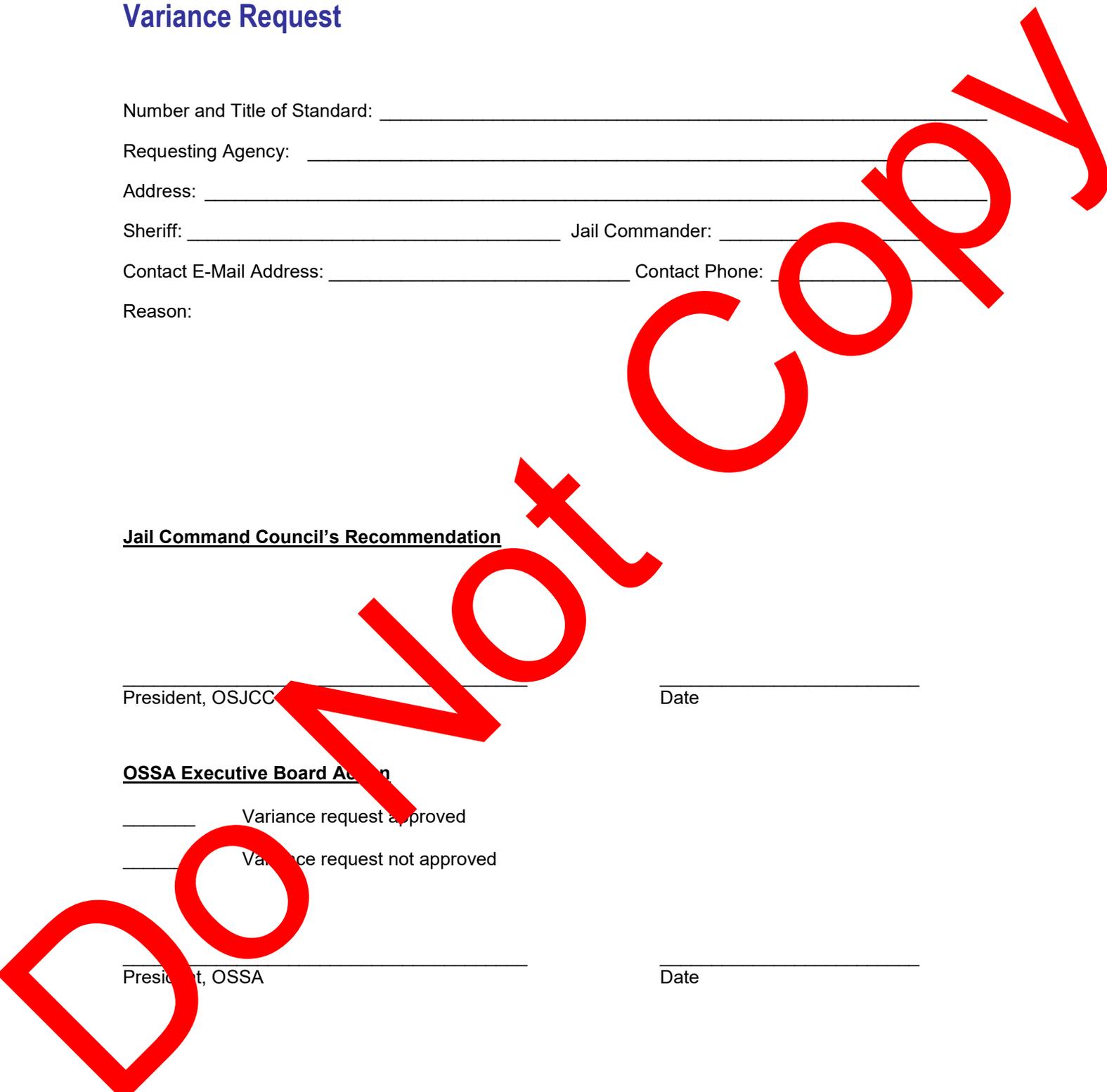
OSSA Executive Board Action

_____ Variance request approved

_____ Variance request not approved

President, OSSA

Date



Agency Background Report

Date of Report _____

FACILITY			
Operating Agency:			
Main Facility Construction Date:			
Facility Modifications and/or Additions:			
Facility Additions Construction Dates:			
Facility Design:			
BEDS			
Total Beds:		Male Dedicated:	
Beds In Use:		Female Dedicated:	
STAFFING LEVEL (Budgeted regular employees)			
Job Classification/Rank	Number	Work Assignment	
Jail Commander			
Lieutenant			
Sergeant			
Deputy			
Other rank:			
Civilian			
JAIL STATISTICS (Since last formal inspection)		OUTSIDE AGENCY INSPECTIONS (Most recent)	
Category	Number	Agency	Date
Grievances		OSSA	
Suicide Attempts		OSHA	
Suicides		Dept. Of Health	
Facility Escapes		Fire Inspection	
Attempted Facility Escapes		Grand Jury	
		Commissioners	
APPLICABLE STATE / FEDERAL DECREES			

[Notice of Jail Inspection Sample Form Letter]

[Date]

Sheriff [Full Name of Addressee]
[County Name] County Sheriff's Office
[Street Address]
[City, State, Zip]

Re: Notification of Jail Inspection

Dear Sheriff [Last Name]:

An Oregon State Sheriff's Association Inspection for compliance with the OSSA Jail Standards has been scheduled for the [County Name] County Jail on [Dates]. At this time, the inspection team members are:

[List each member by rank, full name, and county]

The inspection team will tour your facility in the morning of [Date] and begin the inspection of the standard files in the afternoon. We hope to be prepared to offer you and your command staff a verbal report regarding our findings in the mid-morning of [Date].

I will correspond directly with Jail Commander [Name] regarding details surrounding the inspection process, which includes sending me confirmation by [Date] that that your agency conducted a self-inspection of the OSSA Jail Standards. Your jail commander will also need to send me a completed OSSA Agency Background Report form [Or] please have your OSSA Agency Background Report form completed and prepared at the start of the inspection.

Please feel free to contact me with any questions or concerns at [Phone Number] or by e-mail at [E-mail Address].

Sincerely,

[Rank and Full Name]

cc: [Full Name], Jail Commander

DO NOT COPY

DO NOT COPY

Appendix 4: Jail Inspection Team Expectations

Inspection Team Leader Expectations

OJS Team Leaders were chosen because of their experience as leaders (most are jail commanders) combined with their experience in the inspection process. All serving in this position should have completed a Team Leader training/refresher. OSJCC will provide a yearly training/refresher, usually in January or February, for the team leaders and their identified assistant leaders to meet, review any changes, and ensure all are still inspecting to the same interpretation of the compliance requirements.

As Team Leader, remember, your team members may be very new to the process and may not have pre-date some of the newest edits and adjustments to the standards, thus it is your responsibility to ensure they are consistent with their ratings.

To aid the teams in a more consistent approach, the following expectations and responsibilities have been identified for **Team Leaders**.

Team Leaders will:

- Follow the schedule for inspections, usually delivered to OSJCC once every two years in December
- 60 to 90 days prior, schedule your inspection with the jail commander
- Notify your team and select a reasonable number of available members to assist
- Notify the agency sheriff of the dates and your scheduled members
- Notify or communicate with the DOC inspector to determine if they will attend the same dates
- Request directions and hotel information if needed from the jail commander and share with your team
- Set a pre-inspection planning meet (often dinner the evening prior)
 - Set expectations – uniform, professional, time to meet, importance of talking to the agency staff and even inmates
 - Review scoring criteria for full, partial and non-compliance
 - Discuss the purpose of the tour (should be to orient members to facility layout, not be the sole opportunity to inspect operations)
 - What to do if proof documents are missing
 - What to do if team members have questions
 - Use as opportunity to train your team on changes if the standards have been updated
- Lead the inspection
 - Attend the tour with members – ensure all know how to move about the facility
 - Encourage members to go back and look – observe operations
 - Display decisive leadership – it is not a democracy – Team Leaders are expected to know the most current versions of the standards and process and should be the final say
 - Questions you have as Team Leader – don't guess, make a call:
 - Liaison OJS Sheriff
 - OJS Coordinators
 - Other Team Leaders
 - Communicate with the agency command team throughout the inspection
 - Mentor your assistant Team Leader – consider having them be the first review of partial and non-complaint standards prior to you looking at those files
 - Have the agency make a copy of all standards inspection sheets
 - You keep originals for submission to OSSA via Washington County where the standards, and the end report, are scanned and forwarded electronically
 - Coordinate and control the debrief

- Any significant negative feedback should be shared early on with the facility commander – do not surprise them in the debrief
- Consider your team members strengths – and when appropriate – you deliver negative feedback in the debriefing
- Consider tasking each member with finding something positive and unique in an area they inspected to share at the debrief
- Write and deliver the final report to the agency in a timely manner
 - Copy the report to the OJS Coordinators (to ensure inspections are done as scheduled and that reports are completed timely)
- Sometime after the inspection, seek feedback from the agency about your team members and use the information to strengthen or praise your members

Jail Standards Team Member Expectations

As a member of an OJS inspection team, first and foremost remember that the purpose of this process is to mutually work toward improving all Oregon jails. You will be a guest in the facility you are helping to inspect, and you must be **professional and courteous** at all times. You are not there to nitpick or find fault – you are there to review operations and policy and compare that to the OJSA Jail Standards.

To aid the teams in a more consistent approach, the following expectations and responsibilities have been identified for **Team Members**.

Team Member responsibilities include:

- When notified of an upcoming inspection, respond as soon as you can
- If you consistently have trouble getting the time approved, let your Team Leader know – remember, you are expected to attend at least one inspection per year to stay current
- Be prepared
 - Know your standards and bring them with you
 - Make sure you are familiar with any updates
 - Be sure you have your complete uniform
- Attend the pre-planning meeting – with rare exception, these are mandatory
- Understand the compliance criteria and remember they are the OJSA approved OJSA Jail Standards, not what each inspector thinks individually should be the standard
- Use the tour to get your bearings in the facility, and expect to go back inside for further observations
- Get out of the work room – talk to staff, talk to inmates, look in closets and behind doors, BE CURIOUS, ask questions, learn about what they are doing
- Challenge yourself to find a program, or process, or form the agency uses that you can learn from
- Ask questions when you are not sure – don't guess
- Verify any partials or non-complaint standards with your Team Leader
- Remember that proofs used in your agency and the one you are inspecting may look totally different
 - Photo evidence in files, though often a valuable and wonderful way to show compliance, is **never** required
 - In most cases, forms should be filed out – names might be blacked out if referencing staff misconduct
- Accept the Team Leader's decisions on questions that arise. If you feel strongly that something was done inaccurately, you can always contact the Jail Standards Liaison Sheriff afterward. OJSA will always have contact information on the current sheriff serving in that capacity.
- Enjoy the process – this is an amazing chance to get out and see how other professionals do your job – learn from each other, and we all get better.