

Office of the Sheriff

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September 20, 2016

TO: Chief Deputy Rose
FROM: Lieutenant Bryan
RE: State of the Detention Center 2016

As the Jail Administrator, it is my responsibility to continue to assess jail operations, policies, practices and inmate management to ensure we are functioning within acceptable parameters.

In addition to the uncorrected issues from the 2015 jail report, there are currently three pressing areas of concern: inmate recreational opportunities, visitation, and PREA compliance.

1. Exercise

10A NCAC 14J .1004

After the fourteenth consecutive day of confinement, each inmate shall be provided opportunities for physical exercise at least three days weekly for a period of one hour each of the days. Physical exercise shall take place either in the confinement unit if it provides adequate space or in a separate area of the jail that provides adequate space. The opportunity for physical exercise shall be documented.

Due to the current physical limitations of this facility, inmates are only permitted the opportunity to exercise in the dayroom areas of their assigned housing units. The issue with compliance in this area is what is considered "adequate space." This can and has been interpreted by the courts as not only adequate square footage, but adequate as to conditions of that space.

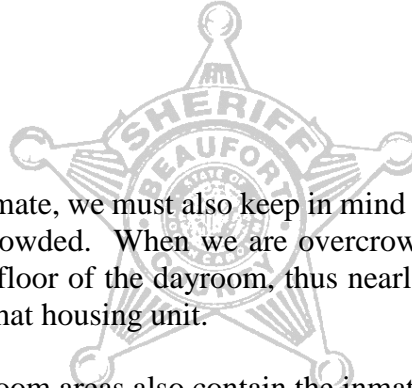
For the square footage, here are the measurements for three of the housing units:

B Block – 18 ft² for 5 inmates = 3.6ft² per inmate
F Block – 96 ft² for 16 inmates = 6.0 ft² per inmate
H Block – 84 ft² for 8 inmates = 10.5ft² per inmate

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While these figures are approximate, we must also keep in mind that they also reflect the best case scenario that we are not overcrowded. When we are overcrowded, the “overflow” inmates are provided a mat to sleep on the floor of the dayroom, thus nearly eliminating the opportunity for any exercise for any inmate in that housing unit.

As to the conditions, these dayroom areas also contain the inmate telephone, the showers, and the benches where inmates eat, write letters, play cards, watch tv, etc. And of course, these dayrooms are all inside as inmates have no opportunity for outside recreation. Thus, there is no fresh air or sunlight.

So, according to the North Carolina Administrative Code, it may first appear that we are in compliance as all inmates have an immediate and on-going opportunity for recreation/exercise in the housing units. However, it seems that our facility may be totally inadequate to meet separate constitutional standards and may violate 8th Amendment protection against cruel and unusual punishment (for convicted inmates) and the 5th and 14th Amendment protection of due process (for pre-trial inmates).

The U.S. District Court for the Western District of North Carolina found in favor of the inmate plaintiff in *Parnell v. Waldrep*, 511 F. Supp. 764. In this case, Inmate Parnell sued the Gaston County Sheriff’s Office claiming constitutional violations for conditions similar to those described for our facility in a previous paragraph. The court found that the jail did violate the due process rights of pre-trial detainees under the 5th and 14th Amendments and the 8th Amendment protection against cruel and unusual punishment for convicted inmates. Additionally, the courts have not allowed these unconstitutional conditions to exist because it would be financially burdensome to correct. In the *Parnell* case, the court ordered the defendant Sheriff to submit and implement an acceptable plan of correction within approximately 90 days.

This issue was also addressed by the NIC in their recent JJSA when they stated that “*Inmates currently have no access to indoor or outdoor recreation space, and the dayroom space is not sufficiently sized to accommodate meaningful physical exercise.*”

2. Visitation

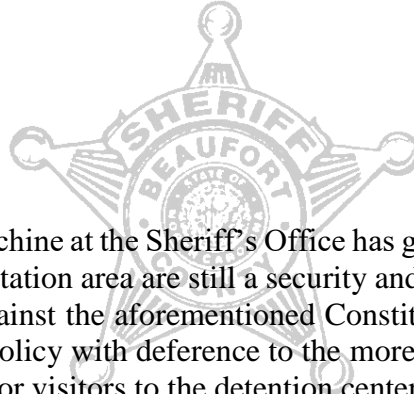
The 1st Amendment of the Constitution provides for the free association of persons. For the detention facility, this means the inmates have rights to visit with other people.

As a review of the 2015 jail report, “*The main lobby of the detention center is a congested place. All new arrestees are processed here, inmates going to or from court use this area to be handcuffed/shackled, civilians come here to be fingerprinted and those here for visitation pass through, including children.*” Additionally, we have inmate workers in this area, medical personnel, arresting officers, etc.

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The addition of a fingerprint machine at the Sheriff's Office has greatly reduced the civilian traffic. However, the jail lobby and visitation area are still a security and safety issue which has forced us to weigh security and safety against the aforementioned Constitutional concerns. As you know, we have written our visitation policy with deference to the more imminent concern of safety, and thus we have a total ban on minor visitors to the detention center.

While the Fourth Circuit Court of Appeals has not directly addressed the issue of limiting visitation, they have ruled in *Buie v. Jones*, 717 F.2d 925, 929, that "*the absolute prohibition on visitation by a detainee's minor children...is almost certainly unconstitutional.*" This was a case arising from the Cumberland County Detention Center and involved a pre-trial detainee who was incarcerated there for approximately 40 days prior to his commitment to prison.

3. PREA Compliance

On September 3, 2003, a federal law was enacted to address the problem of rape and sexual abuse in correctional facilities. The Prison Rape Elimination Act (PREA) applies to all correctional and detention facilities, including federal, state, and local jails, prisons, police lockups, private facilities, and immigration and detention facilities. It is recommended that a detention facility have a certified audit at least once every three years. The approximate cost of an audit is \$5,000 - \$10,000.

After the audit findings are released, there is a 180-day correction action period for all findings of "Does Not Meet Standards." There are 450 standards of compliance for PREA. We are currently in the process of developing a plan to address PREA standards and prepare for a PREA audit. We anticipate being able to comply with many of the standards as they apply to inmate communications, staff training and policy implementation. However, it is highly probable that we will never be able to achieve PREA compliance with the current jail facility. This non-compliance will result in negative consequences for the Sheriff's Office and the County.