

NEBRASKA

JAIL BULLETIN

OCTOBER 1997

NUMBER 137

The *Jail Bulletin* may be used as a supplement to your jail in-service training program. If officers study the material and complete the attached "open book" quiz, they may receive **one half hour of credit**. The bulletin and quiz may be reproduced for staff use as necessary. **We welcome any material you would like to contribute to the "Jail Bulletin"**.

CIVIL LIABILITIES, UNCONSTITUTIONAL JAILS AND PLANNING OF NEW INSTITUTIONS PART III

IV. UNCONSTITUTIONAL - JAIL FACILITIES

Jail Planning: "The Blind Leading the Blind"

Many new jails are planned by architects who have little or no knowledge of the constitutional requirements of jails. They build the jail just as they are instructed by the county commissioners. On the other hand, the county commissioners usually know little or nothing about constitutional requirements. They want punishment for the inmates-no frills, just the bare minimum.

The contents of the *Jail Bulletin* represent the views of the author(s) and do not necessarily reflect official views or policies of the Nebraska Crime Commission or the Nebraska Jail Standards Board

The county commissioners tell the architect, "Build us a no frills

jail.” Often the commissioners and the architect have little contact thereafter. The architect receives no guidance or constitutional standards. It is a case of “the blind leading the blind.” What is the result? The community may spend millions on an inadequate or unconstitutional jail, a brand-new jail that must be remodeled, rebuilt, or restaffed. This has happened in cities and counties all over the country, including Ada County, Idaho; and Harris County, Texas.

Reason for Unconstitutionality: “Cruel and Unusual Punishment”

The most common reason that the courts declare jail facilities unconstitutional is that the jail conditions impose “cruel and unusual punishment” on jail inmates. The imposition of cruel and unusual punishment is prohibited by the Eighth Amendment to the U.S. Constitution.

Formerly, the words “cruel and unusual punishment” referred mainly to physically barbarous punishment, such as branding, whipping, torture, dismemberment, etc. The words have taken on new meaning, however, drawing their meaning from “the evolving standards of decency that mark the progress of a maturing society.” *Wright v. McMann* (1967). In *Estelle V. Gamble* (1976), the Supreme Court stated that the Eighth Amendment embodies “broad and idealistic concepts of dignity, civilized standards, humanity, and decency.” Other lower courts have described the “cruel and unusual” concept using such words as:

- ! inhumane
- ! barbaric
- ! shocking to the conscience of a civilized person.

In determining whether jail conditions are cruel and unusual, a court does not look to any single deficiency, such as inadequate square footage. Rather, the court looks at the “totality of the circumstances”, i.e., the combination of all the deficiencies together.

In addition to the “cruel and unusual” punishment standard, other constitutional standards that apply to the jail facilities are:

- ! Pre-trial detainees cannot be punished (*Bell v. Wolfish* (1979))
- ! Right to reasonable protection from violence (*Withers v. Levine* (Ct. App. 1980))
- ! Right to adequate medical care (*Estelle v. Gamble* (1976))
- ! Rights to either consult an attorney or have law library access (*Bounds v. Smith* (1977))
- ! Right to worship (*Cruz v. Beto* (1972))

Unconstitutional Jail Conditions: Some Examples

The following physical plant conditions have been held unconstitutional, usually when found in combination with each other:

- ! Inadequate square footage, i.e., overcrowding
- ! Inadequate lighting and heating
- ! Lack of toilets and sinks in cells
- ! Fire code violations
- ! Inadequate ventilation systems.

NOTE: The Supreme Court has twice ruled that double bunking is **not**, by itself, unconstitutional. Bell v. Wolfish (1979); Rhodes v. Chapman (1981). However, there may well be some compelling administrative reasons that a county would want to construct a single cell facility. For example, reduced staffing, reduced violence, reduced staff stress, etc.

The following conditions which are indirectly related to the building design, have also been held unconstitutional:

- ! Failure to segregate violent inmates from non-violent inmates, regardless of status (i.e., pre-trial or convicted, felon or misdemeanor, etc.)
- ! Inadequate medical treatment or facilities. Estelle v. Gamble (1976). This includes the failure to segregate sick prisoners from other prisoners.
- ! Lack of exercise.
- ! Denial of right to worship
- ! Lack of facilities for attorney visits—sound proof rooms required.
- ! Strip searches in public view.

Generally speaking, the constitutionality of conditions varies with the length of an inmate's stay. The same conditions which an inmate could tolerate for three days might be intolerable for 30 days, 90 days or a year.

The prohibition of "cruel and unusual" punishment also applies to solitary or disciplinary confinement. Many courts have held unconstitutional the infamous "Chinese Hole", which typically has no toilet, is dark, filthy, and stinks, has no mattresses to sleep on, etc. See Finney v. Arkansas.

Conclusion

The purpose of this material has been to make you aware of the potential constitutional problems of a jail and the potential legal liability of county commissioners, architects, sheriffs or jailers from prisoner lawsuits resulting from those problems. County commissioners and other jail planners should be proactive—think prevention rather than cure. The best way to deal with prisoner lawsuits is to avoid them, by building new jails in accordance with clearly established constitutional standards.

CASE LIST

Bell v. Wolfish, 441 U.S. 520 (1979)
Billings v. Vernal City, C-77-0295 (D. Utah 1982)
Bounds v. Smith, 430 U.S. 817 (1984)
Brandon v. Holt, 105 S. Ct. 873 (1985)

City of Newport v. Fact Concerts Inc., 453 U.S. 247 (1981)
Cruz v. Beto, 405 U.S. 319 (1972)

Estelle v. Gamble, 429 U.S. 97 (1976)
Ex parte Pickens, 101 F. Supp. 285 (D. Alaska 1951)

Finney v. Arkansas Board of Corrections, 505 F. 2d 194 (8th Cir. 1974)

Hamilton v. Love, 328 F. supp. 1182 (E.D. Ark. 1971)
Harlow v. Fitzgerald, 457 U.S. 800 (1982)
Hays v. Jefferson County, 668 F. 2d 869 (6th Cir. 1982)
Hutto v. Finney, 437 U.S. 678 (1978)

Kentucky v. Graham, 53 U.S.L.W. 4966 (June 28, 1985)

Marek v. Chesny, 53 U.S.L.W. 4903 (June 27, 1985)
McClelland v. Facticeau, 610 F. 2d 693 (10th Cir. 1979)
McElveen v. County of Prince Williams 725 F. 2d 954 (4th Ctr. 1984)
McNamara v. Moody, 606 F. 2d 621 (5th Cir. 1979)
Monell v. Department of Social Services 436 U.S. 658 (1978)

Oklahoma City v. Tuttle, 105 S. Ct. 2427 (1985)
Owens v. Haas, 601 F. 2d 1242 (2nd Cir. 1979)

Price v. Johnston, 334 U.S. 266 (1948)
Pulliam v. Allen, 104 S. Ct. 1970 (1984)

Ramos v. Lamm, 485 F. Supp. 122 (D. Colo. 1979), 713 F. 2d 546 (10th Cir. 1983)

Rhodes v. Chapman, 452 U.S. 337 (1981)
Ruiz v. Estelle, 666 F. 2d 854, 679 F.2d 1115, 688 F. 2d 266 (5th Cir. 1982)
Rutherford v. Pitchess, 713 F. 2d 1416 (9th Cir. 1983)

Smith v. Wade, 103 S.Ct. 1625 (1983)

Williams v. Bennett, 689 F. 2d 1370 (11th Cir. 1982)
Withers v. Levine, 449 F. Supp. 473, (D.Md. 1978), app'd 615 F. 2d 158 (4th Circ. 1980)
Wolff v. McDonnell, 418 U.S. 539 (1974)
Wright v. McCann, 387 F. 2d 519 (2nd Cir. 1967)

Youngberg v. Romeo, 457 U.S. 307 (1982)

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QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in service training each year. The Jail Bulletin may be used to supplement in service training if an officer studies the bulletin, completes the quiz, and this process

is documented by the jail administrator for review during annual jail inspections.

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**SUBJECT: CIVIL LIABILITIES,
UNCONSTITUTIONAL JAILS AND
PLANNING OF NEW INSTITUTIONS
PART III**

NAME: _____

DATE: _____

1. Architects and county commissioners typically know a great deal about the constitutional requirements of jails. (circle correct answer)
 - a. True
 - b. False

2. The most common reason that the courts declare jail facilities unconstitutional is that the jail: (circle correct answer)
 - a. fails to provide an adequate exercise program
 - b. imposes cruel and unusual punishment on inmates
 - c. doesn't allow enough "out of cell" time
 - d. fails to meet square footage standards

3. The Supreme Court has ruled that double bunking a cell is by itself unconstitutional.
 - a. True
 - b. False

4. Failure to segregate violent inmates from non-violent inmates has been held to be unconstitutional.
 - a. True
 - b. False

5. In determining whether jail conditions are cruel and unusual, the Court considers the "totality of the circumstances".
 - a. True
 - b. False

6. List the five conditions when found in combination with each other have been held unconstitutional.

1. _____
2. _____
3. _____
4. _____
5. _____

CREDIT: One Half Hour credit for jail in service training requirement.

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ANSWER SHEET

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6. List the five conditions when found in combination with each other have been held unconstitutional.

1. Inadequate square footage - overcrowding _____

2. Inadequate lighting and heating _____

3. Lack of toilets and sinks in cells _____

4. Fire code violations _____

5. Inadequate ventilation _____

CREDIT: One Half Hour credit for jail in service training requirement.

Answer sheet should be retained by the Jail Administrator.