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The County Jail

by Patrice C. Roesler

THE COUNTIES' RESPONSIBILITY for jails derives from various sources, including the U.S. Constitution, the Federal courts, North Carolina state law, and agency regulations promulgated by the North Carolina Social Services Commission on behalf of the Jail and Detention Branch, Division of Facility Services, of the N.C. Department of Health and Human Services. While there is no specific statute that expressly requires a county to build or operate a jail, the requirement is strongly implied in G.S. 162-56, which states, in part, "Persons committed to the custody of the sheriff shall be confined in the facilities designated by law for such confinement and shall not be confined in any other place.…" An additional statutory reference, found in G.S. 153A-218, strengthens this implication by stating that the county board of commissioners is authorized to expend funds for construction and operation of a confinement facility: "A county may establish, acquire, erect, maintain, repair, and operate a local confinement facility and may for these purposes appropriate funds not otherwise limited as to use by law." The two statutes, when read together, point strongly to the expectation that there will be a local place for the housing and care of individuals being held in the custody of the sheriff and that it will be locally funded.

While the absence of a clear mandate to provide a jail might be a bit cumbersome, the statutes are perfectly clear in stating that the management and operation of the local confinement facility are the responsibility of the sheriff. G.S. 162-22 states, "The sheriff shall have the care and custody of the jail in his county, and shall be, or appoint, the keeper thereof." This clarity is helpful when taking into account the fact that two separately elected bodies, the sheriff and the board of county commissioners, both share some responsibility for providing for the care of inmates in the jails.

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Legislative Policy

Legislative policy clearly states that the intended uses of local confinement facilities are for the secure custody of inmates and protection of the community. G.S. 153A-216 establishes the policy of the General Assembly with respect to local confinement facilities and states that minimum standards should be provided to give guidance and assistance to local governments in planning, constructing, and maintaining confinement facilities. The statute goes on to acknowledge a state responsibility for helping develop programs that provide for the humane treatment of prisoners and contribute to rehabilitation of prisoners, and directs the state to provide inspection, consultation, technical assistance, and other appropriate services, such as training and employment requirements for those who work in the jails. Counties are also authorized to join with each other in providing a jail. G.S. 153A-219 authorizes counties to enter into interlocal agreements to establish, finance, and operate multicounty, or district, confinement facilities. Several counties have utilized this authority to create joint approaches to operating their jails. For example, in the northeast section of the state, Pasquotank, Perquimans, and Camden counties operate a regional jail authority. The statute provides that the administrator of this type of facility need not be a sheriff and confers the authority of law enforcement officers on the administrator and other custodial personnel of the facility. In the western part of the state, Catawba County and Burke County have a cooperative arrangement whereby Catawba shares bed space with Burke. Counties continue to explore these options as demand for bed space grows, as older facilities become obsolete, and as new facilities are being constructed.

Regulatory Oversight

To carry out its required statutory oversight, the N.C. Department of Health and Human Services, Jail and Detention Branch, adopts administrative rules that address minimum standards for the construction and operation of local confinement facilities. These standards address both construction requirements and operational requirements. For example, a minimum allowable square footage of space in cells is specified, as is the various materials allowed for furnishings, and the development and implementation of a jail operations manual. The standards allow local flexibility in choosing from multiple jail designs. Single cells, double cells, and dormitory/day room designs are all allowed. Most recent jail construction projects provide for multiple levels of housing security by utilizing some combination of all of these housing arrangements. This encourages the classification of inmates based on level of needed security, and provides a lower cost alternative for those inmates who require less supervision or security than others. There are also standards for satellite jails and work release facilities, although programming developments in recent years have decreased the demand for such types of facilities. (See section “Community Corrections Programs” later in this article.)

The department periodically reviews the local confinement facility standards to assure they are current and consistent with federal and state judicial rulings and with the principles of professional corrections management. Responsibility for enforcement of the standards lies with the Secretary of the Department of Health and Human Services, who has specific authority to require corrective action or to close a county jail if it is found to jeopardize the safe custody, health, or welfare of offenders housed there. This enforcement responsibility has been delegated to the Jail and Detention Branch of the department, which is required to inspect the jails at least twice per year for compliance with the standards. If the secretary orders corrective action or closure of a facility, the report of findings must be given to both the board of county commissioners and the sheriff, and also must be sent to the Senior Resident Superior Court judge in the county in which the facility is located. The board of commissioners must call a public hearing within twenty days of receipt of the report, and the appropriate jail inspector must attend to “advise and consult” regarding recommended actions. The governing body then has thirty days to either request a contested case hearing, begin corrective action, or close the facility.

One requirement included in the state’s standards for local confinement facilities is that each jail must have and use an operations manual. The operations manual must be developed locally, with the involvement of the sheriff and jail management staff. Specifically, the operations manual must address how the jail handles such issues as inmate classification, supervision, visitation rights, legal assistance, inmate discipline, food, religious activities, storage of drugs and weapons, and medical care. A template for a jail operations manual was developed cooperatively by the Institute of Government, the N.C. Sheriffs’ Association, and other organizations soon after the jail standards were enacted. The manual is designed so that it can be updated as needed when and if state or federal court rulings affect corrections or law enforcement practices.

The Jail Offender Population

Pretrial detainees are the predominant class of inmates housed in a county jail on any given day. All persons brought before the court who are unable to meet conditions of pretrial release, such as posting an appearance bond established by the court in initial hearings, must be placed in confinement until the conditions are met or until trial and sentencing. This population can be, and frequently is, as much as 60–70 percent of the offenders in the local jail. The state court system process has a tremendous impact on the jail population. The expediency with which first appearances are held, pretrial screening conducted (if available), and bonds set can affect how quickly pretrial offenders move through the jail.

Over thirty counties have pretrial screening programs in operation at the present time. Pretrial screening provides a mechanism for review and assessment of the level of risk that an offender poses either to abscond or to recommit offenses prior to his or her trial date. Pretrial screening programs recommend conditions of release for the court to impose on those who would otherwise have to be housed in the jail prior to trial and monitor released alleged offenders to assure compliance with those conditions. Effective pretrial screening programs reduce the pressure for jail beds and can help county officials manage overcrowded conditions. Pretrial screening is much less expensive than housing an offender, costing less than $10 per day per offender on average, compared to $48–$52 per day per offender to provide jail space. Many of the existing pretrial programs are funded with a combination of county funds and Criminal Justice Partnership Program (CJPP) funds. Statutory authority exists for some counties to use up to 50 percent of their CJPP allocations for this purpose. However, SL2005-276 (the 2005 state budget) reduces this allowable amount to 25 percent of the county's allocation as of July 2005. Effective July 1, 2006, CJPP funds may no longer be used to fund pretrial screening programs. It is presumed that, by that time, counties operating pretrial screening programs will have to decide whether to fund the programs with county funds or to close them.

Sentenced offenders serving sentences up to nintey days make up most of the remaining jail population. Many of these sentenced offenders have committed misdemeanor offenses, which are generally, but not always, the less violent property crimes; or they may have fewer prior convictions. The seriousness of the offense and the extent of criminal history are both factors that are used to determine the duration of an offender's sentence. The state reimburses the counties a fixed per diem rate to help offset the costs of housing this particular class of sentenced offenders. The state reimbursement amount is established in the state budget and is currently $18.50 per day (less than half the total cost of approximately $52 per offender per day). While structured sentencing guidelines enacted in October 1994 provide for various punishment options for these inmates (active, intermediate, and community-based punishments are allowed, depending on criminal history), other issues besides sentence length can have an impact on the number of inmates serving time in the jail. For example, if a person serving a period of probation violates conditions of release, he or she can be found in contempt of court and can be required to serve a thirty-day sentence in the jail, or alternatively, to have the original sentence reactivated, in the discretion of the supervising probation officer and the court.

Another jail population class of which the numbers are less predictable is sentenced offenders awaiting transfer to the state prison system. Once a person has been tried, convicted, and sentenced, if he or she is to serve time in the custody of the state Department of Correction (generally sentences of greater than ninety days), under G.S. 148-29, that department is responsible for transferring the prisoner from the county where he or she is held to the designated state prison. This transfer is provided by department-owned buses that move throughout the state on a fixed schedule picking up prisoners who have been adjudicated. In recent years, this transportation system has become a method by which the state can manage its own prison overcrowding. If prison beds are not available at the state level, the N.C. Department of Correction can delay the transportation of prisoners; however, when this happens, the state must pay the county a fixed per diem housing fee beginning on the 6th day after the state fails to discharge its duty to transport the adjudicated offender. The number of offenders in this jail population class vacillates as the state grapples with the demand for new prison construction. The increased demand for prison beds is predictable, since state prisoners now must serve the full length of their sentences under structured sentencing requirements, and is regularly reported to the appropriate bodies of the North Carolina General Assembly by the N.C. Sentencing and Policy Advisory Commission.

A small number of jail inmates may be federal prisoners. Some counties negotiate contracts with the U.S. Marshal Service to house federal prisoners under the U.S. Justice Department Cooperative Agreement Program (CAP). Under this program, the U.S. Marshal Service negotiates a cooperative agreement that establishes a mutually agreeable rate based on principles of cost finding established by the U.S. Office of Management and Budget. The counties receive reimbursement for this use of their beds at the rate established in the cooperative agreement. These contracts are typically long term and require that the contracted beds be held open pending potential federal need. Many counties use these contracts as a revenue stream to offset the cost of renovating or building and operating the jail.

Law enforcement officers have the authority to detain people in the jail if found intoxicated in a public place, if they need food or shelter, if there is no other facility available, and the person is not in need of immediate medical attention. Such a person can be held in the jail for no more than twenty-four hours or until he or she becomes sober, whichever comes first. If at any time during the twenty-four hours a responsible party requests release of the person, he may be released (G.S. 122C-303).

Community Corrections Programs

The term *community corrections* is generally used to refer to a multitude of programs designed to be operated locally in conjunction with the jails and prisons. Examples of such programs are pretrial release, community service work programs, day reporting centers, residential treatment facilities, community penalties programs, and other local alternatives to incarceration. These programs are intended to provide a combination of restitution to the community and/or victims and rehabilitation to the offender. Community corrections programs in North Carolina are typically funded through a variety of state, local, and sometimes private sources.

The earliest experience with a community corrections–type program in North Carolina began in 1983 with passage of G.S. 20-179, also known as the Safe Roads Act. A provision in this law requires that persons convicted of certain drunken driving offenses serve a designated number of hours of community service, donating their time to some required activity to improve their communities (G.S. 20-179.4). The legislation created the Community Services Work Program, which established state appointed coordinators who develop work arrangements with local public agencies for those offenders sentenced to the programs. Many of these individuals receive sentences that combine some number of hours of community service with fixed periods of incarceration in the county jail. An increased emphasis on community-based punishments derived from the implementation of structured sentencing in 1994. Under structured sentencing, priority for prison and jail beds is given to those offenders who have committed the most serious offenses or who have a longer history of criminal behavior. Community punishments, including community work service, can be used for all misdemeanor offenses and for some of the lower-level felony offenses. Community punishments can also be used in combination with intermediate punishments for the higher-level misdemeanor offenses and for many of the felony offenses. Other examples of community-based punishments include fines and restitution, supervised or unsupervised probation, and outpatient treatment programs.

The Criminal Justice Partnership Program (CJPP) is a community corrections program that was created as a part of structured sentencing. The purpose of this program is to provide state funding for development of intermediate punishments that are local alternatives to jail or prison for offenders whose crimes are less egregious or who have fewer prior convictions. The county board of commissioners decides whether to accept this source of state funds to design and operate local programs in consultation with the sheriff. To be successful, these local alternatives must have the support of the local law enforcement and judicial communities. Over eighty counties take advantage of the funds available through CJPP. Many counties have used their funds to create day reporting centers, which provide a place for probation officers to meet with their clients and which also provide on-site substance abuse treatment, education programs, and employment counseling for the offenders. The programs typically offered through CJPP offer a combination of control and rehabilitation, and serve offenders at a cost of less than $5 per day, compared to the $48–$52 per day cost of housing an offender in the jail.

Influence of the Courts

By far the most significant influence on county jails is exerted by the federal and state courts. As mentioned above, the adequacy of court facilities and personnel can vastly impact the ability of the sheriff to manage his or her jail population.

In the absence of any federal detention standards, various rulings of the federal courts have served to establish the preferred standards of decency that must be applied to guarantee the protections of the U.S. Constitution for those held in confinement. Many of the challenges alleging unconstitutionality of confinement conditions have to do with overcrowding. The federal courts have repeatedly used Eighth Amendment protections against cruel and unusual punishment and Fourteen Amendment protections against punishment without due process of law to consider whether conditions of confinement rise to a level of violation and therefore must be remediated. Additionally, Section 1983 of 42 U.S. Code establishes liability for failure to provide protection from the deprivation of any rights, privileges, or immunities secured by the U.S. Constitution and laws, and is increasingly used to bring challenges to jail conditions.

The Eighth Amendment reads as follows: "Excessive bail shall not be required nor excessive fines imposed, nor cruel nor unusual punishments inflicted." The courts have interpreted this statement to embody more than physically barbarous punishments. In a 1976 lawsuit related to medical care of an inmate, the U.S. Supreme Court drew attention to the importance of diligent attention to the medical care needs of prisoners. In a case on appeal from the Fifth Circuit Court of Appeals (*Estelle v. Gamble*, 429 U.S. 97 (1976), although the Circuit Court ruled in favor of the inmate when it stated that an inmate must rely on prison authorities to treat his medical needs, and if authorities fail to do so, the inmate's needs will not be met, the U.S. Supreme Court ruled that medical malpractice does not rise to an Eighth Amendment violation just because the victim is a prisoner. The court went on the say that the Eighth Amendment "embodies broad and idealistic concepts of dignity, civilized standards of humanity and decency…we hold repugnant to the 8th Amendment punishments which are incompatible with the evolving standards of decency which mark the progress of a maturing society, or which involve the unnecessary and wanton infliction of pain.…" The phrase "unnecessary and wanton infliction of pain" was used to define deliberate indifference to a serious medical need of a prisoner. This standard of deliberate indifference has since been used frequently to weigh the constitutionality of conditions of confinement. As recently as the 1990s, the federal courts still turned to *Estelle v. Gamble* to interpret the applicability of the deliberate indifference standard.

In *Wilson v. Seiter*, 115 L. Ed. 2d 271 (1991), in Ohio, the court declared that a prisoner claiming conditions of confinement violating his or her Eighth Amendment protection must show that deliberate indifference involves a "culpable state of mind" on the part of prison officials; it must be a deliberate act, and some mental element must be attributed to the inflicting officer. The court further stated that conditions of confinement may establish an Eighth Amendment violation in combination, when the individual conditions might not do so alone, if the mutually enforcing effect produces deprivation of a single identifiable human need, such as warmth, food, or exercise. For example, if a prisoner's cell block is cold and the administrator fails to issue blankets, these two conditions have the mutually enforcing effect of depriving an individual of the basic human need of warmth.

Jail population management and conditions related to overcrowding, especially with the pretrial jail population, are sometimes used in claiming a violation of protections provided by the Fourteenth Amendment to the U.S. Constitution, which prohibits punishment without due process of law. The Fourteen Amendment reads, in part: "…nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." In a case from New York in the late 1970s (*Bell v. Wolfish*, 441 U.S. 520 (1979), the U.S. Supreme Court ruled that if a condition or restriction is arbitrary or purposeless it may be inferred that the purpose of the governmental action is punishment. This case related to whether double-bunking of inmates and other restrictions related to mail and full-body searches after contact visitation amounted to punishment without due process of law. The court established that effective management of the facility may justify conditions and restrictions and dispel any inference that they are intended as punishment, but that there must be mutual accommodation between institutional needs and objectives and preserving internal order and security. Limitations on an inmate's constitutional protections must be related to a legitimate penalogical interest. This was defined by the court as meeting certain criteria: (1) to further one or more of important and substantial governmental interests in security, order, and rehabilitation of inmates; and (2) it must be no greater than is necessary to further the legitimate governmental interest involved. The judicial standard of "legitimate penalogical interest" has since been used in determining the constitutionality of various conditions of confinement, especially as corrections officials respond to increasing demands for or against smoking restrictions, special diets, and unrestricted access to mail.

Jail Construction Costs

Whether a county is building a new jail or renovating an older facility, the cost of jail construction is expensive. Depending on whether the county is building new construction or renovating an existing facility, recent jail construction costs have ranged from $180 to $220 per square foot. One factor that can impact the square footage costs is the degree to which multiple levels of security are included in the design. For example, single cells are much more expensive to build than dormitory space. Many counties construct some combination of single cells and dormitories, which enables them to classify inmates according to the necessary level of security. Another design element that impacts cost is the type of supervision that is to be used. Direct supervision, which provides security officers directly in the rooms with the inmates, is generally less expensive than indirect supervision, which utilizes more costly control rooms with enhanced technology for scanning of the inmate areas.

There are few sources of funds besides the counties' tax revenues with which to fund jail construction. As mentioned earlier, there is the opportunity to generate some federal funds if the county is in a position to dedicate bed space for federal prisoners. State reimbursement toward costs for housing misdemeanants can be used to help offset the costs of building a facility, and there is a very small jail fee that is assessed as part of court costs if a defendant is found guilty. However, construction costs that average $200 per square foot will generally far outstrip these meager sources of revenue. Rather than using general fund appropriations, which can take years of setting aside special funds, or issuing general obligation bonds, which are unpopular with the voters, more and more counties are using installment purchase, or lease/purchase, arrangements to fund jail construction. Installment purchase arrangements are ones in which the title passes at the onset of the transaction. Counties that lease take title and possession of the asset immediately. However, the asset, in this case the jail facility, is collateral for the financing, similar to residential mortgages, in that the financing institution retains ownership of the facility until its costs are paid in full. The counties' methods of paying for facilities construction are governed by the Local Government Commission, which is a part of the Office of the State Treasurer of North Carolina. This body has strict oversight of all local government finances and must approve any funding arrangements that a county would use to plan and build a new jail.

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