



---

# HANDBOOK

## Ohio County Commissioners

*Published by: County Commissioners Association of Ohio*

209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • [www.ccao.org](http://www.ccao.org)

---

## CHAPTER 101

### JAILS

Last Revision  
September, 2011

#### 101.01 INTRODUCTION

A cornerstone and, for most citizens, an enduring symbol of local criminal justice is the county jail. It is important to remember that there are significant distinctions between jail and prison. Generally, a jail houses individuals who are being processed through the criminal justice system at both the misdemeanor level in the county's municipal or county courts and the felony level in the county's common pleas court or are serving sentences of less than a year after conviction of a misdemeanor offense or a Felony 4 or Felony 5 (F-4 or F-5). The Ohio Department of Rehabilitation and Correction (DRC) houses individuals convicted of serious felonies who are serving sentences for longer than a year in its prisons and other less serious felony offenders in a continuum of other settings from community based correction facilities (CBCFs) to half-way houses.

Five key factors are driving a county's ability to safely, efficiently and effectively operate a county jail facility. Two are obvious: overcrowding and age. The other three are subtle: felony populations, female prisoners; and legislating new crimes.

Data clearly documents jail overcrowding. The average daily jail population increased approximately 20% from 2000 to 2005 and an additional 6% from 2005 to 2008. While the average daily population exceeded state recommended capacities by 6% in 2003, it averaged 11% in both 2007 and 2008. Average length of stay also impacts overcrowding. The average length of stay in a county jail in 2004 was around 22 days. As of 2008, the stay had increased to over 38 days. In some instances this has forced counties to transfer prisoners to facilities outside the county, and that invokes additional costs for housing and deputy time and travel associated with prisoner transport.

Age of county jail facilities suggests that there is a crisis upon the horizon. Currently 40 Ohio counties operate a county jail that was built before 1990 and three of those county jails date back to the 1880's. The general life span of a jail building is recognized as being somewhere around 25-30 years. These facilities are reaching the point where costly updates and repairs to their structural, mechanical and operating systems are going to become a necessity.

A majority of the county jail population is incarcerated for felony matters. With criminal offenders becoming more violent a higher percent of cases are being processed through the common pleas courts as felonies. The general rule for the more violent offenders is to keep them confined until trial. Today almost 60% of jail inmates are unsentenced and being held awaiting trial and of that number 75% are charged with a felony. This produces three consequences: less serious offenders are released from jail to make room; there is a greater demand for cells rather than dormitory beds; and greater attention and prisoner management skills are required from the corrections staff in order to successfully supervise these individuals.

The spiraling increase in female offender population is putting significant pressure on facility reconfiguration since separation of male and female prisoners is required. In 2007, 14.3% of the full service and minimum security jails population was female. This was a 12% increase over the 2003 percentage.

And, finally, every time the state creates a new criminal offense, prosecutions under that offense increase the unsentenced and sentenced populations of county jails.

## **101.02 JAIL CLASSIFICATIONS**

Jails are classified into 5 different types. Counties primarily operate only two of the types, the full service and the minimum security jails. Four of the jail classifications fall under the Ohio Administrative Code (OAC) "Minimum Standards for Jails in Ohio" (See Section 101.04 *below*). The fifth classification is not subject to the standards. The jail classifications are:

**FULL SERVICE JAILS:** These are county and large municipal jail operations, which allows for the incarceration of prisoners beyond 12 days. Full service jail standards are found in OAC 5120:1-8-01 through 18. This jail classification is expected to have better defined prisoner services in areas such as medical care, rehabilitative programming, recreation, and commissary provisions.

**MINIMUM SECURITY JAILS:** These jails work in conjunction with a partnering full service jail within the same political subdivision. Minimum security jail standards are found in OAC 5120:1-8-01 through 18. This jail classification is expected to function similar to a full service jail except that it has prerequisites for qualifying incoming prisoners. Prisoners must be sentenced adults for a misdemeanor or an F-4 or F-5, provided the person has been classified as a minimum security risk by the jail

administrator after reviewing, at minimum, the individual's propensity for assaultive or violent behavior and escape risk based upon the offender's prior and present behaviors. In recognition of these eligible prisoner classification restrictions, security structural requirements are significantly less than what is expected for a full service jail.

**TWELVE DAY JAILS:** These jails have a limited maximum prisoner incarceration time span of 12 consecutive days. Twelve day jails are addressed by OAC 5120:1-10-01 through 18. These jails are primarily intended for municipal or township jurisdictions, allowing them to have a jail facility for both booking and processing initial arrestees, and allowing them the option of having municipal ordinance offenders serve their jail sentences in the local jail. This option allows local jurisdictions to maintain court and fine costs locally, and to some extent, avoid having to send their prisoners at that local jurisdiction's expense to another jail facility.

**TWELVE HOUR JAILS:** These jails have a limited maximum prisoner incarceration time span of 12 consecutive hours. Twelve hour jails are addressed by OAC 5120:1-12-01 through 18. These jails are primarily intended for municipal or township jurisdictions to have a jail facility for booking and processing initial arrestees.

**TEMPORARY HOLDING FACILITIES:** These facilities have a limited maximum detention time for securely holding prisoners for up to six hours and are not subject to the minimum jail standards but are operated under guidelines established by DRC. These facilities are used by municipalities and townships to detain arrestees for a maximum six hours for processing and/or awaiting transportation. The temporary holding facility may be a jail cell, but also may be an area which is designated for temporary holding purposes, such as a holding area or room.

As of 2008, Ohio had 92 full service jails, 13 minimum security jails, 90 twelve day jails, 18 twelve hour jails, and 136 temporary holding facilities; for a total of 349 facilities.

### **101.03 JAIL POPULATION & OPERATING COST STATISTICS**

Information from the DRC Bureau of Adult Detention's annual reports provides data that indicates there are over 550,000 individuals who are annually booked at a county jail after arrest. As noted above almost 60% of the average daily jail population of about 20,000 inmates are unsentenced persons awaiting trial. During 2007 the average daily jail population was comprised of: 44% unsentenced pre-trial felons; 13% unsentenced pre-trial misdemeanants; 11% convicted felons serving a sentence (F-4s and F-5s); and 24% convicted misdemeanants serving a sentence. The remaining 8% were other individuals including federal prisoners or Immigration and Customs Service detainees being housed under contract, parole violators, or those being held on civil contempt of court charges.

In 2007, the average daily operating cost per bed for both full service and minimum security jails was around \$60. The average meal cost was \$4.40 for full service jails and \$3.50 for minimum security jails, which are significantly higher than those costs just

two years earlier which were \$1.39 and \$1.20, respectively. The average length of stay remained relatively constant for minimum security jails from 2004 through 2008 at about 34 days. On the other hand, the average length of stay in full service jails increased from 22 days in 2004 to 38 days in 2008.

#### **101.04 STATE OVERSIGHT**

The Bureau of Adult Detention (BAD) was a component of the Division of Parole and Community Services (DPCS) within the Department of Rehabilitation and Correction (DRC). This bureau was charged with the responsibility of inspecting adult detention facilities to ascertain compliance with the “Minimum Standards for Jails in Ohio,” (ORC 5120.10) and assisting jail officials in making progress in correcting deficiencies identified during inspections. The bureau identified as its primary responsibilities:

1. Assisting local officials in identifying and correcting deficiencies in their jail facilities and operations.
2. Developing and coordinating technical assistance resources.
3. Processing variance requests to the standards when alternative practices meet the intent of compliance. (See Section 101.041 *below*)
4. Reviewing and approving plans for new facilities and additions or modifications to existing facilities.

In 2011 as a part of the DRC reorganization to focus on its core mission it was determined that jail oversight was not an area of core responsibility and the bureau was eliminated. The responsibilities of the bureau were transferred to other staff within DRC. The state jail inspector will be the point of contact for issues regarding jails.

As a result of the DRC reorganization jails will be ask to self-report on an annual basis regarding their compliance with the minimum standards. Also, the Jail Advisory Board which was created by executive order to assist BAD in the furtherance of its mission has been eliminated.

#### **101.041 MINIMUM STANDARDS FOR JAILS IN OHIO**

The “Minimum Standards for Jails in Ohio” (jail standards) are found in the Ohio Administrative Code (OAC) 5120:1-7 through 5120:1-12 and outline the “minimum” conditions necessary to ensure the safe, efficient and constitutional operation of a jail. These standards represent a consensus of opinion of sheriffs, commissioners, judges, prosecutors, chiefs of police, and others directly responsible for operating jail facilities, reflect principles of sound jail management, and incorporate existing case law as applicable. They address 18 areas of jail operations and are filed as administrative rules of DRC. Separate standards exist for full service and minimum security jails, twelve day jails, twelve hour jails, and temporary holding facilities.

The Director of DRC has the authority to enjoin compliance with the standards by initiating an action in the common pleas court of the county in which the jail is located (ORC 5120.10(B)). While “on the books” this authority has never been exercised.

The Director of DRC also has the authority under ORC Section 5120.10(C) to grant a variance from the jail standards when a request is made by an administrator of a jail facility, the chief executive of a municipal corporation, or a board of county commissioners. The variance is to be granted if the Director determines that:

1. Strict compliance with the minimum standards would cause unusual, practical difficulties or financial hardship.
2. Existing or alternative practices meet the intent of the minimum standards.
3. Granting a variance would not seriously affect the security of the facility, the supervision of the inmates, or the safe, healthful operation of the facility.

An appeal of the Director’s denial of a variance can be taken under ORC Section 119.12.

#### **101.042      PROTOTYPE JAIL PLANS**

A Prototype Jail Design (PJD) was developed by DRC in the late 1990s to provide local governments with a cost-effective prototype jail design and architectural drawings for them to use in constructing a jail. The PJD is a no-frills, full-service, multi-classification jail design that complies with the Minimum Standards for Jails in Ohio and the related Construction Renovation Criteria. It is a cost-effective, site-adaptable design that has the flexibility to meet the basic needs of a wide variety of jurisdictions.

The PJD comes in two forms: a 52-bed design and a 100-bed design. Both designs can be readily modified to meet unique needs and desires. It has been specifically developed to reduce construction and operating costs. Use of the prototype jail design should help to minimize preliminary architectural design time and reduce the time from the initial decision to construct to actual operation. The design can be easily and economically modified to meet individual requirements and is adaptable to a variety of site conditions, utility requirements and aesthetic considerations.

#### **101.043      JAIL CONSTRUCTION OR RENOVATION PROJECTS**

DRC is required to review and approve plans for the construction of new adult detention facilities or substantial additions and/or modifications to existing jails prior to their adoption by local officials (ORC 5103.18). This approval process is intended to ensure that construction, renovation, or additions comply with the jail standards and all applicable housing, fire prevention, sanitation, health and safety code; however’ it does not supersede or replace required reviews by these other state code authorities.

There are five phases of jail construction which are folded into the planning approval process which is managed by the prison architectural staff of DRC. Minor renovations/remodeling may not require phase one and two. The construction phases are:

**PHASE I – OPERATIONAL PROGRAMMING, ARCHITECTURAL PROGRAMMING, AND SCHEMATIC DESIGN:** May be conducted simultaneously with PHASE II and consists of establishing a mission statement, basic policy statements, projected needs including staff and estimates of construction and operation costs. Design objectives such as space needs, square footage, as well as site analysis and selection are identified and plans are done to scale with an outline of furnishings and hardware along with an estimate of annual operating and staffing costs and projected construction costs.

**PHASE II – DESIGN DEVELOPMENT:** Detailed plans are produced including interior and exterior elevations, outline of specifications and additional work on staffing and related costs.

**PHASE III – CONSTRUCTION DOCUMENTS:** The construction documents, including drawings and specifications, with project cost estimates must be submitted to and reviewed by the state jail inspector. Final approval from DRC must be obtained prior to any bid advertising.

**PHASE IV - BID ALTERATIONS:** Any bid alterations must be submitted and approved by DRC prior to awarding of bid(s).

**PHASE V – OPERATIONAL POLICIES AND PROCEDURES:** The following must also be submitted and approved prior to jail opening: policy and procedure manual, completed checklist of items identified by DRC during their inspection, final staff post/total staffing level and staff training schedule for new and existing staff.

#### **101.05 COMMISSIONERS AUTHORITY REGARDING THE COUNTY JAIL**

A board of county commissioners may provide a jail when, in its judgment, one is needed (ORC 307.01 and ORC 307.02). If a board of county commissioners chooses to construct or renovate a jail it is within their discretion to determine the facility's size, style and expense as long as the facility complies with the jail standards (See Section 101.041 *above*).

The commissioners must provide the sheriff with a monthly allowance for the care and feeding of county jail inmates as well as transportation expenses associated with inmates, and maintenance of transportation facilities (ORC 311.20 and ORC 325.07).

The commissioners, with the consent of the sheriff, may contract with commercial providers for food services, medical services, and other programs and services

necessary for the care and welfare of prisoners and other persons placed in the sheriff's charge (ORC 341.20).

In the absence of a commercial food service contract, the sheriff appoints a cook who has responsibility for the preparation of food for the prisoners and other persons placed in the sheriff's charge. The cook need not, but may be, required to perform other staff duties. The compensation of the cook is to be paid semimonthly from the general fund of the county, upon the warrant of the county auditor (ORC 341.20)

Finally, under ORC Section 341.35 a board of county commissioners may enter into a contract under ORC Section 9.06 for the private operation and management of any correctional facility, but "only if the facility is used to house only misdemeanor inmates." A county's obligation to incarcerate also includes those individuals awaiting trial who cannot post bond, parolees being held prior to a parole revocation hearing, and those in civil contempt besides those serving a sentence for a misdemeanor offense. Today over 60% of average daily jail populations are unsentenced individuals, and, consequently, the housing constraint placed upon private contracts makes them impractical to utilize.

#### **101.06 SHERIFF'S RESPONSIBILITIES TOWARDS THE COUNTY JAIL**

ORC Section 341.01 designates the sheriff as the officer in charge of the county jail, and all persons confined within the jail. The sheriff's duties are broadly defined and include responsibility for the safety of the inmates, maintenance of the jail facility and operation of the jail according the jail standards promulgated by DRC. The sheriff must also prepare written operational policies and procedures and prisoner rules of conduct, and maintain the records prescribed by these policies and procedures in accordance with the jail standards (ORC 341.02). Failure to properly operate the jail could subject the sheriff to criminal penalties (ORC 2921.44(C)) and may result in civil liability. Specifically, the sheriff must do the following:

1. Maintain a jail register with each inmate's name, date of and reason for incarceration, and date and manner of discharge (ORC 341.04).
2. Visit the jail at least monthly to gauge condition of inmates (ORC 341.04).
3. Keep an account relative to the actual cost of care and feeding of inmates; furnish account to the county commissioners (ORC 311.20).
4. Make both the account and register of inmates open and available to the public (ORC 311.20).
5. Maintain, where possible, separation of inmates relative to classification (ORC 341.09).

6. Keep juvenile offenders separate from adult inmates relative to sight, sound and touch, including any booking time (ORC 341.11).
7. Permit inmate contact with an attorney and furnish facilities for this purpose (ORC 2935.20).
8. Convey sentenced felons to state penal institutions within five days after imposition of sentence (ORC 2949.12).

## **101.07 JAIL PERSONNEL**

Jail personnel manning levels tend to be subjective. Federal judges, state judges, sheriffs, jail administrators, deputies, jail staff, and commissioners may all disagree on what constitutes adequate jail staffing levels. Under ORC Section 341.05 the sheriff is responsible for assigning sufficient staff to ensure the safe and secure operation of the county jail but he is bound by the funding which is appropriated by the board of county commissioners for the jail operation and staffing. This section also allows a sheriff to use civilian jail officers who are not deputies to conduct security duties in the jail.

It is important to remember that, as in most other public safety services, a jail is a 24 hour-7 days a week-365 days a year operation which never sleeps. As such, certain constraints result regarding the number of full-time equivalent employees required to “fill” a position and mandatory overtime requirements. Whether the sheriff chooses to utilize his commissioned deputies or other personnel there are basic training requirements based upon the position description and not “deputy status” that must be met. An employee’s job responsibilities within the jail will also be a factor in determining employee and employer contributions into the state’s Public Employees’ Retirement System (OPERS).

### **101.071 STAFFING**

The jail standards address the adequacy of staffing and require a staffing plan but do not establish any criteria regarding the actual number of staff members necessary to run a jail of any classification. The jail standards (OAC 5120:1-8-17) require full service and minimum security jails to:

1. Have a designated jail administrator who is qualified by training or experience to supervise and control prisoners as outlined in a written job description.
2. Complete pre-employment background checks prior to hiring of jail staff.
3. Complete annual standardized performance reviews of jail employees.
4. Maintain a written staffing plan that includes jail personnel assignments and all posts and functions, a calculated shift relief factor, sufficient numbers of male and female jail staff on-duty and available to perform sensitive functions and



procedures as necessary by prisoner gender, and total number of employees required to fill identified posts and functions.

5. Reflect in the staffing plan that the facility has staff for administration and supervision; prisoner programs; prisoner supervision, custody and back up; support services including medical, food service, maintenance and clerical; staff training; and other jail-related functions such as escort and transportation of prisoners.
6. Provide for annual review of the staffing plan and revision as needed.

## **101.072 MINIMUM TRAINING REQUIREMENTS**

Training requirements (OAC 5120:1-8-18) are not subjective. The jail standards identify three categories of jail employees: administrators and supervisors; correctional officers/jail staff; and jail support staff. Training hours for each category of employee are set in the jail standards and the programming within those hours is developed by the Ohio Police Officer Training Commission (OPOTA) (OAC109:2-9-02).

**JAIL SUPPORT STAFF:** persons whose job function does not reflect a primary responsibility for the security and/or supervision of prisoners.

### Training requirements:

1. Prior to or in conjunction with assignment to jail duties - training in pertinent agency policies and procedures.
2. 40 hours of training during the first year of assignment - including legal aspects of corrections, security concepts, emergencies, interpersonal communications, first aid/CPR, unarmed self-defense and the jail standards.
3. 16 hours of in-service training each subsequent year of employment - addressing specific job assignments and/or jail related issues.

**CORRECTIONAL OFFICERS/JAIL STAFF:** persons whose positions consist primarily of duties that require prisoner supervision, direct interaction with prisoners, and responsibility for the safety and security of prisoners and of the facility.

### Training requirements:

1. Within sixty days of employment - training in jail policies and procedures.
2. During the first year of assignment - training for the number of hours and curriculum established by OPOTA which must include training in the following areas: administration, legal, jail security, human relations, special inmate needs, and technical skills.

3. 24 hours of in-service training each subsequent year of employment - addressing specific job assignments and/or jail related issues.

ADMINISTRATORS AND SUPERVISORS: have managerial responsibility for the jail or supervise employee's security assignments or activities in the jail.

Training requirements:

1. Prior to assignment to jail duties - completion of the training required for correctional officers and training in jail policies and procedures.
2. 40 hours of training during the first six months of assignment - including legal aspects of jail management, managerial principles, labor relations and records/information management.
3. 24 hours of in-service training each subsequent year of employment - addressing special issues, skills-enhancement and other assignment related topics.

**101.073 OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM MEMBERSHIP**

Employees of the county sheriff's office, like other county employees, are members of the Ohio Public Employees Retirement System (OPERS). However, within OPERS there is a separate division created for employees who can be classified as law enforcement officers. Known as the OPERS Law Enforcement Division, the OPERS members who qualify for this division are entitled to retire at a younger age and receive a different retirement benefit than an employee of the general division of OPERS. Employees in the Law Enforcement Division also have different contribution rates assessed for both the employer and employee. Under the statutory definitions applicable to OPERS and ORC Chapter 145, an OPERS law enforcement officer includes a sheriff and a deputy sheriff whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state (ORC 145.01(WW)). A deputy sheriff is required to hold peace officer training certification pursuant to ORC Section 109.77(ORC 145.01(AA)).

Consequently, those individuals who have met the training qualifications of the jail standards and are working in the jail but are not deputy sheriffs are members of the general division of OPERS and the county and the employee are paying the pension contribution rates associated with that class of member. For deputy sheriffs who are working in the jail the county and the deputy sheriff pay the pension contribution rates for a law enforcement officer member of OPERS.

The current OPERS contribution rates in effect as of January 1, 2011 are:

Law enforcement officer members:

11.6% of salary – employee  
18.1% of salary - county employer

County employee members:

10.0% of salary - employee  
14.0% of salary - county employer

## **101.08 JAIL FACILITY OPTIONS FOR COUNTIES**

It is within the discretion of the board of county commissioners to determine whether the county operates a county jail facility (ORC 307.01). If the county does operate either a county jail or a minimum security jail the sheriff is responsible for both the operation of the facility and individuals confined within the facility (ORC 341.01 and ORC 341.34(D)). Local governments may join together to form a multi-jurisdictional facility which is managed by a corrections commission rather than the county jail. The law also authorizes commissioners to create community alternative sentencing centers and rehabilitative work camps but it is unclear as to whether the sheriff may be given the responsibility for operating these facilities.

### **101.081 FULL SERVICE SINGLE COUNTY JAIL**

A full service jail is defined as “a local facility that may detain persons for more than 120 hours” and is regulated under OAC 5120:1-8-01 to 19. This facility is under the charge of the county sheriff pursuant to ORC Section 341.01.

County full service jails house individuals awaiting trial on misdemeanor or felony offenses. When the sheriff makes an arrest, regardless of the charge, the person is housed in the county jail until the judge releases the individual upon their own recognance, sets bail for the person and the person posts bond to secure their release, or through trial. They also house individuals who have been convicted of a misdemeanor offense and sentenced to serve time in jail. Common pleas judges may also sentence individuals convicted of low level, non-violent F-4s and F-5s and who meet certain statutory criteria to serve a jail sentence rather than be sent to prison.

Currently, the criminal statutes contain numerous mandatory sentences for felons and misdemeanants who require incarceration in a state penal institution or a jail, respectively. Because jails house various types of offenders, the time a particular inmate spends in a jail will vary depending upon the sentence he has received for the offense.

### **101.082 MINIMUM SECURITY JAIL**

ORC Section 341.34 authorizes the establishment of minimum security jails (MSJs) by counties and municipalities. MSJs may ease jail overcrowding in full service jails by providing an alternative, lower cost, minimum security facility for traffic offenders and other non-violent, sentenced misdemeanants.

An MSJ is defined as “a local confinement facility used to detain sentenced adults for more than 120 hours for a misdemeanor or a felony of the fourth or fifth degree, provided the person has been classified as a minimum security risk by the jail administrator or designee. The classification must include, at a minimum, the individual’s propensity for assaultive or violent behavior and escape risk based upon the

offender's prior and present behaviors" and is regulated under the same administrative rules as full service jails.

Generally speaking construction standards and security requirements for MSJs are less rigorous than full service jails and are thus less expensive to construct, operate, and staff than full service jails. While full service jails must be built to handle the most dangerous pre-trial felon down to the non-violent misdemeanor, the standards for full service jails reflect the maximum degree of security necessary to house pre-trial felons. Conversely, MSJs hold only non-violent misdemeanants and therefore the standards do not reflect a high level of security. Local jurisdictions are free to exceed the MSJ standards, but are not compelled by the standard to build to a maximum level of security.

The MSJ may also be either a locked or unlocked facility. The county's choice on this issue also determines whether a county must provide full service style medical services to inmates. If the facility is unlocked, then inmates may seek their own medical care and make visits to their own medical professionals. If the facility is locked, the county becomes obligated to provide medical services in-house because the inmates are not free to seek their own medical care.

MSJ's may be operated as a multi-jurisdictional facility. For multi-jurisdictional facilities, each participating county or municipality must pass a resolution authorizing participation and enter into an agreement establishing the joint responsibilities and allocating the cost of operation (ORC 341.34(B)(2) and ORC 753.21(B)(2)).

### **101.083      MULTI-JURISDICTIONAL FULL SERVICE JAIL FACILITY**

ORC Section 307.93 creates the option for a multi-jurisdictional facility. These full service "regional jails" are subject to regulation under the same administrative rules as full service jails. County commissioners of two or more adjacent counties or a board or boards of county commissioners and any municipal corporation(s) located in the county or counties may contract for the joint establishment of a multi-county jail. The contract must provide for the manner of funding, debt assumption, and standards and procedures for operation of the facility (ORC 307.93(A)).

Counties and/or municipalities establishing any of the above types of regional facilities are required to form a corrections commission to oversee the administration of the facility. Members of the corrections commission are the sheriff and a member of the board of county commissioners of each participating county, and the chief of police and mayor or city manager of each participating municipal corporation. Each member may appoint a designee to act in their place.

Standards and procedures formulated by the commission must include, but are not limited to, the designation of the person in charge of the facility and a fiscal agent, categories of employees to be employed, the appointing authority of the facility, and the treatment of inmates and security to be maintained.

The judges of the courts with jurisdiction within the member political subdivisions serve as a judicial advisory board to the commission. The judicial advisory board is to make recommendations to the corrections commission regarding issues of bed allocation, expansion of the correctional center, and other issues concerning the administration of sentences or any other matter determined to be appropriate by the judicial advisory board. The judicial advisory board is to meet with the corrections commission at least once each year. If the number of the judges on the advisory board is even, then the county auditor or the county auditor of the most populous county, if the board serves more than one county, becomes a member of the judicial advisory board.

#### **101.084 COMMUNITY ALTERNATIVE SENTENCING CENTER**

The criminal sentencing reform legislation adopted in 2011 through HB 86 of the 129<sup>th</sup> General Assembly creates a new jail option for counties. ORC Section 307.932 provides for the establishment and operation by counties of community alternative sentencing centers. These centers are for confining misdemeanants who are sentenced directly to the centers by the court under a community residential sanction imposed under state law or a municipal ordinance not exceeding 30 days or under a term of confinement for an OVI offense (including an OVI offense together with an adjunct offense of driving under an OVI suspension) imposed under state law or a municipal ordinance not exceeding 60 days (ORC 2929.26, and 2929.34).

The board of county commissioners of any county or two or more adjoining or neighboring counties, in consultation with the sheriff of the county or counties, may adopt a resolution/s proposing a community alternative sentencing center. The responsibility for the management of the facility is unclear under the law. While the law does not specify who is responsible for the management of the facility once it has been created by resolution of the commissioners it does provide that the center may be subcontracted to or operated by a nonprofit organization (ORC 307.932(B)(1)). Under current law it is questionable whether the county commissioners would have the power to designate the management of the facility to the sheriff, and if it that were authorized, whether the sheriff has the authority to accept that responsibility.

The resolution creating the center must include rules for the operation of the center, including criteria to define which offenders are eligible to be sentenced directly to the center and admitted to it. A board of commissioners may either dissolve the center or terminate its involvement with other counties in a center by adopting a resolution stating its intent to do so. No time frame is specified for when the action expressed in the resolution becomes effective.

#### **101.085 REHABILITATION WORK CAMP**

ORC Section 341.31 confers upon the board of county commissioners the power to construct, maintain, equip, furnish, appoint the necessary personnel of, and supervise the operation of county rehabilitation work camps for the purpose of rehabilitating sentenced misdemeanants. The county may also contract with other counties or

municipalities to accept persons convicted of a misdemeanor or municipal ordinance in those political subdivisions' jurisdictions to serve the sentence imposed by the court of that jurisdiction in the rehabilitation work camp (ORC 341.32 and .33). While under this section it is clear that the county commissioners have the power to delegate the management of the facility to the sheriff, it would appear that the sheriff has no authority to accept that responsibility.

#### **101.09 HOUSING INMATES FROM OUTSIDE THE COUNTY**

Several options are available to counties to house inmates who were not sentenced by the courts of their county. When overcrowding occurs in the county jail the sheriff is specifically authorized to remove inmates sentenced to the facility to another county where space is available.

#### **101.091 CONTRACTING WITH THE U.S. GOVERNMENT**

ORC Section 341.21 gives the county commissioners permissive authority to negotiate contracts with the United States government and direct the county sheriff to house federal prisoners. The county may only charge up to the actual cost of keeping and feeding prisoners as determined under ORC Section 311.20.

#### **101.092 CONTRACTING WITH THE STATE GOVERNMENT**

County commissioners may contract with DRC to house state prisoners who have been convicted of an F-4 or F-5 and who, pursuant to ORC Section 5121.161 are first time non-violent offenders. A per diem fee is to be negotiated under ORC Section 311.20 and a contract developed to specify responsibilities.

While counties frequently house federal prisoners per contractual agreement, the state has never contracted with a county to house state prisoners because DRC has never had funding appropriated to do so.

#### **101.093 CONTRACTING WITH A MUNICIPAL CORPORATION**

ORC Section 341.23(A) authorizes a county to contract with a municipal corporation for the purpose of housing prisoners under charge of the sheriff in a municipal workhouse or jail facility. The costs of this contract can be paid from the county general fund.

A county may also enter into a contract with a municipality for the incarceration of municipal ordinance offenders in the county jail. The municipality is authorized to enter into this contract pursuant to ORC Section 1905.35 while the county derives its authority from ORC Section 307.15(A)(1) which allows the county to enter into an agreement with a municipality to render any service to that municipality. The commissioners are also given the express authority to, at their discretion; terminate a contract for the use of the

county jail by a municipality upon giving 90 days written notice to the municipality (ORC 1905.36).

The question often arises about municipalities sending their prisoners to the county jail. The constitutional “municipal home rule powers,” authorize a municipality to adopt and enforce its own ordinances including ordinances that parallel the criminal and traffic offenses of the Ohio Revised Code. The criminal and traffic offenses adopted by the municipality must be substantially equivalent in both the definition of and the penalty for the offense that is provided for in the Ohio Revised Code. Municipal law enforcement officers have the discretion to choose whether to cite an offender under either the ORC or the municipal ordinance. If the police officer cites an individual under the ORC the county becomes responsible for the prosecution of that offense and the housing of that person in the county jail both prior to trial and if the person receives a sentence of incarceration. If, however, the individual is cited under the municipal ordinance the entire processing of that individual occurs under the auspice and at the cost of the municipal corporation. In this instance the municipal corporation may choose to enter into a contract with the commissioners to pay to house persons either awaiting trial or serving a sentence for a violation of the municipal ordinance in the county jail.

#### **101.094      TRANSFER OF PRISONERS TO ANOTHER COUNTY**

If a county sheriff determines that the county jail does not have sufficient space or staff ORC Section 341.12 authorizes a county sheriff to transfer inmates whether awaiting trial or serving a sentence in the county jail to any other county the sheriff considers convenient and secure. If the county happens to be a border county then that sheriff may also transfer inmates to a county in the adjoining state that is contiguous to the border county. A sheriff who receives a prisoner from another county may not transfer that prisoner to a third county.

A sheriff receiving a prisoner from another county must charge the per diem fees calculated pursuant to ORC Section 311.20 for basic care and feeding and is not authorized to enter into contracts to house inmates committed by other counties (OAG 81-042). County commissioners of the county from which an inmate was removed must pay per diem fees charged by the sheriff of the receiving county as determined according to ORC Section 311.20 by appropriating the necessary amount to their county’s sheriff (OAG 86-105). The sheriff transferring a prisoner is required pursuant to ORC Section 341.14 to advance to the county receiving that prisoner an amount equal to at least one week’s expense.

The sheriff receiving a prisoner shall be liable for escapes or other neglect of duty in relation to the prisoner and the sheriff and commissioners of the transferring county cannot be held liable in damages in a civil action for any injury, death, or loss to person or property suffered or caused by the prisoner from their county while the prisoner is in the custody of the receiving county (ORC 341.13). However, the receiving county may recover from the transferring county the amount of any damage caused by the prisoner to either the jail or other property of the receiving county (ORC 341.18).

## **101.10 JAIL AND INMATE MANAGEMENT**

ORC Chapter 341 provides several programs which are designed to help improve jail operations, recover costs from inmates, and manage inmate control. The commissary fund provides inmates with the opportunity to purchase items for their use while in jail. The pay-for-stay program establishes a process by which inmates can be charged for the expenses associated with their incarceration and gives the jail the ability to recover these costs after the inmate has been released from custody. Medical costs are a constantly increasing expense for jails. Limiting off-site medical care costs to the Medicaid reimbursement rate and allowing jails to bill an inmate's private insurance carrier for medical services provided to that inmate help to contain the jail's inmate medical care costs. Random drug testing and recreation prohibitions help to assure jail security. Fingerprinting and DNA sampling help to build both a state-wide and national data base to aid law enforcement in identifying individuals that come into contact with the criminal justice system again.

### **101.101 COMMISSARY FUND**

ORC Section 341.25 authorizes a sheriff to establish a commissary for the jail. The commissary may be managed either in-house or by contract with a third party. If a commissary is established, all inmates shall receive commissary privileges. An inmate's purchases from the commissary are to be deducted from the inmate's account maintained by the jail's business office. Indigent inmates are entitled to receive necessary hygiene articles and writing materials from the commissary at no cost.

The expenses of the commissary are managed through a commissary fund and governed by rules the sheriff must adopt for the commissary fund. The commissary fund is strictly controlled in accordance with procedures adopted by the auditor of state. Commissary fund revenue over and above operating costs and reserve shall be considered profit. All profit from the commissary fund must be used either for the benefit of persons incarcerated in the jail by purchasing supplies and equipment or providing life skills training, education, or treatment services or to pay the salary and benefits of the employees of the sheriff or other person who manage or staff the commissary operation.

### **101.102 PAY-FOR-STAY PROGRAM**

A pay-for-stay program may be created by a board of county commissioners and imposed upon inmates sentenced to the county jail or other correctional facilities. The board is required to enter into an agreement with the sheriff and the pay-for-stay program is administered by the sheriff's office reimbursement coordinator under ORC Section 2929.37(A). The post-release collection procedures which can be taken against the former inmate parallel similar procedures followed by clerks of court for the recovery of court costs.



The pay-for-stay policy for which counties may seek reimbursement from prisoners can only be applied to sentenced prisoners who have either plead guilty or been convicted in court and are serving an actual jail sentence imposed by the court.

ORC Section 2929.37(A) authorizes reimbursement for:

1. The cost of repairing property damaged by the prisoner.
2. A per diem fee for room and board.
3. Medical and dental treatment (typical medical co-pay policies).
4. The fee for a random drug test.
5. A one-time reception fee (which is different from the “booking fee” a sheriff may charge as “court costs” under ORC 311.17).

Pursuant to ORC Section 2929.38(B) the reception fee (5), medical and dental co-pays (3), and the random drug testing fee (4) may be deducted from the inmate’s account (commonly referred to as the “commissary account” which includes the money that was taken from the prisoner at the time of his incarceration or was deposited on his behalf by a third party).

The medical and dental co-pays must be deposited into the jail’s commissary fund as profits to that fund (see Section 101.101 *above*) so that they are used to provide items that benefit the inmate population (ORC 2929.38(B)).

The funds paid by or recovered from the inmate for the remaining items (1), (2), (4) & (5) which are subject to reimbursement are to be deposited into the county’s general fund (ORC 292937(E)).

The sentencing judge, at the time of sentencing, is required to inform the prisoner that they are required to reimburse the local correctional facility for the costs of incarceration as authorized by the pay-for-stay program and that their failure to do so will result in a certificate of judgment being entered against them for the unpaid amount of the reimbursement owed and if such a judgment is entered it automatically becomes a part of the sentence being imposed by the court (ORC 2929.19(B)(17) – felonies and ORC 2929.24(D) – misdemeanors).

The pay-for-stay collection procedure is found at ORC Section 2929.37(B), (C), and (D). Upon release from jail the prisoner is presented with an itemized bill for reimbursable costs. The prisoner is given 30 days to contest the amount of the bill. If the bill is contested, a court hearing will be held to determine the validity of the charges. If the prisoner does not contest the bill and if the bill then remains unpaid after two mailings to the person and after 180 days, then the clerk of courts is notified and is authorized to enter a judgment against the prisoner for the unpaid balance. If the judgment is taken

to the collection process then the costs of a third party vendor, if used, may be added to the prisoner's unpaid balance, along with a 2% poundage fee. All funds recovered under the collection procedure are deposited in the county general fund.

Judges continue to have the power in sentencing felony offenders pursuant to ORC Section 2929.18(A)(5) to, on their own initiative, impose as part of their sentence similar reimbursement requirements consistent with the pay-for-stay program if the offender will be sentenced to a county jail and the county has not adopted a pay-for-stay program.

### **101.103 OFF SITE MEDICAL PROVIDERS COSTS LIMITED**

ORC Section 341.192 limits the county's exposure for the cost of medical services provided to jail inmates off site and outside the jail. This provision is designed to help counties reduce the staggering rate of increase in inmate medical costs. Because counties are constitutionally mandated to provide medical care they have found themselves without the ability to effectively negotiate for competitive discounts.

If the jail doctor determines that an inmate needs necessary medical care that cannot be provided at the jail and transports the inmate off site to receive that care the hospital, doctor, laboratory, pharmacy or other health care provider that takes care of the inmate may only charge up to an amount which does not exceed the Medicaid provider reimbursement rate established for that service or drug. Necessary care is defined as care of a non-elective nature that cannot be postponed until after the individual's release from jail without endangering the life or health of the individual.

The jail staff is responsible for reviewing the medical bills received from the off-site provider and comparing the service charge codes with the Medicaid reimbursement rate currently approved by the Department of Job and Family Services for those codes in order to translate a medical charge from a provider into the appropriate reimbursement to be paid. This information can be found on the ODJFS web site under Ohio Health Plans/Fee Scheduled and Rates: <http://jfs.ohio.gov/OHP/bhpp/FeeSchdRates.stm>

### **101.104 UTILIZATION OF AN INMATE'S PRIVATE HEALTH INSURANCE**

Under ORC Section 341.191 a county is authorized to investigate and determine whether an inmate is covered while incarcerated under a health insurance or health care policy, contract, or plan and if the person has such coverage, what terms and conditions are imposed by it for the filing and payment of claims. If coverage is in force and the inmate needs medical care, the jail may render or arrange for the rendering of health care service to the person in accordance with the terms and conditions of the policy, contract, or plan. In this case the county or provider of the health care service is entitled to promptly submit a claim for payment for the health care service to the appropriate third-party payer.

This section also applies to any person who is under the custody of a law enforcement officer, as defined in ORC Section 2901.01, prior to the person's confinement in the county jail.

### **101.105      RANDOM DRUG TESTING PROGRAM**

The commissioners, with the consent of the sheriff, or multi-jurisdictional corrections commissions with the approval of their member boards of commissioners and sheriffs, may enter into a contract with a vendor to perform blood or urine specimen collection, documentation, maintenance, transportation, preservation, storage, and analyses and other duties required in the performance of random drug testing of prisoners pursuant to ORC Section 341.26. Prior to entering into such contract rules shall be adopted relative to the performance of random drug testing of prisoners. The rules shall comply with the provisions outlined in ORC Section 341.26(C).

If a random drug testing program is established the sheriff or the administrator of the multi-jurisdictional jail is obligated to facilitate the collection, documentation, maintenance, and transportation by the contractor of the blood or urine specimens of the prisoners. Results shall be returned to the facility and kept on file. When an inmate tests positive the sheriff or administrator shall notify the inmate of the drug test results and the inmate shall be afforded an opportunity to be heard regarding the results of the drug test and to present contrary evidence at a hearing held before the sheriff or administrator within 30 days after notification to the prisoner. After the hearing and a determination by the sheriff or administrator that the results were accurate administrative sanctions may be imposed against the inmate to discipline them for their conduct. A reasonable fee may be assessed to the inmate who tested positive. This fee may be collected as a part of a pay-for-stay program.

### **101.106      FINGERPRINTING AND DNA SAMPLING REQUIREMENTS**

Both fingerprints and a DNA specimen are required to be taken during the intake and booking process. Any individual who is suspected of having committed a felony or a crime that is a misdemeanor on the first offense and a felony on subsequent offenses is fingerprinted (ORC 109.57). The fingerprints are forwarded to the Bureau of Criminal Identification and Investigation (BCI&I) and maintained in a file to aid law enforcement and entered into the national fingerprint file which is a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI. The fingerprint data is transferred electronically from the jail to BCI&I by using the LiveScan System which is a direct link connected through the state leads network to BCI&I

As of July 1, 2011, any adult who is arrested for a felony offense is required to submit to a DNA specimen collection procedure that is administered during the jail intake and booking process (ORC 2901.07). This DNA specimen is collected through a Buccal Collection Kit which is provided to the jails by BCI&I. This DNA specimen is forwarded to BCI&I and maintained in a DNA data base along with the personal identification

information that identifies the person from whom the DNA specimen was taken. The DNA records are also entered into the National DNA Index System (ORC 109.573).

### **101.107 PROHIBITED ACTIVITIES FOR INMATES**

ORC Section 341.42 prohibits inmates from using free weight or fixed weight exercise equipment or receiving instruction in boxing, wrestling, karate, judo, or another form of martial arts, or any other program that DRC, in rules adopted under ORC Section 5120.423 designates as enabling a person to improve fighting skills.

An inmate is also prohibited from accessing the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service unless the inmate is participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes and the provision of and access to the internet is in accordance with rules promulgated by DRC pursuant to ORC Section 5120.62.

An inmate who improperly accesses the internet is guilty of improper internet access which is a first degree misdemeanor. If corrections officers or jail staff facilitate an inmate's attempt to improve fighting skills or access the internet those employees may be subject to disciplinary action.

### **101.11 WORK BY PRISONERS WHILE INCARCERATED**

There are several opportunities for individuals incarcerated in the county jail to leave the facility and engage in work. Participation in a work release program is designed to punish an offender while maintaining that individual's employment and is one of the major sanctions utilized by the courts. Both the county jail industry program and prisoner work details offers an opportunity for an inmate to engage in some form of work related activity while incarcerated rather than simply staying confined in the jail setting.

#### **101.111 JAIL WORK RELEASE PROGRAM**

Work release programs are generally associated with minimum security jails as a way to adequately punish an offender without removing them from the community and their employment. Work release programs are established by rule of the common pleas court which has obtained an agreement from all municipal and/or county courts for the establishment of such a program. The judges of all courts in the county must agree and set standards for the program which prescribe conditions under which an inmate may leave the jail during hours of employment, and conditions governing ingress and egress to and from the jail for employment purposes (ORC 547.28).

Any judge in the county may sentence an offender directly to a work release program as a condition of probation or may approve work release for an offender serving time in a county jail (ORC 5147.28(C)).

Inmates participating in a work release program must be paid wages, and are subject to garnishment for child support orders, and work under conditions and hours similar to those in jobs outside the program (ORC 5147.28(E)).

The court designates someone to collect and disburse inmate earnings from a work release program and to maintain accurate records of all inmates employed in the program including monies received and disbursed. Inmates must be given a written statement of this record at least every 60 days (ORC 5147.29(B)). Disbursement of inmate earnings is done in the following order:

1. Reimbursement to the county for the direct cost of administering the program and housing the inmate while in the program.
2. Support of inmate's dependents as ordered by the sentencing judge.
3. Necessary travel expenses to and from work and other expenses incidental to employment.
4. Payment of fines, court costs, and debts acknowledged by inmates in writing prior to sentencing which occurred via garnishment or other attachments.
5. Balance to inmate upon discharge from the sentence.

Any charges assessed by the program for boarding the inmate must be first established by court rule, and based upon a uniform schedule based upon the average weekly earnings of the inmate and upon the number of inmate dependents (ORC 5147.29(D)).

## **101.112 COUNTY JAIL INDUSTRY PROGRAM**

Persons incarcerated in the county jail who are awaiting trial, who have failed to pay a fine or are serving a sentence may participate in a county jail industry program authorized pursuant ORC Section 5147.30 and created by a resolution of the board of county commissioners. To manage the program a jail industry board must be established. The board is comprised of three members appointed by the county commissioners, three members appointed by the county sheriff, and member appointed jointly by the county commissioners and the sheriff. Of these members, one must have knowledge or experience in social services, one in the field of labor, one in law enforcement, and one in business (ORC 5147.30(C)).

### **101.1121 POWERS AND DUTIES OF JAIL INDUSTRY BOARD**

The jail industry board has the following two major responsibilities:

1. To employ as many qualified inmates as possible in jail manufacturing, service industries and agriculture, in private industry or agriculture, in public works, in institutional jobs or in maintenance/operation of the jail.

2. To establish rules of procedure for seeking employment for inmates, a system of compensation, hours, conditions of employment, regulation of working conditions, and an accounting system for the allocation of inmate earnings. These rules are subject to approval by the sheriff.

It should be noted that the county is not required to provide jobs for every employable inmate when funds and resources do not permit. (ORC 5147.30(D)).

### **101.1122 POWERS OF COUNTY COMMISSIONERS**

Upon recommendation of the jail industry board or the county sheriff, the county commissioners may do the following (ORC 5147.30(G)):

1. Enter into contracts with private industry, agriculture and other organizations and persons and receive grants to establish test work programs under county control.
2. Enter into contracts with private industry for establishment of manufacturing and service industries under county control for inmate employment.
3. Enter into contracts with private industry or agriculture to provide employment for inmates.
4. Enter into any contracts necessary for the jail industry program.

### **101.113 PRISONER WORK DETAILS**

The county may utilize a prisoner work detail of inmates who work outside of the jail facility. The work detail is administered by the jail staff and any inmate who is serving a sentence which is not an F-1 or F-2 is eligible for the work detail.

Prior to allowing an inmate to serve on a work detail the jail administration must the inform each inmate on the work detail that, by volunteering for the work detail, the inmate specifically absolves the county, sheriff, and jail staff from liability for damages for injury, death, or loss to person or property of the inmate unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff or jail staff.

If this information is provided to the inmate then the immunity from liability applies to the county, sheriff and jail staff (ORC 341.27)

### **.101.12 FUNDING COUNTY JAIL OPERATION & CONSTRUCTION**

County commissioners are authorized to construct a county jail pursuant to ORC Section 307.01 or to purchase or acquire by various lease arrangements a county jail facility pursuant to ORC Section 307.02. A county may also enter into an agreement providing for the joint construction, acquisition, or improvement of or the joint

management, occupancy, maintenance, and repair of a county jail facility pursuant to ORC Section 153.61. Construction or renovation of a county jail facility must be approved by DRC as being in substantial compliance with minimum standards for jails in Ohio

In addition to the use of general fund revenues to provide for construction or for operating expenses for the county jail there are options to provide voted property tax and county sales tax revenues for construction and operation of county detention facilities which include the county jail.

### **101.121 FINANCING DOES NOT EFFECT NET INDEBTEDNESS OF COUNTY**

ORC Section 133.07 exempts bonds and securities issued to finance construction of jail facilities from the calculation of the county's net indebtedness. This applies to:

1. County financing that was used on a construction project which also obtained state financing through the Ohio Building Authority(See Section 101.164 *below*)
2. Self-supporting securities for correctional and detention facility construction. These are bonds which are supported by levy proceeds specifically pledged to pay off those bonds.
3. Securities issued for the purpose of acquiring, constructing, improving, and equipping a county, multicounty, or multicounty-municipal jail, workhouse, juvenile detention facility, or correctional facility.
4. Obligations incurred under a lease entered into pursuant to ORC Section 307.022.

### **101.122 PROPERTY TAX FUNDING**

ORC Section 5709.19(LL) provides for a property tax levy for criminal justice services. ORC Section 307.45, which enumerates the specific purposes for which money from a criminal justice services levy may be used, includes providing financial support for any county jail or other detention facility (ORC 307.45(A)(4)). Since a definition of financial support isn't included in the Code section it would appear that levy funding uses are unrestricted and could be used for any purpose including operation and construction of a jail facility.

ORC Section 5709.19(MM) authorizes a property tax levy for the purpose of maintaining and operating a jail or other detention facility.

### **100.123 PERMISSIVE SALES AND USE TAX FOR ADMINISTRATIVE AND CRIMINAL JUSTICE SERVICES**

Counties may enact the permissive sales and use tax for the general fund or criminal

and administrative justice services. Criminal and administrative justice services include both the operation and construction of a county jail facility.

Under ORC Sections 5739.021 and 5741.021 the commissioners may enact the tax at the rates of  $\frac{1}{4}\%$ ,  $\frac{1}{2}\%$ ,  $\frac{3}{4}\%$ , or 1.0%. It can be levied for a specified number of years or for a continuing period of time. County commissioners also may reduce this tax to a lower authorized rate after its enactment and they may repeal the tax.

If the commissioners propose that the tax is to be used for criminal and administrative justice services special provisions apply. The commissioners must prepare a statement showing the amount that has been spent for criminal and administrative justice services from the general fund for the two previous years and an estimate of the amount that will be spent during the current year. In addition, the commissioners must also prepare a preliminary plan on how they anticipate money will be spent on these services during the next two years from both the general fund and the special fund that must be established if the tax is enacted for the purpose of criminal and administrative justice services.

Also, if the tax is to be used for both general fund and for criminal and administrative justice services, the resolution enacting the tax must state the rate or amount of the tax to be apportioned to each purpose. The rate or amount may be different for each year the tax is in effect, but the rates or amounts actually apportioned each year cannot deviate from that stated in the resolution enacting the tax.

Criminal and administrative justice services is defined to include, in addition to the exercise by the county sheriff of all powers and duties vested in that office by law, the operation and maintenance of any detention facility, and the construction, acquisition, equipping, or repair of such a detention facility, and public financing pursuant to ORC Chapter 133 of these costs (ORC 5739.021(I)).

A more detailed discussion of the enactment and repeal methods and procedures, public hearing requirements, and other details contained in the law regarding the county sales taxing authority are discussed in Chapter 18 of the *Handbook*.

#### **101.124      OPTION TO LEASE JAIL FACILITIES**

The board of county commissioners of any county can enter into a lease, including a lease with an option to purchase, of correctional facilities for a term not in excess of 40 years or grant leases, easements, and licenses with respect to, or sell, real property owned by the county if the real property is to be leased back by the county for use as correctional facilities. While the negotiations regarding the execution of a lease are not subject to competitive bidding, the actual construction or furnishing of a jail facility that is the subject of an underlying lease remains subject to the county competitive bidding procedures.



### **101.125 STATE CAPITAL FUNDING – NO LONGER AVAILABLE**

The state provided about \$285 million in state funding support to assist counties with jail construction and renovation through the biennial capital appropriations bills covering the period of 1985 through 2003. DRC awarded competitive grant funding from state bonded indebtedness issued by the Ohio Building Authority. ORC Section 307.021 provides that it is a public purpose and function of the state to acquire, construct, or renovate capital facilities for use as jail facilities including county jails and multijurisdictional facilities operated by corrections commissions which allows the state to be able to allocate capital dollars financed in the name of the state to other governmental entities for jail construction.

### **101.13 LIABILITY ISSUES COMMONLY ASSOCIATED WITH JAILS**

Operating a county jail exposes a county to a high level of risk for liability resulting from that operation. The potential to be named in a law suit is enormous. Commissioners should be actively engaged with their sheriff to assist the sheriff in the planning for and supporting improvements to the policies and operations of the facility. The county should be constantly seeking ways to adapt best practices for the management, staffing, training, and physical conditions at the jail.

### **101.131 GRAND JURY INSPECTION**

Once every three months, the grand jury is required to visit the county jail and issue a report to the common pleas court on the discipline, treatment, habits, diet, and accommodations of prisoners (OEC 2939.21). The clerk of courts must send a copy of the report to DRC.

### **101.132 ENFORCEMENT OF FEDERAL CONSTITUTIONAL STANDARDS**

The United States Constitution requires that inmates not be subjected to cruel and unusual punishment nor deprived of due process. Upon proof that jail officials are deliberately indifferent to the needs of inmates, the federal courts will tend to step in and take oversight of the management of the jail. The federal courts will issue orders requiring changes in jail conditions, with the county paying the costs. In that event, elected officials lose the ability to exercise discretion concerning the jail operation and budget and the federal court can take over indefinitely. Federal courts can and have closed facilities, ordered that new ones be built, or ordered jail populations cut, staffs increased, and facilities rehabilitated.

Lawsuits for money damages on behalf of individual inmates are discussed at Section 101.22 of this Chapter. Court orders over jail conditions are usually brought by a class of inmates seeking injunctive relief and attorneys fees. If the jail conditions case is successful, the county, not the federal court, pays for the running of the jail according to the court's order. Additionally, counties are required to pay for the inmates' attorneys fees in any case in which the inmates are declared a "prevailing party"---when the

inmates win at trial or when the county takes action to bring jail conditions up to constitutional standards because of the suit.

The constitutional standards for jails are found in various court cases and are largely up to the district judge hearing the case. Courts are not bound by the Ohio Administrative Code (see Section 101.02 above) or guidelines set by professional organizations. Below is a summary of the usual areas of attack on jails by inmates:

**OVERCROWDING-** A jail is overcrowded when it leads to deprivations of essential food, medical care, and sanitation. Most cases focus on the floor space available for each inmate. The U.S. Supreme Court has allowed double-celling in a space of 63 square feet, but only because the inmates were frequently allowed out of the cell and access to the prison yard.

**FIRE SAFETY -** The federal court will close a jail which is without a sufficient fire safety evacuation plan. Fire marshal reports are crucial evidence in determining whether a county has been deliberately indifferent to the needs of the inmates.

**MEDICAL CARE -** In many counties, there is no jail physician to supervise medical care. If there is no system for assuring the delivery of medical services to inmates, a federal court will require that one be instituted. Any system that requires untrained corrections officers to diagnose illness is subject to serious challenge.

**OTHERS -** Usually, class action suits complain about maintenance, hygiene, ventilation, inmate classification, lack of recreation and mental health programming, food, inappropriate discipline, and staffing.

It is important to work with the sheriff to plan improvements to jail operations. Cooperate to make it clear that the county cares about its inmates before the suit comes, and that the jail is not languishing in indifference, until a lawsuit and the federal court makes the county care. Attorneys experienced in defending jail suits can be helpful in preparing for and defending these suits.

### **101.133      LIABILITY FOR INMATE INJURY**

Individuals are liable for injuries to inmates if those injuries resulted from a deliberate indifference to the needs of the inmates. Knowledge that care is needed, and failure to act to give the care, can be enough to establish liability. Thus, an individual corrections officer can be liable if he or she knows that an inmate is suicidal, and fails to provide mental health services or watch the inmate sufficiently. Similarly, an officer can be liable for putting an inmate at risk of injury by other inmates known to be hostile to him.

The county itself as an entity can be liable if a county custom, policy, or procedure was the moving force in causing the injury. For example, if all felons are housed with all other felons without regard to other more important classification factors, then the county may be liable when an inmate is preyed upon by another inmate known to be a predator.

#### **101.14 BEST PRACTICES MANUAL FOR CORRECTIONS OPERATIONS**

CCAO's County Risk Sharing Authority (CORSA) in conjunction with the Buckeye State Sheriffs' Association (BSSA) provides a Best Practice policy model for Corrections Operations within the Sheriff's Office. This policy model conforms to current standards of the Ohio Revised Code and Federal law/decisions pursuant to the State of Ohio through the United States Supreme Court and the 6<sup>th</sup> Circuit Federal Court governing the State of Ohio. This manual may be purchased from CORSA for counties that are not members of CORSA.

For CORSA member counties CORSA has access to experts around the country to assist in day to day operations of the jail and provide assistance with developing prisoners' rules of conduct as well as records management and maintenance regarding inmates in jail. In addition CORSA also serves its member counties' jails by providing:

1. Updated training and programs designed to assist Certified Correctional Officers in the course of their duties while promoting a consistent direction to maintain standards and address potential liability issues.
2. A Law Enforcement/Corrections Help Desk designated to address issues or concerns with daily operations within the Sheriff's Office and County Jail.
3. A Human Resource Helpline providing HR assistance with employee issues. This assistance is not designed to replace the County Prosecutor, an HR company or legal counsel retained by the sheriff or county, but offers upon contact, a free consultation for HR issues.
4. Guidance for medical and mental health issues presented by an inmate prior to admission into the jail and claims staff and legal assistance in addressing an inmate injury.

#### **101.15 DEPARTMENT OF DETENTION AND CORRECTION UNDER AND ALTERNATIVE FORM OF COUNTY GOVERNMENT**

Under the Alternative Form of County Government law, ORC Chapter 302, a county may establish a county department of detention and correction. This authority only exists in a county that adopts this form of government which requires a vote of the electors.

Under an Alternative Form of County Government, if a department of detention and correction is established, it assumes all of the responsibility for the establishment, maintenance, and operation of an adult detention and correction administration for the county. In addition, the department assumes all responsibility for county jails assigned by ORC Chapter 341 to the sheriff. The department must make and promulgate rules and regulations for the care and custody of prisoners and the maintenance and operation of the county jail. These rules are subject to approval of the common pleas court.

For additional information refer to Chapter 2 of the *Handbook*.