The Key

DECEMBER 2015

North Carolina Jail Administrators' Association

President's Message

President
Eddie Lance

I would like to extend a big thank you to everyone who attended the 2015 NCJAA Training Conference. We had rave reviews of the training and conference as a whole. Many tireless hours went into the conference and it showed. Thank you to all the board members, instructors and volunteers who went the extra mile in order to make our conference such a huge success. The conference was capped off by an outstanding presentation by Kim Munley. What a heart wrenching yet encouraging story she told. I would also like to thank you for your comments and suggestions for the 2016 conference. Your board is already at work on next year's conference and will incorporate many of the suggestions to make the 2016 conference even better than the 2015 conference.

At the 2015 conference, we gave Administrators and Assistant Administrators a sneak peek at the Jail Symposium planned for the spring of 2016. I am pleased to announce that the first ever North Carolina Jail Administrators' Association Jail Administrators & Assistant Administrators Informational Leadership Symposium (JAIL Symposium) is set for March 30-April 1. Your participation in this intensive three-day symposium connects you with other Administrators, Assistant Administrators and Sheriff's in examining the top issues facing jails in our state today. Operating our jail facilities is becoming more complex and demanding. The JAIL Symposium will prepare participants to meet tomorrow's challenges today. There is no registration fee and all meals will be provided. The only cost will be for your room. The location of the JAIL Symposium will be announced soon. The JAIL Symposium will be conducted in a forum setting designed to maximize the learning and discussion. We are designing lunch and dinner to give everyone a chance to network and share ideas. I am excited about this new training opportunity as your board carries out the mission of the NCJAA by encouraging and facilitating professionalism through effective and timely training and the exchange of information between jail professionals.

Eddie Lance, CJM
President NCJAA

Jail Symposium
March 30-April 1, 2016
Details Coming Soon!

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Regulating Inmate Mail

Handling mail to and from inmates is a challenge for the jail administrator. Of course you do not want to violate inmates' constitutional rights. You want to enable them to handle their legitimate business (including pending legal matters) and maintain family and community ties. On the other hand, you must be on guard against contraband or inappropriate materials coming into the jail, or inmates participating in crimes or planning an escape from within. Inmates have a constitutional right to communicate with others and to access the courts, but those rights are limited by the jail's obligation to preserve security, good order, and discipline. This article collects some of the basic legal principles that should be incorporated into your policy on mail regulation. By state administrative regulation, every jail must have a written policy on handling inmate mail.

A starting point in the analysis of how a jail should handle inmate mail is identifying what sort of mail it is. There are two broad categories: privileged mail and general mail. As you might imagine, privileged mail is entitled to greater protection than general mail in terms of the inmate's rights to privacy and prompt delivery.

What inmate mail is privileged? Without question, mail between the inmate and his or her attorney is privileged. That status extends beyond the inmate's personal lawyer to other persons working for the lawyer, such as investigators, law clerks, and paralegals. In general, mail to the court system, judges, consular officials, and other government officials, like the attorney general or the Post-Release Supervision and Parole Commission, should also be considered privileged. (Note, however, that the North Carolina Department of Public Safety explicitly excludes the governor, the president, and members of the General Assembly and Congress from its privileged mail category.) It is not clear in North Carolina whether mail addressed to members of the news media should be considered privileged; many courts say that it is not, but the safer practice is probably to assume that it is. Mail related to medical issues is not privileged in the same way that legal mail is, but jail officials should be mindful of the inmate's privacy and the jail's obligation to provide adequate medical care. Mail that does not fall into the privileged category may be treated under the heading of general mail.

Handling privileged mail. Incoming privileged mail may be opened and inspected for contraband *only in the presence of the inmate*. *It may not be read*. Wolff v. McDonnell, 418 U.S. 539 (1974). A jail could have an exception to this rule for mail that has clear signs of contamination or other indications of danger. Outgoing privileged mail should be sent *unopened and unread* by jail staff.

Identifying privileged mail. In general, mail need not be considered privileged unless the outside of the envelope gives some indication of its status, such as LEGAL MAIL or ATTORNEY MAIL. But no particular words are required. For example, if the return address on a letter suggests it is from a lawyer, law firm, or the court system, jail officials should treat it as privileged and err on the side of inspecting it only in the presence of the inmate. If jailers suspect that mail marked as privileged is from a nonprivileged source, they may make a prompt investigation of its source. The delay should not extend beyond 48 hours.
Occasionally a jail will open and inspect privileged mail outside of an inmate's presence by mistake. So long as the intrusion is the product of an honest mistake and not indicative of any pattern or practice, it will not rise to the level of a constitutional violation. *See, e.g.*, Bryant v. Winston, 750 F. Supp. 733 (E.D. Va. 1990). The best practice in those situations is to hand-deliver the opened mail to the inmate and acknowledge the mistake. Any effort to hide it promotes mistrust and invites litigation.

Handling general mail. Jail officials may open and inspect incoming general mail outside of the presence of inmates. They may also read it—although many jail administration experts recommend doing so only when there is some reason to believe that it contains information relevant to institutional security. As a practical matter, overworked jailers are unlikely to have time to read all incoming mail, and doing so rarely uncovers genuine threats to security. Some jails briefly scan incoming mail and then read further if they notice anything troubling. Others have a policy of random inspection, which is also permissible.

As for outgoing general mail, jail staff may inspect and read it outside of an inmate's presence. Altizer v. Deeds, 191 F.3d 540 (4th Cir. 1999). Even if that is constitutionally permissible, though, many jail administration experts recommend against reading outgoing mail, given the broader demands on officers' time and the small likelihood of uncover-

ing legitimate security concerns.
Any information discovered during a proper inspection of incoming or outgoing general mail is fair game for a subsequent criminal prosecution. For example, a correctional officer did not violate an inmate's rights when he forwarded an incoming letter to police after seeing the words "twenty gauge shotgun loaded" at the top of one of the pages during his inspection for contraband. State v. Kennedy, 58 N.C. App. 810 (1982). Likewise, a deputy did no wrong when he gave to investigators a copy of a letter from an inmate to his father that included information suggesting the inmate was attempting to manufacture an alibi. The letter was not marked "legal mail," the inmate knew that nonlegal mail was inspected, and thus the inmate had no reasonable expectation of privacy in the letter's contents.

Censorship. In general, jail officials should not censor incoming or outgoing mail. Content-based restrictions on speech raise some of the most challenging questions under the First Amendment, and they can be a recipe for liability. That said, jail officials may censor or reject content that presents a legitimate threat to security or inmate rehabilitation. Procunier v. Martinez, 416 U.S. 396 (1974). For example, a jailer may permissibly reject mail that is written in code, makes a direct threat to someone, or includes things like escape plans or instructions on how to make a weapon. Thornburgh v. Abbott, 490 U.S. 401 (1989). Unfortunately, those are the easy issues. Censorship of things like sexually explicit, religious, or racially-sensitive content are of course much more difficult, as they involve personal experiences, perceptions, and biases. Mere insults to jail staff (sometimes directed at the "nosy" officers whose job it is to inspect the mail) should not be censored. Ultimately, the touchstone of permissible censorship is whether the content presents a genuine threat to security. When a letter is censored or rejected, the jail must give notice to the sender and the inmate, and provide the sender an opportunity to protest the ruling before an official other than the one who made the initial decision. The jail should create a standard form for such notifications.

Postage and writing materials. Indigent inmates who cannot afford writing materials or stamps must be provided a reasonable supply of materials at state expense whenever they wish to send mail to their lawyers or the courts. Bounds v. Smith, 430 U.S. 817 (1977). That rule should probably also extend to other privileged correspondents. As for general mail, an inmate does not have a right to unlimited free postage, but most experts recommend providing a small number of stamps and writing materials at facility expense. A jail might consider providing postage for a certain number of letters each week, with a process to request more with administrator approval. For comparison, the state prison system allows for 10 free stamps per month, while the Federal Bureau of Prisons allows for five each month.

Postcard-only policies. Some jails have considered or adopted a policy of allowing inmates to send and receive general mail only by postcard. The policy has some appeal, as it virtually eliminates the possibility of contraband being sent through the mail, and also allows for a quick inspection of the content of the correspondence. Nevertheless, some courts in other jurisdictions have concluded that postcard-only policies violate inmates' First Amendment rights. In Prison Legal News v. Columbia County, 942 F. Supp. 2d 1068 (D. Or. 2013), for example, a federal judge in Oregon concluded that the jail's postcard-only policy was not related to a legitimate penological interest. The policy placed too great a barrier between inmates and their unincarcerated correspondents by preventing the sharing of "photographs, children's report cards, and drawings," and the small space available on a postcard "creates a hurdle to thoughtful, personal, and constructive written communication." Meanwhile, the policy did not respond to a documented problem, and less severe measures (simply opening envelopes and visually inspecting their contents) were effective and did not take much more time than inspecting a postcard. Other courts have upheld such policies. *See, e.g.,* Prison Legal News v. Chapman, 44 F. Supp. 3d 1289 (M.D. Ga. 2014). The issue is being actively litigated around the country, but there is not yet any controlling case law in North Carolina.

Conclusion. As with many matters of jail administration, mail regulation involves a balance between the jail's institutional interests and inmates' general wellbeing and constitutional rights. The discussion above provides a basic framework for a written policy on mail management, but is by no means comprehensive. Sheriffs and jail administrators should consult with legal counsel to create or update a lawful policy tailored to the needs of their particular facility

Submitted by Jamie Markham, School of Government

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JAIL SYMPOSIUM
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New Legislation Regarding Jails

By: Eddie Caldwell
Executive Vice-President and General Counsel
North Carolina Sheriffs' Association

The 2015 Session of the North Carolina General Assembly initially convened on January 14, 2015, then reconvened at noon on Wednesday, January 28, 2015 with the House of Representatives and Senate adjourning at 4:18 a.m. on September 30, 2015.

For specific details about the legislative bills summarized below, please review the actual legislation. Copies of any of the legislation introduced or considered by this year's General Assembly are available on the General Assembly's website: www.ncleg.net.

Of particular interest to North Carolina sheriffs' office jail administrators are the following items, which were originally summarized in the 2015 Final Legislative Report published by the North Carolina Sheriffs' Association:

STATE BUDGET ACT
HOUSE BILL 97

- Requires the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Oversight Committee on Justice and Public Safety to each appoint a subcommittee to study the intersection of justice and public safety and behavioral health. Included in the issues to be studied is the impact of mental illness and substance abuse on county law enforcement agencies, specifically the number of people with mental illness and substance abuse issues held in county jails and their impact on agency budgets and personnel.

- Allocates $2.5 million for 2015-2016 and another $2.5 million in 2016-2017 to be used to provide matching grants to local law enforcement agencies to purchase and place into service body-worn cameras, and also for training and related expenses. The maximum grant allowed cannot exceed $100,000 and recipient law enforcement agencies are required to provide $2 in local funds for every $1 of grant funds received. In addition, the agencies are required to have appropriate policies and procedures in place governing the operation of body-worn cameras and the proper storage of images recorded with those cameras.

- Allows DPS to use any available funds to pay $40 per day as reimbursement to counties for the cost of housing convicted inmates, parolees, and post-release supervisees awaiting transfer to the State prison system. This is commonly referred to as "jail backlog."

- Allows DPS to consult with the county or municipality where a closed prison facility, youth detention center, or youth development center is located about the possibility of converting the facility to another use. DPS may also consult with elected State and local officials, State and federal agencies, or private for-profit or nonprofit firms. Priority is given for converting the facility to criminal justice use. DPS can also use available funds to reopen and convert closed facilities for use as treatment and behavior modification facilities for offenders serving a period of confinement in response to violation (CRV).

- Requires DPS to report annually to the chairs of the House of Representatives and Senate Appropriations Committees on Justice and Public Safety and to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety on county prisoners housed in the State Prison System for safekeeping. This report will include:

  i. The number of safekeepers housed by DPS;
  ii. A list of the facilities where safe keepers are housed and the popula tion of safekeepers by facility;
  iii. The average length of stay by a safekeeper;
  iv. The amount paid by counties for housing and extraordinary medical care of safekeepers; and
  v. A list of the counties in arrears for safekeeper payments owed to DPS.

- Requires that if a county owes money to the Division of Adult Correction and Juvenile Justice (Division) for safekeeper reimbursements that is more than 120 days overdue, the NCSA is required to withhold Statewide Misdemeanant Confinement Program (SMCP) funds from the county and to send those SMCP funds to the Division until the overdue safekeeper reimbursements are satisfied.

- Effective December 1, 2015, the list of crimes for which a law enforcement officer would be required to obtain a DNA sample upon a person's arrest is expanded. Currently, law enforcement officers are required to collect a DNA sample from arrestees for crimes such as murder, manslaughter, rape, sex offenses, kidnapping and armed robbery. Funding is provided to expand the list of offenses to include assault with a deadly weapon on executive, legislative, or court officers, castration and maiming, aggravated assaults on handicapped persons, patient abuse, discharging a firearm from within an enclosure, malicious injury or damage by use of explosives, assaulting a law enforcement agency animal, secret peeping, and felony child abuse.

- Directs the Joint Legislative Oversight Committee on Justice and Public Safety to study extending the collection of DNA samples to persons arrested for any felony.

- Requires the Administrative Office of the Courts, in conjunction with the Office of Indigent Defense Services (OIDS) and the NCSA, to study and determine whether savings could be realized through the establishment of a system of fully automated kiosks in local confinement facilities to allow attorneys representing indigent defendants to consult with their clients remotely. A report is due to the General Assembly by February 1, 2016 and it must include recommendations for at least two pilot sites for the proposed system.

- Allocates funds to the SBI for replacement of the Statewide Automated Fingerprint Identification System (SAFIS). However, House Bill 735, DPS Changes, amends House Bill 97 to prohibit the allocation of funds to the SBI to update SAFIS and instead provides that the DPS can use up to $3 million in over-realized receipts during the 2015-2017 fiscal biennium for replacement of the SAFIS.

HOUSE BILLS

HOUSE BILL 58, Certain Counties Sheriff/Food Purchases, provides that specific counties (Alamance, Anson, Caswell, Craven, Cumberland, Davidson, Guilford, Onslow, Pamlico, Randolph, Rockingham and Wake) sheriff's offices can contract for the purchase of food and food services supplies for the county's detention facility without being subject to certain State purchase and contract laws [G.S. 143-129 and G.S. 143-131(a)] which require local governments to obtain competitive bids before awarding certain types of contracts.
Effective: July 20, 2015

HOUSE BILL 130, Davie County/Food for Detention Facilities, provides that Davie County and the Sheriff may enter into a contract with the local board of education to provide meals for inmates in the county's detention facility. Meals provided under the contract must meet the minimum standards established by the Secretary of Health and Human Services as provided in G.S. 153A-221 and Subchapter 14J of Title 10A of the North Carolina Administrative Code. The contract would not be subject to the provisions of Article 8 of Chapter 143 of the General Statutes (Public Contracts).
Effective: May 18, 2015

HOUSE BILL 173, Omnibus Criminal Law Bill, makes various changes to the criminal laws for the purpose of improving the efficiency of the trial courts, to include:

- Amends G.S. 7A-146(11) to allow a chief district court judge to designate certain magistrates to appoint counsel and accept waivers of counsel (previously the law did not allow acceptance of waiver of counsel) and removes the requirement that the designation was limited to magistrates who are licensed attorneys.

- Modifies G.S. 14-444 to allow the chief district court judge to designate certain magistrates to accept guilty pleas in cases involving a charge of intoxicated and disruptive in public.

- Amends G.S. 15A-534(d3), effective October 1, 2015, to provide that, after conditions for pretrial release are determined for a defendant who is charged with an offense and who is currently on pretrial release for a prior offense, a judicial official would be allowed (instead of required) to double the amount of the defendant's most recent bond, with a minimum amount set at $1,000.
  Effective: September 23, 2015

HOUSE BILL 236, Certain Counties/Purchasing Exemption, allows the counties of Beaufort, Chowan, Currituck, Dare, Granville, Pasquotank, Stanly and Washington to contract for the purchase of food and food services supplies for the county's detention facilities without being subject to certain State purchase and contract laws [G.S. 143-129 and G.S. 143-131(a)] which require local governments to obtain competitive bids before awarding certain types of contracts.
Effective: July 20, 2015

HOUSE BILL 312, Certain Counties Sheriff/Food Purchases, allows the counties of Cherokee, Haywood, Henderson, Iredell, Jones, Lincoln, Madison, Orange, Transylvania and Yancey to contract for the purchase of food and food services supplies for the county's detention facilities without being subject to certain State purchase and contract laws [G.S. 143-129 and G.S. 143-131(a)] which require local governments to obtain competitive bids before awarding certain types of contracts.
Effective: July 23, 2015

HOUSE BILL 318, Protect North Carolina Workers Act, enacts new G.S. 143-133.3 to provide that no board or governing body of the State, a county, or a city can enter into a contract unless the contractor and subcontractors under the contract comply with requirements of Article 2 of Chapter 64 of the General Statutes (Verification to Work Authorization). A county could satisfy this requirement if it includes a provision in all contracts it enters into that requires contractors and subcontractors to use E-verify.

New G.S. 15A-306 is enacted to provide that the following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

- A matricula consular (embassy identification card) or other similar document, other than a valid passport, issued by a consulate or embassy of another country; or
- An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

No local government or law enforcement agency would be allowed to establish the acceptability of any of those documents as a form of identification to be used to determine the identity or residency of any person.

However, Senate Bill 119, GSC Technical Corrections 2015, amends G.S. 15A-306 to provide that identity documents issued or created by any person, organization, county, city, or other local government, could be used by a law enforcement officer to assist in determining the identity or residency of a person when they are the only documents providing an indication of identity or residency available to the law enforcement officer at the time.

No city or county has the authority to enact a policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws. No city or county has the authority to prohibit law enforcement officials or agencies from gathering information regarding a person's citizenship or immigration status, or to direct law enforcement officials or agencies not to gather citizenship or immigration information. Additionally, no city or county can prohibit this type of citizenship or immigration status information from being shared with federal law enforcement agencies.
Effective: October 1, 2015

HOUSE BILL 446, Amend Statutes Governing Bail Bondsmen, amends G.S. 58-71-50(b)(1) to require bail bondsmen be 21 years of age in order to qualify for licensure. Additionally, G.S. 58-71-200 is amended to allow bail bondsmen to have access to both criminal and civil information held by the Administrative Office of the Courts (AOC). This section refers to general information held solely in the AOC systems maintained by the clerk.
Effective: August 5, 2015

HOUSE BILL 562, Amend Firearm Laws, makes numerous changes to North Carolina's firearms laws. Changes of particular interest to jail and detention center personnel are as follows:

- Effective October 1, 2015, arresting law enforcement agencies are required to fingerprint individuals arrested for certain misdemeanors (such as domestic violence related crimes, impaired driving offenses and controlled substance violations) and to forward those fingerprints to the State Bureau of Investigation for the purpose of having them forwarded to NICS. However, House Bill 735, DPS Changes, amends House Bill 562 to remove the statement that this is being done for the purpose of the fingerprints being reported to NICS. The complete list of crimes for which an arrestee must be fingerprinted is found in Attachment A of this article.
- Law enforcement officers are also required to provide as much as possible of the following information after an arrest to magistrates: the arrestee's name, address, drivers license number, date of birth, gender, race, social security number and domestic relationship to any victims.

HOUSE BILL 570, Facilitate Successful Reentry, modifies G.S. 15A-301.1 by adding two new provisions to direct a law enforcement agency, at the time an individual is taken into custody, to attempt to identify all outstanding warrants against the individual and notify the appropriate law enforcement agency of the location of the individual. Similarly, prior to the entry of any order of the court in a criminal case, the court is required to attempt to identify all outstanding warrants against the individual and notify the appropriate law enforcement agency of the location of the individual.

The bill also enacts new G.S. 148-10.5 to direct the Division of Adult Correction and Juvenile Justice of the Department of Public Safety to work with law enforcement, the district attorneys' offices, and the courts to develop a process, both at intake and before release of an inmate, to identify all outstanding warrants on the inmate. An inmate would have to be notified of any outstanding warrants that were discovered and of his/her right to counsel.
Effective: October 1, 2015

HOUSE BILL 879, Juvenile Code Reform, makes several changes to the juvenile code in North Carolina. G.S. 7B-2101(b) was amended to change the age at which a juvenile must have a parent or attorney present during a custodial interrogation in order for their statement to be admissible from 14 to 16. This means that 14 and 15 year olds may no longer waive their right to have a parent or attorney present during a custodial interrogation.

G.S. 7B-2202(f) and 7B-2203(d) were amended to require adjudication hearings to be held separately from hearings to determine probable cause and transfer. G.S. 7B-1701 requires juvenile court counselors, upon receipt of a complaint regarding a divertible offense, to make "reasonable efforts" to meet with the juvenile and their parent or guardian about the complaint (if there is not a previous complaint against the juvenile involved).

G.S. 7B-1903(c) was amended to require a "custody review hearing" at least every 10 calendar days while a juvenile is in

New Legislation Regarding Jails Cont.

secured custody pending disposition of the case or placement, unless this hearing is waived by the juvenile through counsel. G.S. 7B-1903(f) prohibits the use of physical restraints while transporting a juvenile under 10, who does not have a pending delinquency charge, that is in secure custody for the purposes of evaluating the juvenile for medical or psychiatric treatment unless it is reasonably necessary for the safety of the officer (as determined by the officer or other authorized person).
Effective: December 1, 2015

SENATE BILLS

SENATE BILL 185, Clarify Credit for Time Served, amends G.S. 15-196.1 to clarify that credit for time served does not include time spent in custody as the result of a pending charge while serving a sentence imposed for another offense.
Effective: December 1, 2015

SENATE BILL 699, Protect LEO Home Address/Other Information, amends G.S. 153A-98 and G.S. 160A-168 to modify the statutes governing county and city personnel files. This new language prohibits disclosure of information that might identify the residence of a sworn law enforcement officer, emergency contact information, or any identifying information as defined in G.S. 14-113.20 such as the officer's social security or drivers license number. This information is not allowed to be disclosed unless it is disclosed in accordance with G.S. 132-1.4 or G.S. 132-1.10, or for the personal safety of the sworn law enforcement officer or a person residing in the same residence.

The bill also amends G.S. 132-1.7 by creating a new provision which provides that mobile telephone numbers do not constitute public records if they are issued by a local, county, or State government to a sworn law enforcement officer or nonsworn employee of a public law enforcement agency, an employee of a fire department, or any employee whose duties include responding to an emergency.
Effective: October 1, 2015

APPENDIX A
NEW FINGERPRINTING REQUIREMENTS PURSUANT TO N.C.G.S. § 15A-502

Effective October 1, 2015 it is the duty of an arresting law enforcement agency to cause a person charged with the commission of any of the following misdemeanors to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation:

1. N.C.G.S. § 14-134.3 (Domestic criminal trespass);
2. N.C.G.S. § 15A-1382.1 (Offense that involved domestic violence);
3. N.C.G.S. § 50B-4.1 (Violation of a valid protective order);
4. N.C.G.S. § 20-138.1 (Impaired driving);
5. N.C.G.S. § 20-138.2 (Impaired driving in commercial vehicle);
6. N.C.G.S. § 20-138.2A (Operating a commercial vehicle after consuming alcohol);
7. N.C.G.S. § 20-138.2B (Operating various school, child care, EMS, firefighting, or law enforcement vehicles after consuming alcohol);
8. N.C.G.S. § 90-95(a)(3) (Possession of a controlled substance); or
9. A misdemeanor offense of assault, stalking, or communicating a threat and the person is held under N.C.G.S. § 15A-534.1.